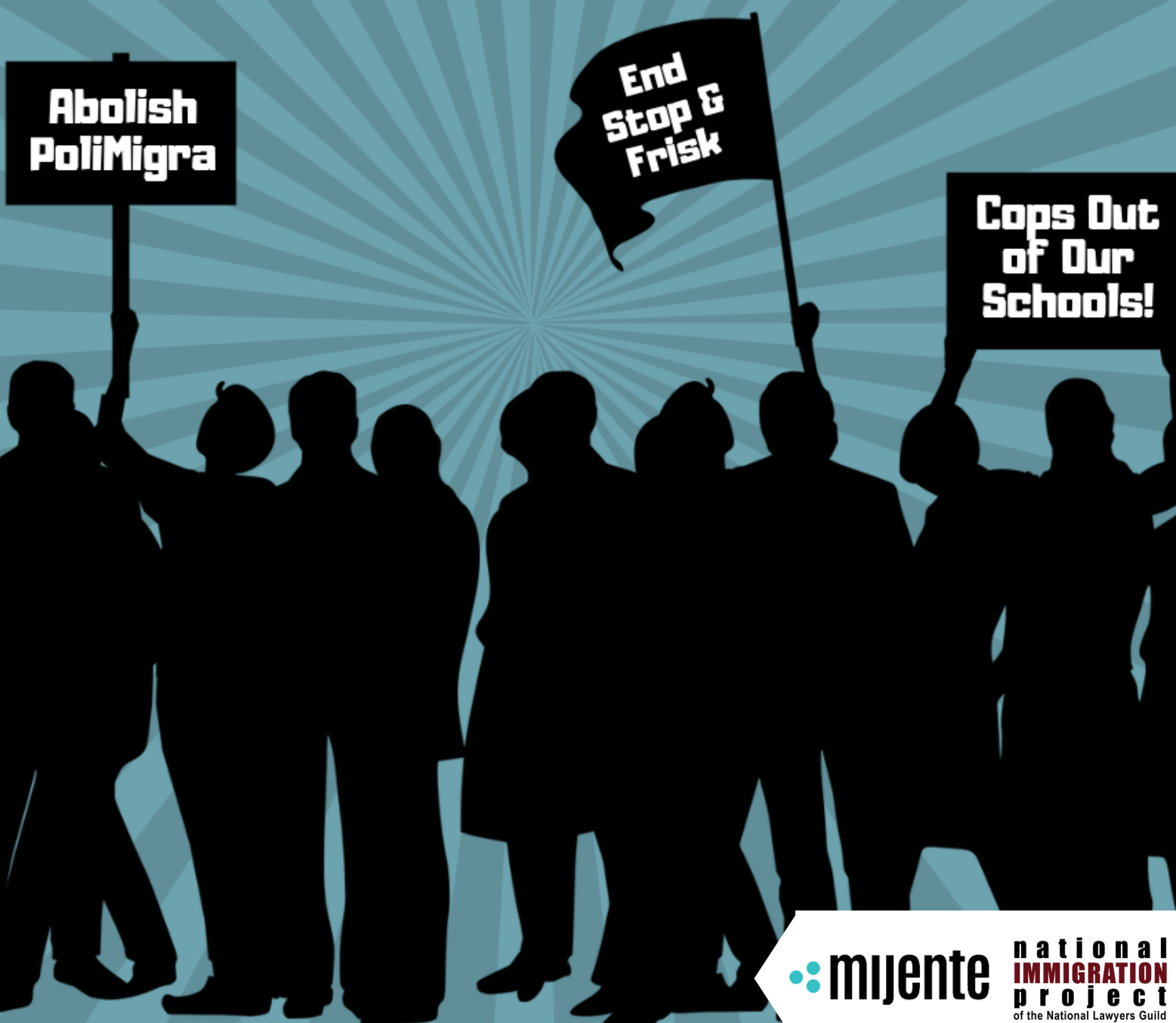


# Three Ways DC Can Improve Its “Sanctuary City” Policies to #AbolishICE from the City



 **mijente**

**national  
IMMIGRATION  
project**  
of the National Lawyers Guild

## Three Ways DC Can Improve Its “Sanctuary City” Policies to #AbolishICE from the City

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Mayor Bowser has declared repeatedly that Washington DC is a “sanctuary city” for immigrants, where “neighborhoods are safer and stronger when no one is afraid,” and affirming that DC law enforcement, the Metropolitan Police Department (MPD), does not collaborate with Immigration and Customs Enforcement (ICE).<sup>1</sup>

But, as this factsheet explains, the reality for DC residents is anything but sanctuary or safety. Unfortunately, for a number of years, DC officials have chosen to collaborate with federal immigration agents to deport its immigrant community members at various points in the criminal legal system. Many of these policies and practices are voluntary, meaning the DC government has the power to end them.

The people of DC have a long history of resisting violence from the state and federal governments. Collusion between local law enforcement and ICE is part of a larger pattern and history of civil rights abuse arising from this city’s criminal legal system that its residents, particularly low-income communities of color, continue to experience.<sup>2</sup> It is time for the DC community to demand transparency and accountability from its elected officials to abolish the collaboration with ICE in our city and make sanctuary real, and not just a media talking point.

Furthermore, immigrants in our city need protection not just from law enforcement who collaborate with immigration enforcement, but also from criminalization by the MPD itself. Immigrant communities are criminalized every day. At a time when any police interaction can land you on the target list for immigration enforcement, and when the rate of incarceration and criminalization of communities of color is growing,<sup>3</sup> the definition of what makes DC a “sanctuary” must also include how our communities are treated by the MPD.

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1 Executive Office of the Mayor, “Mayor Bowser Issues Statement Reaffirming that DC is a Sanctuary City,” Press Statement, Nov. 14, 2016, available at: <https://mayor.dc.gov/release/mayor-bowser-issues-statement-reaffirming-dc-sanctuary-city>.

2 Erick Flack, “DC Police not following law requiring Stop and Frisk data collection 2 years after it was passed,” WUSA9, Mar. 26, 2018 (“six-month investigation by the WUSA9 Special Assignment Unit revealed eight out of 10 Stop and Frisks in the district are being done on African-Americans. Sometimes based on vague descriptions leading to thousands of stops on innocent people.”); Department of Justice, Civil Rights Division, “Findings Letter re Use of Force by the Washington Police Department,” 2001, available at: <https://www.justice.gov/crt/findings-letter-re-use-force-washington-metropolitan-police-department> (describing the Department of Justice’s pattern and practice findings and consent decree against MPD including violations of excessive use of force, racial profiling, improper use of canines, and inadequate civilian complaint system).

3 Peter Hermann, “Study cites racial disparities in D.C. arrests,” Washington Post, July 12, 2013, available at: <https://www.wusa9.com/article/news/investigations/police-86-of-people-arrested-for-marijuana-in-dc-are-black/65-581301045>. Erick Flack, “Police: 86% of people arrested for marijuana in DC are black,” WUSA9, August 7, 2018, available at: <https://www.wusa9.com/article/news/investigations/police-86-of-people-arrested-for-marijuana-in-dc-are-black/65-581301045>.

Below we call out four major ways that DC participates in the deportation of its community members and call on DC officials and community to end these practices.

## 1. The DC Jail

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The DC jail, also known as the Central Detention Facility, is operated by the city's Department of Corrections ("DOC"). DOC has a policy of collaborating with ICE by transferring individuals into ICE custody upon resolution of their criminal matters such as after they are ordered released pre-trial, their charges are dismissed, and/or they serve their sentence.

According to DOC Policy 4236.2D, "Immigration Status/Immigration Detainer Process," officers submit to ICE requests for detention (also known as "ICE detainers") by notifying ICE when an individual is set for release from the jail and therefore ready for ICE pick up during release processing. In other words, upon resolution of criminal matters, DOC officers facilitate an immigrant's transfer into ICE custody. According to ICE's own arrest statistics, the DC jail transferred more than 200 individuals into ICE custody via ICE detainers between 2015 and 2018.

**This means that individuals arrested by MPD and brought to the DC jail can be picked up and transferred to ICE custody and deported. It also means that DC law enforcement officers have effectively become an extension of ICE agents despite the city declaring itself a "Sanctuary City" and assuring its residents that no collaboration between local government and ICE exists.**

Additionally, there are instances where ICE appears at an individual's home within days of his release from jail or waits outside of the jail right as the individual is being released, leading community to reasonably suspect that DC officials share address and release time information with ICE which is then used to carry out raids. Also, DOC prevents noncitizens from accessing any pre-release services, which makes ICE transfers from the DC jail much easier. This is completely discretionary and can be changed.

It is important to understand that DC's policy to collaborate with ICE is a voluntary choice, circumvents a 2012 City ordinance directing DOC not to submit to ICE detainers, and implicates Constitutional protections against warrantless arrests. The City could end this practice by directing DOC not to notify and transfer individuals based on ICE detainer requests.

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4 DC Department of Corrections, "Correctional Facilities," available at: <https://doc.dc.gov/page/correctional-facilities>

5 District of Columbia Department of Corrections, Policy and Procedure 4356.2D: Immigration Status/Immigration Detainer Process, effective date: March 2, 2017, available at: <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204356.2D%20Immigration%20Status-Immigration%20Detainer%20Process%203-2-17.pdf>.

6 TRAC Syracuse, Latest Data: Immigration and Customs Enforcement Detainers: ICE Data through April 2018, available at: <http://trac.syr.edu/phptools/immigration/detain/>

7 Interviews with attorneys.

8 District of Columbia Department of Corrections, Policy and Procedure 8010.1B: Work Release Program effective date: 4/4/2012, available at: <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PM%208010.1B%20Work%20Release%20Program%2001-18-2018.pdf>; also, substantiated by Maria Amato, General Counsel of DOC that all detainers preclude release to a halfway-house (on file with Paromita Shah at NIPNLG).

9 D.C. Code 24-211.07 passed in 2012 limits the holding of individuals in jail for 48 hours beyond the resolution of their criminal proceeding at the request of ICE in order to effectuate their pick-up and transfer to ICE. The current DOC policy circumvents this policy by transferring individuals to ICE during the normal jail release period. In other words, individuals are transferred to ICE during the course of regular release processing, rather than overheld for ICE pick up and transfer.

## 2. The Police

The Metropolitan Police Department (MPD), DC's local police department, has a number of ways that it facilitates deportations of community members, directly and indirectly.

MPD has sought to aggressively criminalize low-income communities of color (many of whom are immigrants) within the District including through the following practices:

- Overpolicing policies such as Stop-and-Frisk: MPD continues to target communities of color for invasive investigatory searches and arrests over minor municipal infractions.<sup>10</sup> Moreover, the Department refuses to collect statistics on its stop-and-frisk policies, data which could then be used to monitor racial bias, as required by the city ordinance, the NEAR Act.<sup>11</sup> Such arrests, even for minor infractions, can have serious immigration consequences as discussed below.
- Gang database and labeling: a lesser-known way that MPD does this is to accuse someone of gang affiliation. This is done through the Intelligence Branch. MPD's verification process for gang labeling has a low threshold of questionable constitutionality. MPD can place individuals in the gang database based on, for example, being seen interacting with someone already in the gang database or having been arrested in a neighborhood that experiences gang activity.<sup>12</sup> Schools are one of the locations where this surveillance happens as security officers at schools, known as School Resource Officers, track and share information about students with MPD.<sup>13</sup> In recent years, similar gang labeling practices in other jurisdictions have come under strong community criticism for racial profiling, error and overinclusion of community members, and information sharing with ICE that have led to raids and deportations.<sup>14</sup>
- ICE transfer after MPD arrest: an MPD arrest could directly lead to deportation due to ICE transfers at the DC jail or DC courthouse. An MPD arrest likely results in an individual being detained at the DC jail. Per DOC's ICE collaboration policy mentioned above and the role of U.S. Marshals in DC's court system described later, this could lead to an individual's transfer to ICE and deportation after resolution of the criminal matter.

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10 Seema Sadanandan, "Living under the cloud of stop-and-frisk," Washington Post, Aug. 23, 2013 available at: [https://www.washingtonpost.com/opinions/living-under-the-cloud-of-stop-and-frisk/2013/08/23/a83c7914-0b52-11e3-8974-f97ab3b3c677\\_story.html?utm\\_term=.d2dbd8715da6](https://www.washingtonpost.com/opinions/living-under-the-cloud-of-stop-and-frisk/2013/08/23/a83c7914-0b52-11e3-8974-f97ab3b3c677_story.html?utm_term=.d2dbd8715da6); see also Footnote 2.

11 See Eric Flack, "DC mayor, police chief sued over failure to collect stop and frisk data," WUSA9, available at: <https://www.wusa9.com/article/news/investigations/dc-mayor-police-chief-sued-over-failure-to-collect-stop-and-frisk-data/65-548797616>.

12 Interviews with criminal and immigration attorneys in 2018; MPD, "Understanding and Avoiding Gangs," available at: <https://mpdc.dc.gov/page/understanding-and-avoiding-gangs>; MPD, "Special Order: Validation of Individuals as Members of a Criminal Gang," SO No. 09-03, Jun. 1, 2009.

13 For example, RSO officers in schools share information on youth with the MPD Gang unit. See e.g. MPD, School and Safety Report 2011-2012, available at: [https://ocp.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/SchoolSafetyReport\\_2011\\_2012.pdf](https://ocp.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/SchoolSafetyReport_2011_2012.pdf); "General Order: MPD School Safety Division," GO-RAR-310.08, May 2005, available at: <https://go.mpdconline.com/GO/3664000.pdf>.

14 Christie Thompson, How ICE Uses Secret Police Databases to Arrest Immigrants, The Marshall Project (Aug. 28, 2017), available at: [https://www.themarshallproject.org/2017/08/28/how-ice-uses-secret-police-databases-to-arrest-immigrants?utm\\_medium=email&utm\\_campaign=share-tools&utm\\_source=email&utm\\_content=post-top](https://www.themarshallproject.org/2017/08/28/how-ice-uses-secret-police-databases-to-arrest-immigrants?utm_medium=email&utm_campaign=share-tools&utm_source=email&utm_content=post-top); Ali Winston, Vague Rules Let ICE Deport Undocumented Immigrants as Gang Members, The Intercept (Feb. 17, 2017), <https://theintercept.com/2017/02/17/loose-classification-rules-give-ice-broad-authority-to-classify-immigrants-as-gang-members/>. See also UCI Law School Immigrant Rights Clinic, Mislabeled: Allegations of Gang Membership and their Immigration Consequences (April 2016), <http://www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf>.



These practices can lead to the deportation of immigrants in a number of ways, particularly under the Trump administration where even a police arrest or allegation, even if later dismissed, leads to ICE detention and deportation.<sup>15</sup> For example, immigration agents use criminal record information from local law enforcement agencies—such as a police arrest, criminal charge, or allegation of gang affiliation—to arrest individuals, revoke immigration status, justify the denial of immigration bond, or deny discretionary immigration relief even if charges are eventually dismissed. Moreover, in the case of DC, an MPD arrest can lead directly to ICE arrest through the jail or courthouse as explained in Points 1 and 3. Additionally, MPD may share information about community members that it encounters with ICE as long as it involves a criminal matter in some respect.<sup>16</sup>

The District leaves immigrant community members, particularly immigrant youth of color, vulnerable to immigration arrest and deportation for minor infractions, dismissed charges, and unsubstantiated gang allegations. MPD could change its policies by ending stop and frisk policies, gang labeling practices, dismissing school resource officers and replacing them with more support/social workers to address school discipline, and ending the overpolicing of young people of color in our schools and communities.

### 3. Pretrial Services and Probation

DC's pretrial services and probation programs are staffed by a federal agency called the Court Services and Offender Supervision Agency (CSOSA). Pre-trial services also manages some of the court's diversion programming.

According to its own manual, CSOSA instructs its pre-trial and probation staff to question individuals about their country of origin and citizenship status and report the information gathered to ICE. Related biographic information such as name and address may be shared in this process. In turn, ICE initiates an immigration investigation into the person, and shares information about the person's immigration status with CSOSA. Such investigations can lead to ICE enforcement actions such as placement in removal proceedings, detention, and deportation.

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15 See e.g. Jonathan Blitzer, "How Gang Victims Are Labelled as Gang Suspects," The New Yorker, Jan. 23, 2018, available at: <https://www.newyorker.com/news/news-desk/how-gang-victims-are-labelled-as-gang-suspects>; Sonam Sheth, "Half the undocumented immigrants rounded up in February raids had no criminal records or minor offenses," Business Insider, May 1, 2017.

16 While the City has a policy of not conducting civil immigration enforcement, pursuant to the Mayor's Order 2011-174, this policy does not prevent MPD from contacting ICE on criminal matters. Many of ICE's enforcement activities involve some form of federal criminal law, particularly as immigration authorities increasingly refer immigrants for federal prosecution for entry and reentry. See Sari Horwitz and Maria Sacchetti, "Sessions vows to prosecute all illegal border crossers and separate children from their parents," Washington Post, May 7.

17 "About: Court Services and Offender Supervision Agency," available at <https://www.psa.gov/?q=about/CSOSA>.

18 CSOSA Community Supervision Operations Manual, at 268-71, available at: <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2018/08/CSS-Operations-Manual.pdf>

19 Id. at 270-71.

20 Id. at 271

## 4. DC Court Bailiffs

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The DC courthouse, also known as the Superior Court of the District of Columbia, employs the U.S. Marshals, a federal law enforcement agency, to handle courthouse law enforcement duties including bailiff responsibilities. This means that the U.S. Marshals are in charge of local court security, transportation of arrestees to and from the DC courthouse, and most importantly, processing the release of individuals from the DC courthouse if a judge orders release or charges are dismissed.

During the release process, U.S. Marshals are detaining individuals in the courthouse holding cell for ICE pick up at the end of the day, even at times when there is no ICE detainer.<sup>21</sup> To date, in 2018, the U.S. Marshals have transferred an estimated 70 or more people to ICE via the DC courthouse.<sup>22</sup>

The District of Columbia could change this policy by ending its use of the U.S. Marshals for bailiff duties. Also, the District of Columbia should cease efforts to federalize its criminal legal system, which would further immunize DC police, courts, and jails from community-based accountability.

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<sup>21</sup> Interviews with criminal attorneys.

<sup>22</sup> Martin Austerhuhle, "Marshal Law: D.C. Is A Sanctuary City, But That Status Stops At The Courthouse Door," WAMU, Sept. 20, 2018.

## POLICY RECOMMENDATIONS

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We call on our DC city officials & Mayor Bowser to do the following:

1

Close the loopholes in the DC Jail policy which allows the jail to notify and transfer individuals to ICE, in circumvention of the city ordinance limiting the jail's submission to ICE detainers. This means a policy that clearly prohibits ICE transfers, notifications, and access to the jail.

2

End MPD policies and practices that over police and criminalize people of color in our schools and communities: this includes ending stop and frisk policies, gang database and labeling practices, over reliance on school resource officers to address school discipline, replacing school resource officers with more social workers.

3

Cancel the use of U.S. Marshals as DC Courthouse Bailiffs and end the federalization of DC's criminal legal system.



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## **CONTRIBUTORS**

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Mijente is a digital and grassroots hub for Latinx and Chicanx movement building and organizing that seeks to increase the profile of policy issues that matter to our communities and increase the participation of Latinx and Chicanx people in the broader movements for racial, economic, climate and gender justice.

National Immigration Project of the National Lawyers Guild (NIPNLG) is a national non-profit organization that provides technical assistance and support to community-based immigrant organizations, legal practitioners, and all advocates seeking and working to advance the rights of noncitizens.

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