

WORKING P A P E R

Identifying Deportable Aliens in the Los Angeles County Jail

Implementing the HI-CAAP Federal-Local Partnership

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INFRASTRUCTURE, SAFETY, AND ENVIRONMENT

PREFACE

In June 2000, the County of Los Angeles was awarded a \$2.3 million grant by the U.S. Department of Justice (DOJ) to “develop and test a working model of interagency coordination and technology integration that will intensify law enforcement efforts to reduce the incidence of crimes committed by criminal aliens who continually reenter the county following deportation”¹. This interagency partnership was named the High Intensity Criminal Alien Apprehension and Prosecution Project (HI-CAAP).

The DOJ grant specified that an evaluation be part of the project and the RAND Corporation received a subcontract to conduct it. This report represents the findings of an evaluation of the implementation of the HI-CAAP partnership. Also as part of the subcontract, RAND is conducting a companion study intended to replicate two previous studies of deportable aliens released from the Los Angeles County Jail conducted by the Countywide Criminal Justice Coordinating Committee (CCJCC). A report on the findings of this study is slated to be released in October 2005.

The interviews described in this report were conducted in late 2003 and early 2004. For this report to provide feedback and insight to the HI-CAAP partners, it is necessary to present results while the partnership is still in development. Thus, this report documents implementation through March 31, 2004. The resources available for this study were limited and therefore it is necessarily narrow in scope. Rather than original data collection or systematic observation, it relies on observations and interviews of those already invested in the HI-CAAP process. Despite its limitations, this methodology can provide important feedback about the development of the HI-CAAP partnership.

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¹ CCJCC, 2002: 1.

CONTENTS

Preface	i
Contents	ii
Acknowledgments.....	iii
Glossary	iv
Executive Summary.....	v
1. Introduction.....	1
HI-CAAP Partnership Background.....	1
Identifying Deportable Aliens in the L.A. County Jail Population.....	2
Imposition of Federal Penalties on Previously Deported Criminal Aliens	5
Formation of the HI-CAAP Steering Committee	5
Definition of Previously Deported Criminal Aliens	6
2. Methodology	9
3. Results: Implementation of the HI-CAAP Partnership	12
Identification of Previously Deported Criminal Aliens	12
Matching Fingerprints of Arrestees	13
Technological Components of the Office of Community Oriented Policing Services Grant	15
Additional Efforts to Increase Identification of Criminal Aliens	16
Automated Immigration Detainers	16
Summary of the Implementation of the HI-CAAP Alien Identification Progress.....	19
Federal Prosecution of HI-CAAP Aliens	19
Summary of the Federal Prosecution Implementation Progress	23
4. Summary and Recommendations	25
Build Capacity for Central Data Collection	27
References	29

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GLOSSARY

AFIS	Automated Fingerprint Identification System
AJIS	Automated Justice Information System
CCHRS	Consolidated Criminal History Reporting System
CCJCC	Countywide Criminal Justice Coordinating Committee
CLETS	California Law Enforcement Telecommunications System
COPS	United States Department of Justice Office of Community Oriented Policing Services
DACS	Deportable Alien Control System
FBI	Federal Bureau of Investigation
HI-CAAP	High Intensity Criminal Alien Apprehension and Prosecution
ICE	Bureau of Immigration and Customs Enforcement
IAQ	Immigration Alien Query
IAR	Immigration and Alien Response
IHP	Institutional Hearing Program
INS	Immigration and Naturalization Service
IRC	Inmate Reception Center
ISAB	Information Systems Advisory Body
IVF	Immigration Violators File
LA	Los Angeles
LAFIS	Los Angeles Automated Fingerprint Information System
LAPD	Los Angeles Police Department
LESC	(Bureau of Immigration and Customs Enforcement) Law Enforcement Support Center
NCIC	National Crime Information Center
NLETS	National Law Enforcement Telecommunications System
SCAAP	State Criminal Alien Assistance Program
USAO	United States Attorney's Office

EXECUTIVE SUMMARY

Throughout the 1990s, Los Angeles County officials grew increasingly concerned about the negative impact of criminally involved deportable aliens on local public safety and local criminal justice resources. In order to quantify the problem, the Los Angeles Countywide Criminal Justice Coordinating Committee (CCJCC) conducted a series of studies focused on identifying and describing the characteristics of deportable aliens released from the county jail over a one-month period in both 1990 and 1995. The studies showed that deportable aliens made up 11 percent (1,933) of the 1990 release cohort and 17 percent (2,416) of the 1995 release cohort. At the conclusion of a one-year post-release follow-up period, about 40 percent of the deportable aliens in both the 1990 and the 1995 release cohorts had been rearrested, with many experiencing multiple arrests (CCJCC, 1990; 1997). These findings supported conclusions that deportable aliens involved in criminal activity posed a substantial public safety problem and drain on criminal justice resources in Los Angeles (L.A.) County. Of particular concern was that subgroup of criminal aliens who had been previously deported from the United States and later rearrested for new criminal activity in L.A. County.

In response, the County began to pursue policy and program changes intended to increase the identification, federal prosecution, and removal of previously deported criminal aliens. A multi-agency, interjurisdictional task force was formed and the developing partnership received a grant from the U.S. Department of Justice Office of Community Oriented Policing Services to fund technological improvements that would allow better identification of all criminal aliens and specifically those who had been previously deported. This effort was called the High Intensity Criminal Alien Apprehension and Prosecution (HI-CAAP) partnership. The HI-CAAP partnership does not address illegal aliens living in Los Angeles generally. Its focus is on previously deported aliens who return to the country and are involved in criminal activity in Los Angeles County.

The purpose of this report is to provide some feedback about progress on implementing the goals of the HI-CAAP partnership and to point out areas that may need further attention. This assessment is not an outcome evaluation. That is, it does not address the effectiveness of the HI-CAAP activities in reducing the return of previously deported criminal aliens to L.A. County or whether crime in the County by criminal aliens has been reduced. Instead, it is a first step in understanding how the partnership's planned activities have been put into place.

The methodology consisted of three primary activities:

- 1) a series of individual interviews with members of the HI-CAAP steering committee (conducted between August 2003 and February 2004);
- 2) a document review of materials generated by and/or pertinent to the HI-CAAP steering committee about planned activities and their implementation; and
- 3) attendance and observation over a two-year period at HI-CAAP steering committee meetings (from May 2002 to March 2004).

From these activities, we organized our observations according to information on each of the two key implementation goals of the HI-CAAP partnership: 1) increasing the identification of previously deported criminal aliens and 2) increasing the rate at which these aliens face federal prosecution for illegal reentry. We then summarized the observations to reveal general themes (such as impressions of the process) and details on program components (such as technology installation progress).

The implementation goals of the HI-CAAP partnership are to increase the identification of previously deported criminal aliens and to increase federal prosecution of these individuals. Interview respondents clearly indicated that considerable progress toward the first goal has been made. They reported achievements including increased ability to make a fingerprint-based identification of previously deported criminal aliens; improved working relationships with the Law Enforcement Support Center (LESC), and the important progress toward implementation of an automated immigration detainer process.

Outstanding issues related to the identification of previously deported criminal aliens are:

- Determining the reasons why Bureau of Immigration and Customs Enforcement (ICE) agents are inconsistently using LiveScan equipment and to identifying strategies for increasing LiveScan processing of individuals taken into ICE custody.
- Resolving the contractual and other issues stalling integration of the HI-CAAP Automated Fingerprint Identification System (AFIS).
- Resolving the labor union concerns about federal background investigations related to the “deputization” of jail staff by ICE to conduct immigration interviews.
- Continuing to work with Law Enforcement Support Center (LESC) to establish the automated detainer process for non-self declared aliens.

Our interviewees also reported progress toward the goal of increased federal prosecution of HI-CAAP aliens. Despite no increase in resources, the United States Attorney Office (USAO) has been actively seeking methods, such as the adoption of the Fast Track program, to increase the number of federal prosecutions of criminal aliens. Outstanding issues are:

- Identification of additional resources for the USAO to support federal prosecution of HI-CAAP aliens.
- Clarification of HI-CAAP partnership goal of cost savings versus policies of pursuing local prosecution before transferring HI-CAAP aliens to federal authorities.
- Development of a clearer understanding among the HI-CAAP partners of policy and practice regarding voluntary departures versus formal deportation proceedings for aliens with criminal records who have not been previously deported. The ICE partner office should consider regularly providing L. A. County-specific descriptive data on the numbers and characteristics of voluntary departures and formal deportations.

- Greater communication is needed about the content and application of the federal prosecution guidelines.
- Regular reporting to the HI-CAAP partners of data on the number of cases referred for federal prosecution, the number and type of prosecutions, reasons for rejection, and case outcomes.

From our interviews and observations, it is clear that implementation of the HI-CAAP partnership is still ongoing. Progress on implementation should continue to be monitored. Critical to such efforts is the independent collection and analysis of data relating to the status implementation. Two other recommendations for consideration by the HI-CAAP partners are of a general nature. They relate to addressing high staff turnover and building a capacity for central data collection.

Finally, the issues raised in this review may serve as informative background for other jurisdictions that are seeking to form interjurisdictional partnerships to address criminal aliens. The L.A. County experience illustrates that such efforts require the long-term commitments of all key agencies; creative solutions to resource, bureaucratic, and jurisdictional barriers; openness to scrutiny and constructive criticism by partner agencies; and proactive communication with federal authorities about local needs. While these partnerships are not easily developed or maintained, they may hold great promise for addressing the multijurisdictional problem of previously deported criminal aliens.

1. INTRODUCTION

In recent years, greater national attention has been focused on the potential threats to public safety posed by deportable aliens involved in criminal activity. Of particular concern are aliens who have been previously deported for criminal activity, yet return to this country and continue to engage in criminal behavior. Systematic identification and apprehension of criminal aliens in the United States, however, is a formidable challenge for immigration agents, especially at the initial stages of apprehension and detention at local jails. While it may be easy for immigration agents to identify and prepare to take custody of deportable aliens among the state prison population (as prison terms typically exceed one year), this may not be the most efficient way of combating the problem of re-offending criminal aliens. This limits identification to only those who are convicted and receive a prison sentence.

A more efficient way to identify deportable criminal aliens may be to focus on the local jail population. However, identification in local jails presents considerable difficulties. Jails serve as short-term holding facilities for both convicted offenders and pre-trial defendants. In these county-level facilities, immigration agents may have little time to identify criminal aliens before their release from local law enforcement custody.

One strategy for increasing the ability of immigration agents to identify and take custody of deportable aliens among jail populations is to strengthen collaborative relationships with local criminal justice agencies. Moreover, these collaborations can be critical to increasing the rate at which previously deported criminal aliens face federal prosecution and the significant penalties afforded under federal law for illegally reentering the country. In this report, we present the findings from an assessment of the implementation of such a multiagency, local-federal partnership in Los Angeles County. Dubbed HI-CAAP (High Intensity Criminal Alien Apprehension and Prosecution), this partnership is intended to increase the identification, federal prosecution, and removal of previously deported criminal aliens.

The research presented in this report is a process evaluation with two goals:

1. to describe the implementation of the partnership project to date; and
2. to identify areas for project improvements.

While the HI-CAAP partnership had been evolving over the 1990s, it received federal grant dollars to officially launch its activities in June of 2000. In this chapter, we will present the context and background for the development of the Los Angeles (L.A.) County partnership. In chapter two, we describe the methodology of the process evaluation. The third chapter presents the findings of the study and the fourth chapter presents the recommendations and conclusions.

HI-CAAP Partnership Background

Throughout the 1980s and 1990s, L. A. County officials grew increasingly concerned about large numbers of deportable aliens cycling through the county jail system. Particular concerns were raised about the negative impact of these criminally involved deportable aliens on local public safety and on local

criminal justice resources. In order to quantify the problem, the L. A. Countywide Criminal Justice Coordinating Committee (CCJCC) conducted a series of studies focused on identifying and describing the characteristics of male deportable aliens released from the county jail over a one-month period in both 1990 and in 1995. The studies showed that deportable aliens made up 11 percent (1,933) of the 17,774 inmates in the 1990 release cohort and 17 percent (2,416) of the 14,446 inmates in the 1995 release cohort.² Because of the enormous size of the L. A. County jail system, these percentages translate into substantial numbers of deportable aliens. If these one-month release cohorts are representative of the rest of year, the estimated number of male deportable aliens released from the L.A. County jail was approximately 22,000 in 1990 and 29,000 in 1995.

One year following their jail release, criminal record checks were conducted to assess recidivism. For the 1990 study, records were checked for all deportable aliens in the release cohort. The 1995 study checked records for a sample of those released from the jail directly into the custody of immigration agents. After one year, about 40 percent of the deportable aliens in both the 1990 and the 1995 groups had been rearrested by local law enforcement for various criminal offenses, with many being the subject of more than one arrest during the one-year follow-up. In both time periods, over 80 percent of the rearrests occurred in L.A. County (CCJCC, 1990; 1997).

These findings gave credence to views that deportable aliens were imposing a substantial burden on the local criminal justice system. This was due not only to their sheer numbers but also to the seeming regularity with which the same deportable aliens were rearrested and returned to the L.A. County jail population. Both the 1990 and 1995 studies found a 40 percent recidivism rate, suggesting that both the United States border and the L.A. County jail had become a “revolving door” for criminal aliens.

Two general issues were focused on to address the revolving door problem:

1. identifying deportable (and previously deported) aliens among the hundreds of inmates admitted and released daily from the L.A. County jail, and
2. imposing stricter federal penalties on previously deported criminal aliens to reduce the likelihood of their return to the country and more specifically to L.A. County.

Regarding the first point, identifying all criminal aliens in the jail system was seen as an important intermediate step to identifying those who had been previously deported.

Identifying Deportable Aliens in the L.A. County Jail Population

Difficulties in identifying deportable aliens (previously deported or not) prior to their release from custody are not unique to L.A. County. National level reviews have identified similar problems with identifying deportable aliens in local jails across the country (U.S. DOJ Inspector General, 2002).

Prior to the implementation of the HI-CAAP program in L.A., there was no method to electronically check fingerprints of those in the local jail population against immigration records. Law enforcement

² RAND is currently replicating these studies using a 2002 release cohort.

agencies rely on fingerprint-based electronic databases to identify individuals whereas the federal immigration agency relies on a name-based identification system. (This agency was formerly known as the Immigration and Naturalization Service but is now the Bureau of Immigration and Customs Enforcement or ICE.)³ Thus, identification of deportable aliens required immigration agents stationed at the jail to execute a much slower and resource-intensive process of in-person interviews and name-based database searches.⁴

Typically, the identification procedures were as follows:

- In the normal course of their duties, local law enforcement officers arrest suspects for any number of criminal offenses and book them at their local facility or transport them to the county jail.
- During the booking process, all suspects are asked to indicate their place of birth. Those suspects naming a country other than the United States are recorded in the Automated Justice Information System (AJIS) as foreign-born.
- For each foreign-born inmate recorded during booking, AJIS automatically generates a query to the Bureau of Immigration and Customs Enforcement's (ICE) Law Enforcement Support Center (LESC), which then conducts a name-based search of immigration records. The LESC returns a response to the county jail with immigration status information based on the results of this search. (The role and procedures of the LESC will be discussed in detail in later sections of this report.)
- After primarily consulting a list of foreign-born inmates printed out from AJIS (and also consulting the responses sent from LESC), jail staff select those inmates that are:
 - still in law enforcement custody,
 - currently located at the county jail (as opposed to a local booking facility),
 - fully sentenced inmates.
- Selected inmates are scheduled for interviews by immigration agents stationed at the jail.
- Immigration agents interview the scheduled inmates and review immigration databases (via dedicated ICE-use computer terminals located within the jail) to verify immigration status.

³ A reorganization of federal agencies after the terrorist attacks of 2001 resulted in this agency name change. For simplicity of presentation in this report we refer to the relevant federal immigration agency in the pre- and post-reorganization period as the Bureau of Immigration and Customs Enforcement (ICE).

⁴ Immigration agents were posted in the jail through the Institutional Hearing Program (established in 1986). This program expanded in 1998 and was renamed the Institutional Removal Program.

- When immigration agents identify a deportable alien, they may lodge a federal immigration detainer against the individual. This detainer provides the legal authority necessary to prevent release from custody, should release related to a local criminal case otherwise be required (e.g. a local prosecutor declines to proceed with the case, a court orders a release, a local jail sentence is completed, etc.)
- Upon release from jail, immigration agents take identified deportable aliens into custody and transport them to a federal holding facility. From there, aliens face immigration administrative procedures which may result in the alien:
 - being released pending further immigration investigation,
 - being offered the opportunity to voluntarily depart the country in lieu of facing formal deportation proceedings,⁵
 - facing deportation proceedings, which may grant the alien relief by an immigration court, voluntary departure in lieu of formal deportation, or formal deportation.

The greatest impediments to consistent identification of deportable aliens in this process are the restrictions on time in custody and immigration personnel resources. At any one time there may be thousands of foreign-born inmates in the L.A. County jail system.⁶ To determine immigration status, each must be interviewed before being released, which may occur within a few hours or days. Local jail officials lack the legal authority to detain a foreign-born inmate, who is otherwise scheduled for release, solely for the purpose of determining immigration status.

Complicating matters further, immigration agents are not present at the jail 24 hours a day or seven days a week. Consequently, deportable aliens escape detection if there are not enough immigration agents to interview all the foreign-born inmates scheduled for release at any one time and/or if inmates are released during evening and weekend hours when immigration agents are not available. Moreover, immigration agents are not available to interview inmates who are held at a local booking facility and are never transferred to the county jail. Data are not available on how many foreign-born inmates were released without immigration status determination in the period before launching the HI-CAAP partnership.⁷

⁵ Those who voluntarily depart also avoid the designation of previously deported alien.

⁶ While the CCJCC studies did not examine jail admissions or the standing jail population, foreign-born male releasees numbered 3,327 during the one-month period in 1990 and 3,983 in 1995 (CCJCC, 1990, 1997).

⁷ The 1990 and 1995 CCJCC jail studies (and the 2002 RAND replication study) were made possible through cooperation of ICE (then INS). It ensured that immigration agents were present in adequate numbers 24 hours a day for the study period. The two CCJCC reports stated that all released foreign-born inmates were interviewed. During the RAND replication study, immigration status was not determined for 957 foreign-born releasees because agents were unavailable for some periods.

Imposition of Federal Penalties on Previously Deported Criminal Aliens

The act of illegally entering the United States and of reentering the country after being deported are federal crimes under 8 U.S.C. Sections 1325 and 1326. Before previously deported aliens are removed from the country, they may face federal criminal charges that range in severity depending upon the seriousness of offenses on their criminal record. Prior to the formation of the HI-CAAP partnership, concerns were raised that a lack of federal prosecution of previously deported criminal aliens contributed to their high rate of return to the L.A. County jail system. A Sheriff's Department report on L.A. County criminal aliens stated that limited resources forced the United States Attorney Central California District Office, responsible for the L.A. area, to adopt a policy of filing charges only against aliens who had been deported several times. Consequently, the local immigration office referred relatively few cases (396 in 1998) for consideration by federal prosecutors.⁸ With so few criminal aliens facing federal prosecution, local policymakers were concerned that little deterrent existed to dissuade criminal aliens from reentering the country and returning to L.A. County.

Formation of the HI-CAAP Steering Committee

Community problems rarely align themselves with government agency boundaries. Because of the interjurisdictional problems presented by previously deported criminal aliens, L.A. County agencies alone could not adequately address the issue. With immigration under federal jurisdiction, it was imperative to collaborate with the appropriate federal agencies. In response to the interjurisdictional nature of the problem of previously deported criminal aliens, the HI-CAAP partnership was created. Led by L. A. County Supervisor Michael Antonovich, partner agencies were recruited to join the HI-CAAP steering committee. These partners are:

- County Supervisor Michael Antonovich's Office
- Countywide Criminal Justice Coordinating Committee
- Information Systems Advisory Body⁹
- County of Los Angeles Sheriff's Department
- City of Los Angeles Police Department
- City of Los Angeles Office of the City Attorney
- County of Los Angeles Office of the District Attorney
- County of Los Angeles Chief Administrative Office
- United States Attorney's Central California District Office, U.S. Department of Justice

⁸ Baca, 2000.

⁹ This is a multi-agency subcommittee of the CCJCC focusing on the planning, coordination, and development of justice information systems.

- Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security¹⁰

Under the leadership of the CCJCC, the committee examined the issues involved with deportable criminal alien arrest, prosecution, and deportation, and proposed specific ways to combat the problems as part of an innovative partnership. They developed the following set of action items:¹¹

- Develop operational linkages of fingerprint and data system technology among local, state and federal agencies to ensure positive identification and tracking of all repeat criminal aliens who illegally reenter the United States after deportation;
- Establish interagency procedures to coordinate local, state and federal identification, prosecution, and sentencing of all repeat criminal aliens who illegally reenter the United States after deportation;
- Increase federal prosecution and incarceration of criminal aliens who illegally reenter the country after deportation;
- Reduce the number of deportable aliens who fail to make court appearances at proceedings involving state criminal charges;
- Identify unmet local, state, and federal needs required to ensure the positive identification, prosecution, and sentencing of all repeat criminal aliens who illegally reenter the United States after deportation; and
- Develop a regional model for interagency law enforcement coordination that could be replicated in other regions of the State and nation.

Definition of Previously Deported Criminal Aliens

The HI-CAAP partnership does not focus on detection of illegal aliens. Instead, it is designed to increase detection and federal prosecution of aliens who:

1. are convicted for criminal offenses specified by federal law according to ICE,
2. are deported from the U.S. as a result of a conviction,
3. illegally reenter the U.S. after deportation, and
4. are rearrested for criminal behavior in L.A. County.

The term “previously deported criminal alien” refers to individuals who meet all four of these criteria. The designation of “criminal alien” is assigned based upon conviction of an aggravated felony under federal immigration law. Despite this name, these crimes are not necessarily felony offenses under

¹⁰ At the time of the formation of the HI-CAAP steering committee, the immigration partner agency was the Immigration and Naturalization Service (INS).

¹¹ CCJCC, 2002.

California law. Examples of these offense are murder, sexual offenses, property offenses that carry penalties of more than one year in prison, trafficking of a controlled substance, certain firearms violations, stalking, spousal and child abuse, and certain crimes of fraud.¹² The partnership does not focus specifically on aliens who have never been deported, rather the activities of the program would function to increase the identification of all criminal aliens in the jail system.

Federal Grant Award to Support HI-CAAP Partnership and Technology

The HI-CAAP steering committee applied for and received a \$2.3 million grant from the U.S. Department of Justice Office of Community Oriented Policing Services (COPS) in June 2000. Funds were awarded to “develop and test a working model of interagency coordination and technology integration that will intensify law enforcement efforts to reduce the incidence of crimes committed by criminal aliens who continually reenter the county following deportation.”¹³

In addition to strengthening interagency communication and collaboration, the federal grant funding was earmarked to support four key technological enhancements intended to increase the identification of previously deported criminal aliens.

The L.A. County/ICE grant proposal reads:

“The State of California’s existing CCHRS (Consolidated Criminal History Re[porting] System)¹⁴ database provides the necessary technological infrastructure upon which to develop, enhance and reconfigure the presented technologies comprised of the following project components:

Installation of [ICE] CCHRS;

Installation of [ICE] LiveScan;

Integration with HI-CAAP AFIS; and

CCHRS enhancement

[ICE] CCHRS

The [ICE] CCHRS component will provide for the installation and development of a CCHRS system within the Los Angeles Offices of the [ICE]. This includes purchasing the necessary hardware, software, and other resources to connect the local [ICE] office to the [Los Angeles County’s] CCHRS. The component also includes CCHRS training, site preparation and technical assistance for staff. Technical assistance will be provided by the Los Angeles County Sheriff’s Department staff within the Records and Identification Bureau...”

“...[ICE] LIVESCAN

¹² For a complete list of these offenses and a comparison of the legal definition of aggravated felony under federal law, see U.S. DOJ Inspector General (2002).

¹³ CCJCC, 2002: 1.

¹⁴ L.A. County’s CCHRS began operating in late 1996. It combined eight otherwise incompatible databases to provide one central source for criminal history information.

The [ICE] Livescan component will provide for the installation and development of Livescan terminals, card scanners, fingerprint scanners and software within the Los Angeles Offices of the [ICE]. Purchases include a Livescan/Central Index System, Livescan customization/programming, Livescan maintenance, and fingerprint card scanner maintenance...”

“...HI-CAAP AFIS

The AFIS [c]omponent includes developing a fingerprint system focused on the records of deportable aliens. This includes purchasing the necessary hardware, software, interfaces, and technical resources to install and develop the AFIS system...”

“...CCHRS ENHANCEMENT

The expansion and enhancement of the CCHRS system is a key element of the proposed technology project. This component includes specifically creating and developing a CCHRS/[ICE] Web-Enabled Interface. We will secure the necessary hardware, software and technical resources (including web application servers, the services of a software development subcontractor and other hardware) to install and maintain the enhanced CCHRS system.”

While many of these technological enhancements can support the HI-CAAP partnership goal of increasing federal prosecution of identified aliens, the primary thrust is increasing the ability to identify previously deported criminal aliens.

The HI-CAAP partnership has been an evolving entity over many years so there is no distinct launch date for its establishment. Having been infused with the COPS Office funding, its efforts grew more keenly focused. As a result of the COPS Office funding, in April 2002 RAND was contracted to assess the status of implementation of the HI-CAAP partnership activities. In the next chapter and following, we present the methodology employed to assess this implementation and the findings.

2. METHODOLOGY

Successful implementation is the key to successful programs and must be monitored closely. The goal of a process evaluation is to assess program implementation. Process evaluations fill in valuable details about the activities-to-date – details that may provide important insights into whether the program is implemented as intended. Process evaluations provide formative or developmental suggestions. Data collection methods such as interviews can be helpful in identifying areas where program activities seem to be fully established as well as identifying challenges and barriers to implementation. By comparing actual implementation with planned activities, a process evaluation can serve as a quality check and can pinpoint areas for program improvement.

The goal of this report is to provide feedback regarding the HI-CAAP partnership's progress on goal implementation and to point out areas that may need further attention. This assessment is not an outcome evaluation. That is, it does not address the effectiveness of HI-CAAP activities in reducing return of previously deported criminal aliens to L.A. County, or whether crime in the County by criminal aliens has been reduced. Instead, it is a first step in understanding how the partnership activities have been put into place.

The methodology consisted of three primary activities:

- 1) a series of individual interviews with members of the HI-CAAP steering committee (conducted between August 2003 and February 2004);
- 2) a document review of materials generated by and/or pertinent to the HI-CAAP steering committee about planned activities and their implementation; and
- 3) attendance and observation over a two-year period at HI-CAAP steering committee meetings (from May 2002 to March 2004).

From these activities, we organized our observations according to the two key HI-CAAP partnership implementation goals: 1) increasing the identification of previously deported criminal aliens and 2) increasing the rate at which these aliens face federal prosecution for illegal reentry. We then summarized the observations to reveal general themes (such as impressions of the process) and details on program components (such as technology installation progress).

Interviewees included past and present project participants who represented all the HI-CAAP partner agencies. These individuals and agencies were:

- John Aerts, Lieutenant, Information Systems Advisory Body
- Anthony Argott, Captain, Los Angeles Sheriff's Department
- Larry Bryant, Sergeant, Los Angeles County Sheriff's Department
- George Cardona, Chief Assistant, Office of United States Attorney

- Dan Jeffries, Assistant Supervising Attorney, Office of the City Attorney of Los Angeles
- Kevin Jeffery, Section Chief, Investigations Unit, Bureau of Immigration and Customs Enforcement
- Thomas Laing, Captain, Los Angeles County Sheriff's Department
- David Lindsay, Lieutenant, Los Angeles Police Department
- Janice Maurizi, Director, Los Angeles County District Attorney's Office
- Anna Pembedjian, Justice Deputy, Office of Michael Antonovich, County Board of Supervisors, Fifth District
- Mico Robles, Lieutenant, Los Angeles County Sheriff's Department
- Peggy Shuttleworth, Executive Director, Countywide Criminal Justice Coordinating Committee
- Mark Tajima, Intergovernmental Relations Director, County of Los Angeles Chief Administrative Office
- Mark Weldon, Lieutenant, Los Angeles County Sheriff's Department

Interviews used semi-structured protocols, with some questions asked of all participants and others tailored to the role of the individual and agency represented. All interviews lasted between 45 minutes and one hour and were mostly conducted in-person. In several cases, it was necessary to interview respondents by telephone. In general, the interviews asked the following questions:

- What is your agency's role in HI-CAAP and when did it become involved?
- What type of alien does HI-CAAP target and how would you describe the HI-CAAP process?
- From your perspective, how has HI-CAAP implementation gone?
 - Who or what has been the driving force behind the steering committee?
 - Were there any roadblocks along the way? If so, please describe.
 - What do you think has been achieved to date through the process?
- What are you still looking to accomplish and what issues are the group still sorting out?
- Do you see any indirect effects of the program, either benefits or negative outcomes?

Ideally, a number of individuals from each organization would be interviewed in order to gather a representative perspective from each agency. Unfortunately, available resources prevented this more extensive data collection. Thus, our findings are necessarily limited to the individual perspectives of the interviewees representing their respective agencies.

In addition to the agency interviews, we regularly attended the HI-CAAP steering committee meetings to observe and document proceedings. The meetings occurred approximately every six to eight weeks. During these meetings, problems with implementation were discussed and updates were provided from participating agencies about the status of their implementation efforts. Because RAND was contracted to begin work in May 2002, we were unable to observe meetings prior to that date. In addition to the meetings, we observed a conference call between the local steering committee and the ICE Law Enforcement Support Center (LESC) on obtaining immigration detainers for criminal aliens in the L.A. County jail.

While documenting the observations and insights of the HI-CAAP steering committee members can provide important information about the status of implementation, it is limited in utility. Ideally, the process evaluation would have involved primary data collection and independent, systematic observation of activities over time in each participating agency. This strategy would have afforded us a much higher level of confidence in the findings about implementation. Unfortunately, resource limitations prevented a broader scope for this study. Therefore, we can only judge success according to the reports of those already invested in the HI-CAAP partnership. Since this is not an unbiased source of data, we must be cautious in interpreting the results. More in-depth research would be necessary to support firm conclusions about implementation of the HI-CAAP partnership.

In the next chapter, we describe our findings on the status of implementation.

3. RESULTS: IMPLEMENTATION OF THE HI-CAAP PARTNERSHIP

In this chapter, we present the status of the HI-CAAP partnership implementation through March 31, 2004. The two major implementation goals for the HI-CAAP partnership are: 1) to increase the identification of previously deported criminal aliens and 2) to increase the rate at which these aliens face federal prosecution for illegal reentry. Overall, steering committee interviewees indicated that there has been significant merit and value to the HI-CAAP partnership. The most commonly reported result of the HI-CAAP process was improved communications between steering committee members. Virtually all respondents indicated that this had occurred as a result of participation in the partnership. Communication was characterized as both more frequent and more substantive than that which had previously existed. Increased communication was thought to have a generally beneficial effect as well as found to be valuable in several specific instances. The partnership by interviewees was characterized as a true example of collaborative problem solving, having included all key stakeholders in the process from its inception.

The increased communication flow is thought to have created better working relationships. Regular communication allows participants greater understanding of each agency's needs and constraints. One respondent noted, "We can see each other's problems and figure out how others might help." If members understand the problems faced by other agencies, they can often be creative in devising workable solutions. This communication can be especially important when members encounter an issue that they need key leaders to resolve.¹⁵

Overall, the improved communication and working relationships fostered through the HI-CAAP partnership were cited by respondents as critical to moving toward full implementation of key program goals. Next, we discuss findings for the specific program goals. In the first section, we describe the findings related to identification of criminal aliens (including discussion of the enabling technologies). In the second section, we discuss federal prosecution of HI-CAAP aliens.

IDENTIFICATION OF PREVIOUSLY DEPORTED CRIMINAL ALIENS

Identifying individuals based upon their names alone is highly problematic. There are many duplicate names in databases and subjects routinely attempt to conceal their identity by providing false names and dates of birth. Key to increasing identification of HI-CAAP aliens is to develop a more rapid and consistent means of determining their identities than was afforded by dependence on overwhelmed immigration agents conducting name-based searches. The HI-CAAP partnership envisioned a system

¹⁵ For instance, when County staff and local ICE agents were having difficulty in setting up new protocols for the HI-CAAP process with the ICE Law Enforcement Service Center, they called on Supervisor Antonovich who was able to access the then-head of LESC to resolve difficult issues. The ability to access senior leaders in partner agencies has also been important in implementing the technological changes that the COPS grant funded.

that would compare the fingerprints of arrestees to immigration records, much as they are compared to state and national criminal history databases. This system would allow rapid and automated checks of arrestee fingerprints against electronic fingerprint files of previously deported criminal aliens. A fingerprint match would allow immediate notification of immigration agents to obtain an immigration detainer. This was expected to reduce the problem of HI-CAAP aliens slipping through the L.A. County jail without being identified.

In order to implement this system, several basic elements were necessary. First, an automated fingerprint-based database of deported criminal aliens was needed. Second, a method of rapidly obtaining an immigration detainer to prevent release of HI-CAAP aliens needed to be established. We discuss progress on each of these items below.

Matching Fingerprints of Arrestees

Prior to the formation of the HI-CAAP partnership, some resources were available to assist local law enforcement in determining whether an arrestee was a criminal alien. However, these resources were not efficient for extensive use by L.A. County law enforcement. In this section, we discuss these resources and how they were utilized through the HI-CAAP partnership.

Law Enforcement Support Center. Aside from immigration agents stationed in the jail, the other information source for detecting criminally deportable aliens was the ICE LESC. Established in 1994, this center is available 24 hours a day to conduct name-based searches of immigration databases in response to law enforcement inquiries. Name-based matches are considered preliminary until an interview can be conducted by immigration agents to confirm the true identity of the arrested suspect. In June 2002, the HI-CAAP partnership sent a delegation to meet with Joseph Greene, then-INS Assistant Commissioner for Investigations, Office of Field Operations. As the result of that meeting, LESC was given authority to place an immigration detainer on an individual in local law enforcement custody. However, LESC policy prevents lodging an immigration detainer on the basis of a name match alone. If immigration agents were unable to interview these individuals rapidly and local charges did not provide adequate justification for further detention, arrestees were subject to release from custody.

While the service provided by LESC is important, it is also time-consuming and inconsistently utilized by local law enforcement. It requires a manual inquiry (either via telephone or electronic inquiries) to the LESC in cases where criminal alien status is in question.

National Crime Information Center. A second option for identifying criminal aliens was available to local law enforcement through the National Crime Information Center (NCIC). In February 1996, the Deported Felon File was added to NCIC. It is maintained by ICE and contains records of those deported as criminal aliens. In August 2003, the Deported Felon File became a sub-file in a new NCIC addition called the Immigration Violators File (IVF). Along with deported felons, it contains immigration absconders (those facing final orders of removal from the country but whose whereabouts are unknown), and those who have not complied with the requirements of the National Security Entry Exit Registration

System.¹⁶ Initially, a search within the IVF required that local law enforcement conduct a special NCIC query. While this added capability was useful, it was difficult to ensure that this special query was consistently made by the many local law enforcement agencies in L.A. County.

In part because of a 2002 request from the HI-CAAP partnership to then-INS Assistant Commissioner Joseph Greene, the Deported Felon File (and later the IVF) was made part of a standard NCIC arrestee query. Thus, when local law enforcement agencies submit electronic fingerprints of arrestees they are simultaneously searched against the standard “wanted persons” file (checking for “wants and warrants” in jurisdictions around the country) and the IVF.

If an indexable number and name search match is made within the IVF, no immigration interview is required to obtain a detainer from the LESC. Local enforcement can then notify the LESC of the fingerprint match and a detainer can then be immediately placed upon the individual in question. An indirect result of the HI-CAAP partnership was the addition of the link of the IVF to the standard NCIC wanted persons query; a dramatic step forward in identifying the partnership’s target population.

State-Level Process. Prior to the advent of the partnership, the services of the NCIC and LESC were regarded as valuable but not sufficient for HI-CAAP’s purposes.¹⁷ There were concerns about a large backlog of cases to be added to the NCIC IVF. Some HI-CAAP aliens would escape detection if L.A. County relied solely on the NCIC file. Thus, a third means for identifying HI-CAAP aliens was devised. L.A. County officials in cooperation with the then-INS office serving the L.A. County created a state-level deported felon file. Between 1995 and 2000, the INS office provided fingerprint cards on deported aliens to the California Department of Justice. This agency then added these records to the state criminal history system, which eventually grew to include approximately 35,000 aliens.

This database received automated queries from L.A. County. During standard procedures for booking arrestees, an automated query is generated by AJIS to the state criminal history system. This system then returns a response to the booking agency with a state identification number and any records it contains on these individuals, including a notice of HI-CAAP status. Upon receipt of a notice of HI-CAAP status, AJIS automatically generates a query to LESC, informing it that a HI-CAAP alien is in custody and requesting an immigration detainer.

In January 2001, the regional then-INS office discontinued the practice of submitting fingerprint cards on deported aliens to the DOJ for criminal records flagging. It cited a lack of resources for this change.

¹⁶ Kirkpatrick, 2003. Pending legislation would expand the categories of aliens included in NCIC’s IVF. The Homeland Security Enhancement Act of 2003 (S. 1906) would add to NCIC all with final orders of deportation (not just absconders), those who agreed to a voluntary departure, and aliens who overstayed legal visas. The Clear Law Enforcement for Criminal Alien Removal Act of 2003 (H.R. 2671) would add immigration law violators of any kind (Seghetti, Vina, & Ester, 2004).

¹⁷ Prior to HI-CAAP, immigration related queries to the NCIC and LESC were used by L.A. County for the purpose of reporting numbers of deportable aliens for reimbursement under the federal State Criminal Alien Assistance (SCAAP) program.

Consequently, the California database is significantly outdated but is still queried as part of the standard booking process.

In November 2001 utilizing information from the state criminal history system, CCHRS was enhanced to display a flag on the records of all known HI-CAAP aliens and provide email notification to HI-CAAP partners.¹⁸ For various reasons the LESC is unwilling to rely on this HI-CAAP flag and requires that immigration agents confirm the identity and immigration status of individuals before issuing an immigration detainer.

The HI-CAAP partnership appears to have been proactive in seeking to improve existing federal systems (LESC and NCIC) and consequently, the ability of local law enforcement to identify criminal aliens. By engaging in dialog with high-level federal officials about improving federal services, the partnership appears to have progressed toward its goals. The partnership was also proactive in developing a more local solution to identifying criminal aliens who may slip through the cracks of the federal data systems. Despite the complications that developed in maintaining the HI-CAAP flag in state criminal history systems, it is an example of innovative thinking and of the development of creative solutions.

Technological Components of the Office of Community Oriented Policing Services Grant

While some of these have been discussed above, in this section we provide a summary of the status of implementation for each of the four major technological components sponsored under the federal grant.

ICE CCHRS Access. Through technological improvements, the HI-CAAP steering committee sought to establish direct access to criminal records information available in CCHRS for ICE agents. This access would also allow ICE agents to query CCHRS. Access and training for ICE agents was completed in November 2001. The COPS grant allowed the Sheriff's Department to purchase 25 desktop computers for use by ICE agents to access CCHRS. ICE determined that it could use its own computers for this purpose and the 25 computers were returned to the Sheriff's Department, where they have been put to alternate uses. Eight laptop computers were also purchased by the Sheriff's Department for use by ICE agents. These laptop computers have not yet been provided to ICE.

ICE LiveScan Equipment. The LiveScan equipment enables the creation of electronic fingerprint files and direct processing of criminal records and "mug shots" directly with those fingerprints. Installation of LiveScan equipment was intended to allow the L. A. area ICE office to create such fingerprint files for aliens taken into immigration custody for removal. Once these identity records are created by ICE, they can be accessed by local law enforcement in L.A. County and across the country, in searches of arrestee criminal history records. Through the COPS grant, ICE has received two LiveScan machines. Installation was complete in August of 2002 and thereafter, the Sheriff's Department trained ICE to use the equipment. Several interviewees questioned whether ICE was consistently using the LiveScan machines for individuals taken into custody. Consequently, we obtained data from the

¹⁸ Also in 2001, the automatic query to the CLETS system (California Law Enforcement Telecommunication System of 'wants and warrants') was altered so that it does not go to the state criminal history system until identified by fingerprints and the state identification number.

Sheriff's Department on ICE's use of LiveScan. Between October 1, 2003 and March 31, 2004, 2,790 individuals were released from IRC custody to ICE custody. Of those, 1,463 (52%) were processed by ICE using the LiveScan machines. Thus, attention must be given to determining the reasons why ICE agents are inconsistently using the equipment and to identifying strategies for increasing LiveScan processing of individuals taken into ICE custody.

CCHRS Enhancement. CCHRS was to be enhanced in several ways under the COPS grant. Primarily, CCHRS was to receive fingerprint-based data about previously deported criminal aliens. The system was also reprogrammed to include immigration Alien Registration Numbers and an electronic alert and flag on criminal records of previously deported criminal aliens. In November 2001, these CCHRS enhancements were successfully implemented. According to our interviewees, these enhancements have made CCHRS unique in the nation. No other local law enforcement records system contains identifying information about criminal aliens released to the ICE office serving the local area.

HI-CAAP AFIS. The HI-CAAP AFIS was intended to serve as the searchable component of a larger data system within which fingerprint-based records of deportable criminal aliens would reside. To date, this integration has yet to take place. Problems related to contracting have delayed the process. However, the L.A. Automated Fingerprint Information System (LAFIS), the county's standard fingerprint system has been updated recently and includes much of the same information that was planned for the HI-CAAP AFIS.

Additional Efforts to Increase Identification of Criminal Aliens

Despite the advancements of fingerprint-based technologies identifying HI-CAAP aliens, there is still a substantial need for in-person interviews of suspected criminal aliens in the jail population. According to our interviewees, the local ICE office can conduct 60 immigration interviews each day but the Sheriff's Department estimates this number to be a fraction of those eligible for immigration interview. Through the HI-CAAP partnership, an agreement was reached (in principle) for Sheriff employees to supplement the ICE workforce. A memorandum is pending regarding an understanding between ICE and the Sheriff's Department is pending that would allow specified jail staff to be trained and granted authority to conduct immigration interviews. As a component of this agreement, these specially trained jail staff would have access to the ICE Deportable Alien Control System (DACS). DACS contains information about immigration status and previous deportations, in particular. Because access to DACS would require jail staff to undergo a federal background investigation, implementation of the agreement has been slowed pending the resolution of concerns raised by the labor union representing Sheriff's employees. It may be necessary to utilize senior management and union leaders for resolution of these complex issues.

Automated Immigration Detainers

One of the efforts of the local HI-CAAP steering committee was to automate the process of obtaining immigration detainers both to bolster efficiency and to prevent criminal aliens from slipping through the cracks in the manual process. During the June 2002 meeting between the HI-CAAP partnership delegation and then-INS Assistant Commissioner Joseph Greene, an agreement was reached that the

LESC would automatically return an electronic immigration detainer when fingerprint-based identification was made of a previously deported criminal alien. To obtain these detainers, AJIS was reprogrammed to submit an automated query (a detainer request) to LESC when an arrestee's fingerprints were identified. In accordance with the June 2002 meeting, HI-CAAP partners expected LESC to automatically respond to these notices with an immigration detainer without further action or follow-up on the part of L.A. County.

Between June 2002 and March 2004, the participants regularly voiced frustration to the HI-CAAP steering committee meetings that this agreement was not yet implemented. Many responses from the LESC to L.A. County indicated that a particular arrestee appeared to be a deportable alien but that L.A. County was still required to manually contact LESC for a confirmation or further investigation before a detainer could be placed.

Because LESC was not automatically sending immigration detainers for arrestees identified as deportable, the HI-CAAP partnership arranged a conference call with key staff at the LESC to discuss the matter. A phone meeting took place on March 24, 2004, revealing a basic misunderstanding having to do with the differences in processing self-declared versus non-self-declared foreign-born aliens.

- Self-declared aliens are foreign-born aliens who report their true country of birth during the law enforcement booking process (described above).
- Non-self-declared aliens are those that report being born in the U.S. but fingerprint-based NCIC searches during the standard booking procedures reveal a match against the NCIC's IVF (indicating that individual is foreign-born).

This telephone meeting revealed that in the case of self-declared aliens, L.A. County was indeed receiving automated detainers. Whenever LESC received an automated query from AJIS indicating that a foreign-born alien was in custody and LESC verified a fingerprint-based match with IVF (discussed in detail below), it automatically returned a detainer to L.A. County.

The misunderstanding had occurred around the issue of detainers for non-self-declared aliens. Because these individuals were not initially identified as foreign-born, AJIS did not generate a query to LESC. During standard booking procedures for all arrestees, a NCIC search will return a notice to L.A. County reporting a match against the IVF (indicating a non-self-declared alien) but no such notice is sent by NCIC to the LESC. As a result, LESC is not aware of the non-self-declared alien unless notified directly by L.A. County. During the March 24 telephone meeting, LESC personnel explained that because L.A. County had not established its own automated procedure of notifying LESC when non-self-declared aliens are identified, automated detainers from LESC were not possible.

One method discussed that would allow L.A. County to automate notifications to LESC about non-self-declared aliens was for L.A. County to make use of a specific kind of automated query. The LESC generally fields two types of inquiries about arrestees from local law enforcement through the automated National Law Enforcement Telecommunications System (NLETS). They are discussed below:

Immigration Alien Query (IAQ). IAQs are treated by the LESC as a name-based inquiry. Therefore, it will not lodge a detainer based on an IAQ query without positive confirmation of identification (i.e. a match against NCIC's IVF or an interview by immigration agents).

YQ. YQ is a programming code in NLETS referring to a "hit confirmation request" from the sending law enforcement agency. It indicates that a law enforcement agency has arrested an individual listed in the NCIC IVF. NCIC only sends a notification of this match to the arresting agency and not to LESC. Therefore, the arresting agency can use the YQ procedure to notify LESC of the IVF match. When notified by the arresting agency of a IVF match, LESC will lodge a detainer with no additional confirmation of identity.

LESC staff explained that if L.A. County were to reprogram its data systems to automatically generate a YQ message response to match against the IVF, the LESC could quickly verify the match and return an automated detainer with no manual contact from L.A. County.

IAQ messages were also discussed during the phone meeting. These messages to LESC were automatically generated by AJIS whenever a match was found in the California criminal alien file. Consequently, the HI-CAAP partners had expected LESC to return an automated detainer whenever such a match was made. During the telephone meeting, LESC personnel clarified that this would not be possible. Because the state-level criminal alien file was not officially verified by ICE, even fingerprint-based matches of arrestees could not be regarded by the LESC as adequate grounds to automatically generate an immigration detainer without additional investigation. LESC staff clarified that there were no circumstances under which an automatic immigration detainer would be sent in response to a match with this state-level file.

This conference call resulted in several key steps forward for the HI-CAAP partnership. It revealed a misunderstanding which was interfering with HI-CAAP goals and also generated the following understandings:

1. In order to obtain automated detainers for non-self-declared aliens, L.A. County would assess whether it is possible to execute the reprogramming necessary to automatically generate YQ messages notifying LESC of a match with the NCIC IVF.
2. L.A. County would discontinue automatic IAQ notifications to the LESC based upon HI-CAAP flags in the California state criminal records system.
3. Representatives of the HI-CAAP partnership and LESC would conduct site visits to the other's respective locations to observe procedures first-hand and identify ways to make the processes more consistent and efficient.

Resolution of these three issues was still outstanding at the close of the process evaluation study period, March 31, 2004.

Summary of the Implementation of the HI-CAAP Alien Identification Progress

Interview respondents resoundingly agreed that there has been improvement in identification of previously deported criminal aliens since the advent of the HI-CAAP partnership. An improved ability to make fingerprint-based identifications was an important milestone in this process, as were enhancements to CCHRS that benefit local law enforcement and prosecutors.¹⁹

Outstanding issues remain:

- Attention must be given to determining the reasons why ICE agents are inconsistently using LiveScan equipment and to identifying strategies for increasing LiveScan processing of individuals taken into ICE custody.
- Resolution of the contractual and other issues stalling integration of the HI-CAAP AFIS.
- Resolution of the labor union concerns about federal background investigations related to the “deputization” of jail staff by ICE to conduct immigration interviews.
- Continuation of work with LESC to establish the automated detainer process for non-self declared aliens.

This review suggests that progress has been made in identifying previously deported criminal aliens. The HI-CAAP partnership has communicated directly and proactively with federal authorities at ICE about their specific needs for changes in the LESC and NCIC procedures. Also to the credit of officials of INS/ICE and LESC, they have agreed to work with L.A. County in its efforts to increase identification of criminal aliens. Moreover, the Sheriff’s Department has committed to use its own personnel resources to supplement the workforce of the L.A. area ICE office. The deputization of jail staff to fill gaps in immigration agent staffing is an innovative solution and, if ultimately implemented, will potentially increase immigration processing of the number of criminal aliens. Despite these apparent steps forward, further monitoring is needed to assess whether full implementation is achieved on each of these points. Data need to be captured and analyzed to assess whether the reported technological and other enhancements have truly resulted in an increase in identified previously deported criminal aliens.

FEDERAL PROSECUTION OF HI-CAAP ALIENS

In addition to increasing the identification of previously deported criminal aliens, the second key implementation goal of the HI-CAAP partnership was to increase the rate at which these aliens face federal prosecution. The expectation is that federal prosecution would deter criminal aliens and

¹⁹ Several respondents observed that the ability to positively identify deportable criminal aliens has an important financial benefit. The administrative offices of the County have been able to more accurately apply for federal reimbursement for housing and other services to this group through the State Criminal Alien Assistance Program (SCAAP). The relationship of HI-CAAP activities to the complex SCAAP reimbursement process is beyond the scope of this report but is clearly a relevant issue for the County. This issue should be the focus of specific study in the future.

especially those prosecuted, from reentry into L.A. County. Since the advent of the HI-CAAP partnership, there appears to have been progress made on increasing federal prosecution of previously deported criminal aliens. In the next sections, we discuss available data on the number of federal prosecutions, the guidelines for federal prosecution, and the related issue of local prosecution of criminal aliens for crimes in the community.

Number of Federal Prosecutions

As discussed, before the HI-CAAP partnership federal prosecution of previously deported criminal aliens was uncommon, except for those with several previous deportations. Resource limitations were cited as the primary difficulty in prosecuting more cases. The Central District of the U.S. Attorney's Office (USAO) which covers the Los Angeles County area, implemented a program called Fast Track in May 2001, in part because of participation in HI-CAAP. Similar to a program in the Southern District USAO which serves the San Diego area, the Fast Track program is intended to allow prosecution of a greater number of deportable criminal aliens with fewer resources. Under this program, federal prosecutors may file charges against a greater number of criminal aliens for illegal reentry but offer reduced sentences for a guilty plea. This strategy reduces the time burden per case and avoids the cost of trial. In exchange for a guilty plea, the program offers lower-level Section 1325 offenders a pre-determined sentencing arrangement including a set 30-month sentence. More serious Section 1326 offenders are prosecuted and if convicted, sentenced to significantly longer terms in federal prison.²⁰

The USAO provided us with data on the number of federal indictments between 2000 (the earliest point at which data were available) and the end of the study period, March 2004. As shown in Table 1, consistent with expectations under the Fast Track program, the total number of prosecutions per year and the average number of prosecutions per month has been steadily growing over time. Unfortunately, we were unable to obtain the number of individuals who were referred by ICE for prosecution during this same time frame. Consequently, we can not draw conclusions about whether a greater proportion of all ICE referrals are resulting in prosecution or whether the numbers have risen because ICE has been making a growing number of referrals for prosecution over this time frame.

As Table 1 shows, Section 1326 prosecutions have remained constant for the past three years at an average of 8 per month. In the first three months of 2004, there was an increase in average monthly prosecutions to 13. Again, because we do not have data on the number referred for prosecution under Section 1326 we can not assess whether it represents an increase in prosecutions overall.

²⁰ Under Section 1325, it is a crime to illegally enter the United States. The first offense is a misdemeanor with a maximum sentence of 6 months. The second and subsequent offense is a felony with a maximum sentence of 2 years. USC Section 1326 makes it a crime to illegally reenter, or to be found to be illegally in the United States, after previous deportation or eligibility for deportation. Ordinarily, this crime carries a two-year maximum sentence. If, however, the prior removal/deportation was subsequent to a felony or aggravated felony conviction the maximum sentence ranges from 10 to 20 years.

Table 1
Federal Prosecutions for Sections 1325 and 1326, 2000 – 2004

	Section 1325		Section 1326	
	Year Total	Monthly Average	Year Total	Monthly Average
2000 ¹	n/a	2	n/a	9
2001	73	6	99	8
2002	168	14	99	8
2003	255	21	95	8
2004 ²	n/a	34	n/a	13

1 Data were available for October through December 2000

2 Includes data from January through March 2004, the end of the study period

Our interviewees reported that the USAO does not appear to file federal charges against all eligible criminal aliens. Despite the reported increase in the volume of known deportable criminal aliens generated by HI-CAAP, the USAO received no additional staffing resources. There is concern that the office has had difficulty in keeping pace with increased demand. The Fast Track program was devised as a strategy for responding to increased demands without adding staff.

Federal Prosecution Guidelines

The U.S. Attorney Office reports following a set of guidelines used for determining which HI-CAAP cases to prosecute. Office policy prevents the disclosure of these prosecuting guidelines to those outside of federal law enforcement. Thus, the HI-CAAP partner agencies do not have access to the specific content of these guidelines, nor were we able to gain access for purposes of this process evaluation.

Some interviewees reported frustration at the lack of disclosure of federal prosecution guidelines to the HI-CAAP partner agencies. Some reported that it is not clear why some criminal aliens may be federally prosecuted and some may not. Disclosure of the guidelines would likely provide some clarification to the partner agencies as well as allow input on the content of the guidelines.

According to some interviewees, the relationships developed through the HI-CAAP partnership have provided a case-by-case mechanism for increasing federal prosecution. For example, jail staff may contact federal prosecutors to request consideration for federal prosecution of a particular individual in custody. On occasion, such a request from a HI-CAAP partner has resulted in reconsideration of federal prosecution in some cases that were initially passed over.

Related to the guidelines (and specifically to federal law) is the relevance of formal deportation for federal prosecution. Some deportable aliens may be offered and accept the opportunity to voluntarily depart the country rather than face formal deportation proceedings. While the number of deportable aliens to which this applies is currently unknown, the 1995 CCJCC jail study found that approximately 40 percent of deportable aliens taken into immigration custody voluntarily departed without formal deportation. Those without a record of formal deportation (either executed or pending) who illegally reenter the country cannot be prosecuted under the federal law (1326) that allows the most serious punishment.

This issue was raised as a concern by the HI-CAAP steering committee. While those with a prior record of deportation proceedings are reportedly not offered the opportunity to voluntarily depart, it is not clear under what circumstances other aliens are offered the opportunity to voluntarily depart by immigration authorities and whether they may be offered this opportunity more than once. Some interviewees were concerned that allowing voluntary departures for aliens with criminal records defeats the purpose of the HI-CAAP partnership and promotes recidivism by these aliens.

Given that this issue is central to a key HI-CAAP goal, there appears to be a need for greater communication between the ICE partner office and the HI-CAAP agencies about the issue of voluntary departures for aliens who have not been previously deported yet have criminal records. One helpful strategy would be for the ICE partner to provide data to the steering committee on a regular basis on the outcome of immigration proceedings (voluntary departures and formal deportations) for aliens taken into ICE custody from the county jail. This would allow the steering committee to better understand how voluntary departures may affect HI-CAAP goals and, if necessary, work with the ICE office to lobby federal authorities for a change in policy and/or federal legislation.

Local Prosecution for Crime in the Community

Some of our interviewees question the appropriateness of local prosecution policies in HI-CAAP cases. The target population of the HI-CAAP partnership is previously deported criminal aliens rearrested for criminal offenses in L.A. County. Therefore, these individuals are suspected of new criminal activity that may result in a specific prosecution for that local offense. For example, a HI-CAAP alien may have been deported, returned illegally to the country and rearrested in L.A. County for robbery. According to our interviewees, the emphasis on federal prosecution for previously deported criminal aliens by the HI-CAAP partnership has not altered local prosecution policies. The City and District Attorneys continue to prosecute the new crime (in this case robbery) in virtually the same way that they would otherwise. The HI-CAAP designation plays no role in determining whether charges will be brought but may encourage higher bail request and may affect the sentencing recommendation.²¹ For cases that result in conviction, HI-CAAP offenders are turned over to ICE agents at the conclusion of their local sentences.

Some interviewees suggested that this business-as-usual policy for local prosecution is inconsistent with one HI-CAAP goal of shifting costs for criminal aliens to the federal government. Proceeding with local charges against these aliens means that state and local government agencies bear the cost of prosecution, processing, and incarceration. Some interviewees believed that the HI-CAAP partners should work together to change policy toward foregoing local prosecution in favor of handing these aliens over immediately to federal authorities for prosecution and deportation.

²¹ While HI-CAAP status may not bear on local prosecution by policy, our interviewees stated that this information is important to prosecutors. There appears to be inconsistency in the process by which the District Attorney's (DA) Office is notified by local law enforcement of HI-CAAP status. The DA continues to work with police agency detectives to be sure that these cases are prominently identified for prosecutor reviewing the case.

Based upon our document review, the HI-CAAP goals are unclear on this point. Many HI-CAAP documents do not address this issue whereas several do articulate a goal of saving local resources by transferring HI-CAAP aliens to the federal system. For example, the L.A. Board of Supervisors stated that “state and local taxpayers should not have to bear criminal justice costs resulting from the federal government’s inability to control illegal immigration and prosecute deported criminals who unlawfully reenter the country and commit new crimes. Addressing the criminal alien problem should be a top federal law enforcement priority. This is especially important for Los Angeles County, which has a larger undocumented immigrant population than any single state except for California” (Los Angeles County Board of Supervisors, May 2002: 9).

It appears that some goal clarification among the partner agencies is necessary. This issue may not be an easy one to resolve because of the difficult issues involved. Undoubtedly, resources could be conserved by declining to prosecute HI-CAAP aliens locally on the promise of federal prosecution for reentry and eventual deportation. This change could be problematic, however. The local prosecution policies appear to be designed to ensure justice is served for a particular crime in the community. Local prosecutors may face public dissatisfaction with a policy that summarily dismisses cases of all sorts simply because they involve a HI-CAAP alien. Moreover, according to some interviewees, there is also a level of uncertainty about whether federal prosecution occurs consistently in HI-CAAP cases. Thus, local prosecution is thought to ensure that this recidivist population will experience some punishment. We suggest the issues raised by cost savings versus local prosecution be considered openly by the HI-CAAP partners and a consensus reached about the how this apparent conflict in goals may be resolved.

Summary of the Federal Prosecution Implementation Progress

Progress toward the goal of increased federal prosecution of HI-CAAP aliens is difficult to measure directly. Our interviewees consistently reported a belief that federal prosecution is more frequent under HI-CAAP but also that not all cases that appear eligible are prosecuted.

One regularly cited problem by our interviewees is that the USAO has received no additional resources with which to increase prosecution. This problem is compounded by the growth in workload reportedly generated by the improved methods of identifying HI-CAAP aliens. While securing more resources for the USAO serving the L. A. area was not an articulated goal of the HI-CAAP partnership, it seems to be vital to ensuring the success of the federal prosecution component of the program. Relatedly, the goal of increasing federal prosecution increases the workload and resource needs for the entire federal justice system (including ICE for conducting investigations and providing detention space, federal courts and probation for increased case processing, and Bureau of Prisons for additional prisoners). While the issue of resources for the federal system is not within local control, L. A. County partners can join the L.A. area ICE and USAO offices to lobby for more resources at the federal level to support HI-CAAP goals.

The USAO’s adoption of the Fast Track program is one strategy for increasing the numbers of federal prosecutions and convictions, though it comes with the trade-off of shorter sentences than might otherwise be obtained. We suggest that the HI-CAAP partner agencies work collectively to identify potential strategies for obtaining more resources for federal prosecution.

In addition to seeking more resources to support federal prosecution, there other issues that need to be addressed:

- The HI-CAAP partnership should clarify its goal of cost savings versus policies of pursuing local prosecution before transferring HI-CAAP aliens to federal authorities.
- There is a need to develop a clearer understanding among the HI-CAAP partners of policy and practice regarding voluntary departures versus formal deportation proceedings for aliens with criminal records who have not been previously deported. The ICE partner office should consider regularly providing L. A. County-specific descriptive data on the numbers and characteristics of voluntary departures and formal deportations.
- Greater communication is needed about the content and application of the federal prosecution guidelines.
- There is a need for regular reporting to the HI-CAAP partners of data on the number of cases referred for federal prosecution, the number and type of prosecutions, reasons for rejection, and case outcomes.

Overall, while challenging issues remain to be resolved, our interviewees reported that improvements have been made in the area of increased communication, cooperation, and deeper understanding of federal prosecution constraints among the partner agencies. Particularly commendable is the effort of the USAO to work with the other partner agencies to identify strategies for increasing federal prosecutions within existing resources. To understand whether and the extent to which federal prosecution has increased as a result of the HI-CAAP partnership, a systematic data collection effort is needed. For example, it is necessary to compare the number of federal prosecutions over time to the number of aliens referred for prosecution. This analysis would allow an assessment of whether a greater proportion of eligible aliens face federal prosecution since the advent of the HI-CAAP partnership.

4. SUMMARY AND RECOMMENDATIONS

The implementation goals of the HI-CAAP partnership are to identify previously deported criminal aliens and to increase federal prosecution of these individuals. Interview respondents clearly indicated that considerable progress toward the first goal has been made. They reported achievements including increased ability to make fingerprint-based identification of previously deported criminal aliens; improved working relationships with the LESC, and the important progress toward implementation of an automated immigration detainer process.

Outstanding issues related to the identification of previously deported criminal aliens are:

- Determining the reasons why ICE agents are inconsistently using LiveScan equipment and to identifying strategies for increasing LiveScan processing of individuals taken into ICE custody.
- Resolving the contractual and other issues stalling integration of the HI-CAAP AFIS.
- Resolving the labor union concerns about federal background investigations related to the “deputization” of jail staff by ICE to conduct immigration interviews.
- Continuing to work with LESC to establish the automated detainer process for non-self declared aliens.

Our interviewees also reported progress toward the goal of increased federal prosecution of HI-CAAP aliens. Despite no increase in resources, the USAO has been seeking methods, such as the adoption of the Fast Track program, to increase the number of federal prosecutions of HI-CAAP aliens. Some outstanding issues are:

- Identification of additional resources for the USAO to support federal prosecution of HI-CAAP aliens.
- Clarification of HI-CAAP partnership goal of cost savings versus policies of pursuing local prosecution before transferring HI-CAAP aliens to federal authorities.
- Development of a clearer understanding among the HI-CAAP partners of policy and practice regarding voluntary departures versus formal deportation proceedings for aliens with criminal records who have not been previously deported. The ICE partner office should consider regularly providing L. A. County-specific descriptive data on the numbers and characteristics of voluntary departures and formal deportations.
- Greater communication is needed about the content and application of the federal prosecution guidelines.
- Regular reporting to the HI-CAAP partners of data on the number of cases referred for federal prosecution, the number and type of prosecutions, reasons for rejection, and case outcomes.

From our interviews and observations, it is clear that implementation of the HI-CAAP partnership is still on-going. Progress on implementation should continue to be monitored. Critical to such efforts is the independent collection and analysis of data relating to the status implementation. This is discussed further below.

In addition to addressing the issues discussed above, we forward two other recommendations of a general nature for consideration by the HI-CAAP partners. These relate to addressing high staff turnover and building a capacity for central data collection.

Build Institutional Knowledge to Offset High Staff Turnover Rates

Virtually every new program faces challenges when the 'new' phase passes and the maintenance or sustaining phase begins. Typically, a small set of key individuals has championed a program and they form the relationships necessary for inception. This can be useful in getting past organizational barriers that confront change efforts. Eventually, though, formal ongoing ties between agencies must be created to ensure that the program can withstand staff changes. Among our interview respondents, staff turnover is a consistent concern. Nearly all of the original representatives to the HI-CAAP steering committee have been reassigned, retired, or have otherwise discontinued participation. This turnover threatens important institutional memory and relationships, even while new energy and ideas coming from new staff benefit the group.

Because of their central roles in the HI-CAAP partnership, we will discuss the issue of turnover in key officials at ICE and the Sheriff's Department. Due to regular rotations, law enforcement organizations intentionally create turnover in positions. Indeed, HI-CAAP staff at the Sheriff's Department have changed several times in the last few years. Despite attempts at transition plans and some documentation of standard operating procedures, core knowledge has seeped away in the turnover process. In the case of ICE, the entire agency has undergone a reorganization and reassignment to a new executive department in the past two years. Leadership at the most senior levels of the organization has changed, sometimes creating inconsistency in policies. Agreements that were reached under the previous leadership may not be prioritized in the new environment. This leaves local agents, who have also changed positions during this time, with inconsistent guidance on ICE's commitment to the HI-CAAP program.

One safeguard against the loss of institutional knowledge and other impact of personnel turnover may be to generate broad awareness of HI-CAAP within the partnering agencies. Currently, knowledge of the HI-CAAP program is largely restricted to the individuals representing the partner agencies. Plans to disseminate information and trainings more broadly among staff should be implemented.

Also, the negative impact of staff turnover might be mitigated with the development of an orientation packet for new staff in partner agencies to familiarize them to the partnership and outline procedural information for each agency. Moreover, historical information about the development of the HI-CAAP processes should be easily accessible to support a depth of understanding of previous efforts to establish and refine current procedures. There might also be an in-person orientation provided by the HI-CAAP partners for new staff from key agencies, such as the Sheriff's Department.

Finally, the group should consider creating a HI-CAAP website. This website could provide a host of information to new and existing staff, including HI-CAAP procedures for each partner agency, current and historical partner meeting minutes, relevant news stories and announcements, partner contact information, and background documents describing the partnership. Further, the existing HI-CAAP partner e-mail distribution list could be used more actively to provide regular updates, announcements, and direct partners to new information posted on the HI-CAAP website, should one be established.

Build Capacity for Central Data Collection

Currently there is no centralized effort by the HI-CAAP partnership to collect data on case processing or outcomes. As a result, the group is unable to quantify the activities of the program, monitor changes in workload or resource requirements, or report on ongoing implementation or outcomes. Several of the HI-CAAP partners reported during steering committee meetings that their agency was working to establish (or had established) internal data collection or tracking system for HI-CAAP cases. The partnership would benefit from encouraging all partner agencies to develop their own routine data collection effort and to regularly report these data to the partnership. The partnership could then compile data from all agencies and produce a regular report on HI-CAAP activities.

Examples of the types of data that might be routinely collected include:

- Number of individuals identified as foreign-born through the arresting/booking agency
- Number of queries sent to LESC and NCIC
 - Number of responses confirming HI-CAAP status
- Number of foreign-born inmates released from jail custody
 - Number of ICE interviews completed
- Number of HI-CAAP aliens prosecuted for local offenses
 - Disposition and sentence in these cases
- Number of HI-CAAP aliens referred for federal prosecution
 - Number of cases where federal charges are filed
 - Disposition and sentence in these cases
- Number of HI-CAAP aliens and non-HI-CAAP aliens with criminal records taken into ICE custody
 - Number of voluntary departures
 - Number facing formal deportation proceedings and outcomes
 - Data on other possible immigration dispositions

The HI-CAAP partners should work together to develop a list of data that would be most meaningful and feasible to collect by the relevant agencies. Regular monitoring of data would help the HI-CAAP

partnership make refinements in procedures and report on progress to local and federal officials. The collection of data about HI-CAAP cases might ultimately be used to assess whether increased identification and federal prosecution of previously deported criminal aliens has had the intended result of reducing the threat posed to public safety by HI-CAAP aliens.

The issues raised in this review may serve as informative background for other jurisdictions seeking to form interjurisdictional partnerships to address criminal aliens. The L.A. County experience illustrates that such efforts require the long-term commitments of all key agencies; creative solutions to resource, bureaucratic, and jurisdictional barriers; openness to scrutiny and constructive criticism by partner agencies, and proactive communication with federal authorities about local needs. While these partnerships are not easily developed or maintained, they may hold great promise for addressing the multijurisdictional problem of previously deported criminal aliens.

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