



CATHOLIC LEGAL  
IMMIGRATION  
NETWORK, INC.

# Do You Want ICE in Your Neighborhood?

A Tool Kit for Communities on Challenging  
ICE Partnerships with Local Law Enforcement

*Written by*

Karen A. Herrling  
Advocacy Section  
Catholic Legal Immigration Network, Inc.



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*Cover Image: James Porter, CLINIC*

*Written in October 2010: This information is for educational and advocacy purposes only. The contents do not constitute legal advice. Consult an immigration lawyer for legal advice.*

# Introduction

Over the last several years, the Catholic Legal Immigration Network, Inc.'s (CLINIC's) partners have seen a dramatic increase in city, county and state law enforcement agencies partnering with Immigration and Customs Enforcement (ICE) in the jails or on the streets. This collaboration concerns CLINIC and its partners, as well as civil rights, community and immigrant organizations around the country. CLINIC strongly believes that immigration is a federal responsibility and that the civil enforcement of immigration laws should be left to the federal government and not transferred to local law enforcement authorities whose critical role is maintaining public safety and fighting crime in communities.

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CLINIC has been monitoring closely three programs where local law enforcement agencies collaborate with ICE in their local communities either on the street or in jails and prisons. The three programs are: the Criminal Alien Program (CAP), the Secure Communities Program, and the 287(g) Program. Through these programs, local law enforcement officers assist ICE with such duties as: (1) identifying non-citizens; (2) placing detainees or holds on non-citizens; and, (3) placing non-citizens in removal proceedings.

All three programs are part of ICE's strategy to partner with state and local agencies on immigration enforcement. These programs are part of ICE ACCESS -- Agreements of Cooperation in Communities to Enhance Safety and Security. Other component

programs include: Asset Forfeiture, Border Enforcement Security Task Force, Customs Cross-Designation, Document and Benefit Fraud Task Forces, Equitable Sharing/Joint Operations, Fugitive Operation Teams, Intellectual Property Rights Coordination Center, Law Enforcement Support Center, Operation Community Shield, Operation Firewall, Operation Predator, and Rapid REPAT. ICE ACCESS is well funded. In Fiscal Year (FY) 2010, ICE ACCESS programs received almost \$1.5 billion.

This Tool Kit provides an overview of the Criminal Alien Program, the Secure Communities Program, and the 287(g) Program. It also recommends advocacy strategies to challenge the implementation and/or halt the continuation of these programs in your communities.

# The Criminal Alien Program

The Criminal Alien Program (CAP) is implemented in federal, state and local prisons and jails around the country. Under this program, ICE officers identify non-citizens *incarcerated* in federal, state and local facilities and begin formal removal/deportation proceedings against them. CAP operates in all state and federal prisons along with over 300 local jails. According to the Department of Homeland Security (DHS), CAP helped ICE identify 48% of all removable immigrants in FY 2009.

## ▪ No Formal Written Agreements

CAP is an essential component of ICE's focus on federal-local partnerships to target serious criminal offenders for removal. It is one of the agency's oldest immigration enforcement programs having been in operation for more than 25 years. ICE's stated enforcement priorities and Congressional appropriations ostensibly guide the program.

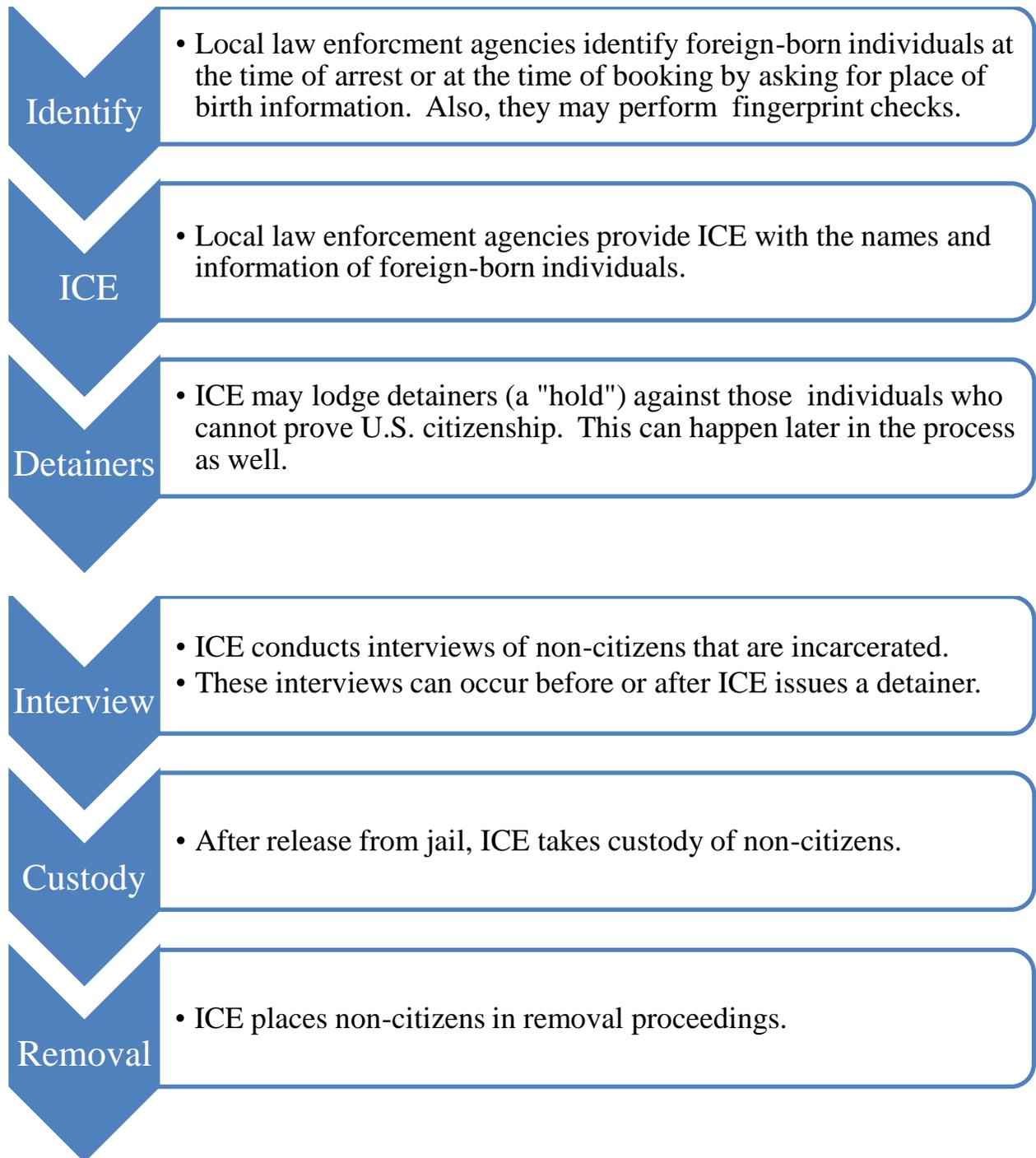
The program lacks any formal written agreements between the jails/prisons and ICE. Instead, CAP operates informally based upon local practice. At some locations, ICE has a desk or an office on the jail/prison premises. This is the case at Rikers Island in New York City. With this jail presence, ICE officers review booking records, interview incarcerated individuals, and make decisions on whether an ICE detainer or "hold" should be placed in the individual's file. At other locations, CAP teams frequent the jail on a regular basis to

review arrest information and interview individuals who have been charged with a crime. ICE also has the capability to do this work via phone and video conferencing in many areas. Thus, many detainer decisions are made remotely rather than at the detention facility, especially in the case of inmates in the custody of the U.S. Bureau of Prisons.

## ▪ No Right to Access

In general, ICE does not have a statutory right to review booking information or to access the state and local jails to interview individuals incarcerated for state crimes. While local law enforcement agencies may believe that they must cooperate with ICE and provide the information, this is not the case. Some advocates have persuaded their local and state jails to limit ICE's access. In these communities, advocates are concerned that the cooperation between the local and state jails and ICE will undermine the relationship between local law enforcement agencies and the communities in which they serve.

# How CAP Works



## Questioning by Local Law Enforcement or ICE

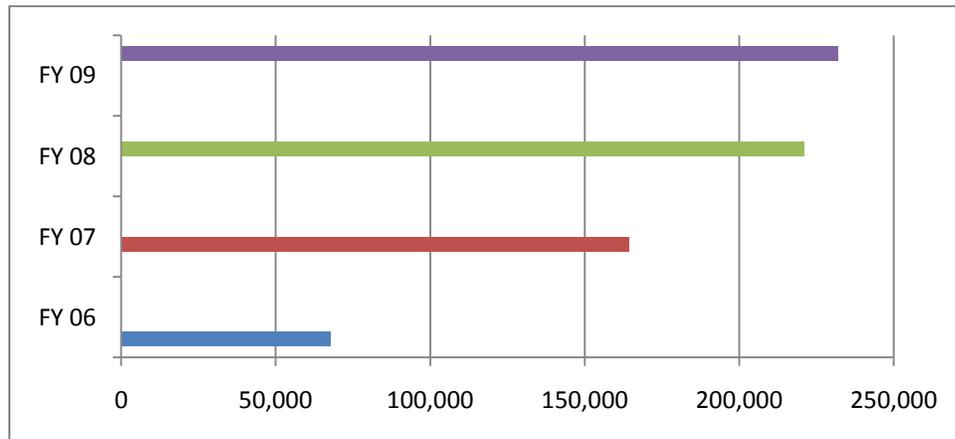
Often when local law enforcement or ICE officers question individuals in the jails, the individuals do not have legal counsel with them. In some instances, the individuals do not even know that an ICE officer is questioning them. While individuals have a constitutional right to remain silent and not

answer questions about where they were born or their immigration status, many people are unaware of this right, and there is no requirement that law enforcement agencies or ICE agents tell people of this right. (Immigration matters are considered civil matters and not criminal matters so Miranda warnings are not required.) Thus, many individuals end up in removal proceedings based upon facts gathered from jail interviews.

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## Expansion of CAP in Recent Years

CAP has expanded rapidly in a short period of time. As the chart below shows, the number of charging documents issued to noncitizens has tripled in just 4 years.



CAP charging documents issued to noncitizens during FY06: 67,850.  
CAP charging documents issued to noncitizens during FY07: 164,296.  
CAP charging documents issued to noncitizens during FY 08: 221,085.  
CAP charging documents issued to noncitizens during FY 09: 232,000.

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## Targets of the CAP Program

ICE states that it places a high priority on targeting non-citizens who commit serious crimes and pose a threat to public safety. It has set up a three tiered system to prioritize the identification, detention and removal of noncitizens. Level 1 is for the most serious offenders (felony offenses against a person such as murder, kidnapping and major drug

offenses); Level 2 for non-violent offenders (felony offenses against property such as burglary and larceny); and Level 3 offenders who have committed misdemeanor offenses. To date, many of the individuals affected by CAP have been individuals cited for misdemeanor and traffic offenses. For example, DHS noted in an October 2009 report that 57% of immigrants identified through the Criminal Alien Program had no criminal convictions, up from 53% in 2008.

# Secure Communities

**S**ecure Communities uses technology to provide local and state law enforcement agencies with the criminal history and immigration status of individuals in their custody. Through Secure Communities, fingerprints taken during the *normal booking process* are checked against information in the Federal Bureau of Investigations (FBI) and DHS databases. Both ICE and local law enforcement agencies are notified if the fingerprint check shows that the person is an unauthorized immigrant or a legal immigrant who previously has committed a crime that makes him/her deportable. ICE then evaluates each case to determine if it will issue a detainer against the jailed individual. It is important to note that Secure Communities is initiated at the arrest and booking stage. *Individuals are screened through this program before they have been convicted of a crime.*

ICE first proposed the Secure Communities program in March of 2008, after Congress appropriated additional funding for the agency to develop a comprehensive plan to remove criminal aliens. Congress's interest and funding have continued over the years. In FY 2010, Congress appropriated 200 million for Secure Communities and as of August 24, 2010, Secure Communities operated in 567 jurisdictions in 29 states. As of April 2010, Secure Communities has resulted in over 2 million fingerprint submissions, with matches found on just 200,000 of those submitted. According to ICE, immigration holds have been placed on over 50,000 individuals and nearly 40,000 individuals have been deported pursuant to Secure Communities. ICE states that Secure Communities is the future of immigration enforcement – it plans to make the program available to each state and federal prison and jail by the end of 2013.

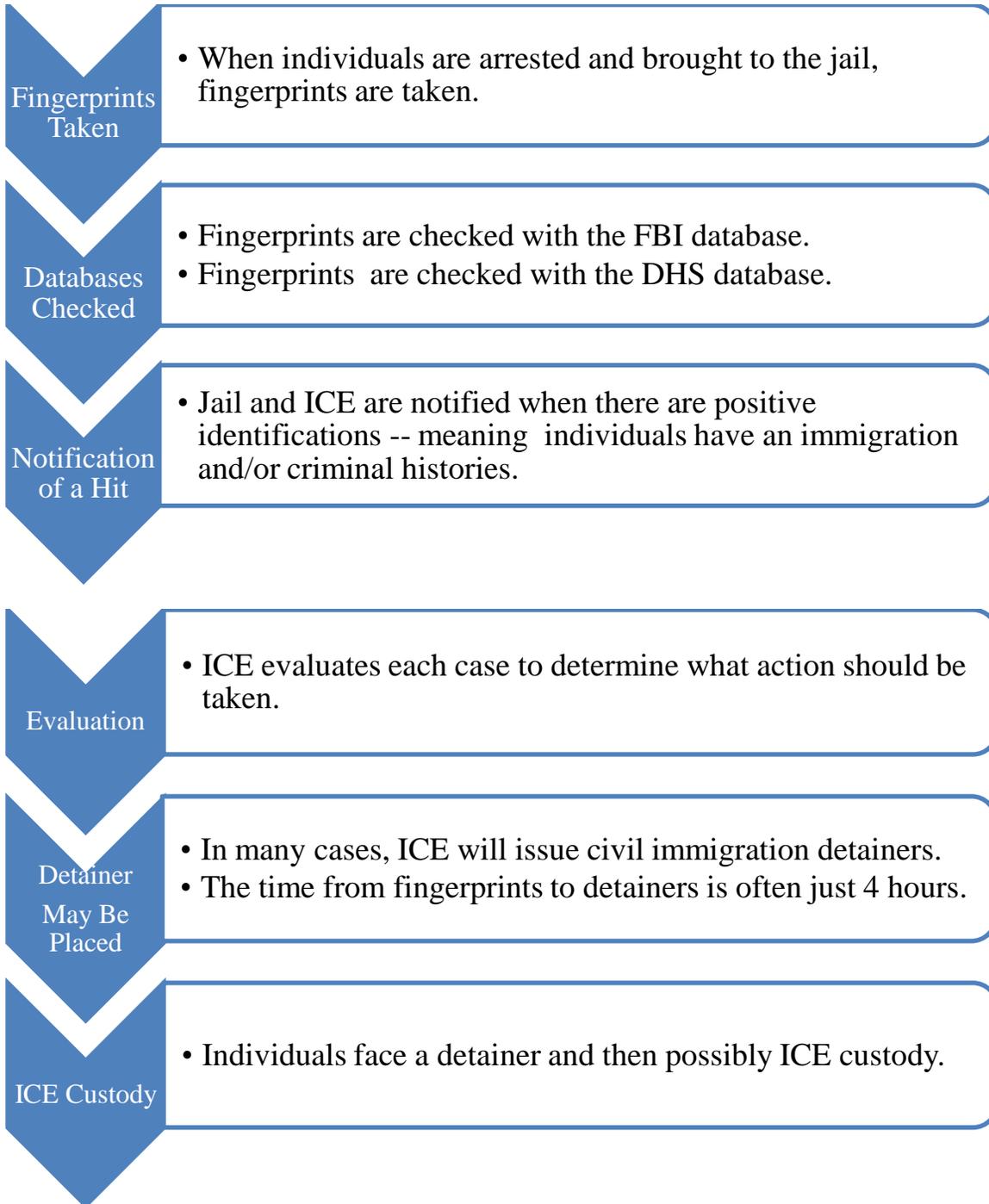
## ▪ Broad Agreements

ICE enters into agreements with the State Bureau of Identification (SBI). The SBI is the agency in the state that processes the fingerprints of those arrested by state and local police. Additionally, ICE has issued Secure Communities Standard Operating Procedures for participating county and local law enforcement agencies. Both agreements are available on ICE's website at: <http://www.ice.gov>.

## ▪ Targets of Secure Communities

Like the CAP Program, ICE has set up a three tiered prioritization system. It claims that the program targets serious Level 1 criminals. However, data from October 2008 through June 2010 show that the vast majority (79 percent) of those deported under the program were either non-criminal or arrested and convicted for non-serious crimes. Indeed, only 20 percent of the individuals deported under the program were charged or convicted of the most serious, Level 1 offenses.

# How Secure Communities Works



## ▪ **Concerns with the Secure Communities Program**

Advocates have been troubled by the program. As noted above, they are concerned that local law enforcement agencies and ICE have failed to follow the program's congressional mandate and ICE's stated prioritization to focus resources on the removal of immigrants that commit serious crimes.

Additionally, many advocates believe that ICE has not been transparent about how the program operates; has not given notice to the local communities that the program is being deployed; and has not been clear about whether or not local communities can decline or limit their participation in the Secure Communities Program. As an example, since the inception of the program, advocates have been led to believe that the program was voluntary and that jurisdictions could opt-out of the program. This perception was reinforced by an August 17, 2010, ICE memo entitled, "Setting the Record Straight." In this memo, ICE set forth its policy on how a jurisdiction can opt-out of the program. This process was later confirmed in a September 7<sup>th</sup> letter from DHS Secretary Janet Napolitano to Congress. Subsequently, a senior ICE official told a Washington Post reporter that jurisdictions could not opt-out of Secure Communities. At a press conference on October 6<sup>th</sup>, DHS Secretary Janet Napolitano reported that participation in Secure Communities was not voluntary. Shortly thereafter, the Director of ICE, John Morton, told the Associated Press that he will meet with individual localities to discuss the issue of opting-out. Thus, the issue of whether communities can opt-out of the Secure Communities Program and how they would do so is still unclear. Local advocates working with law enforcement agencies that wish to opt-out of the Secure Communities Program can contact CLINIC's Advocacy Director for assistance in reaching out to the Director of ICE.

Along with a lack of transparency, advocates are concerned about the cost of the Secure Communities Program. They acknowledge that it simply may not be feasible or sensible for all state and county governments to implement the program. Integrating federal, state and local databases is complex and the capabilities of local jurisdictions vary. Further concerns exist as to the accuracy of the databases. As an example, data shows that 6% of "hits" or matches from October 27, 2008 through December 31, 2009, were for US citizens. Moreover, advocates note that ICE has never issued regulations regarding operation of Secure Communities. Nonetheless, ICE continues to rapidly expand this program throughout the country.

# The 287(g) Program

The 287(g) program cross-designates local law enforcement officers to enforce federal immigration law as authorized through Section 287(g) of the Immigration and National Act (INA). Under this section of the INA, local law enforcement agencies may sign a standardized Memorandum of Agreement (MOA) with ICE to perform immigration-related duties on the streets or in the jails.

## ▪ Formal Written Agreements

The MOA gives local law enforcement agencies the opportunity to enter into an agreement to enforce civil immigration law on the streets (Task Force Officer Model) or in jails (Jail Enforcement Officer Model). Task Force Officers have the authority to investigate and detain people on civil immigration violations that they encounter during their task force and regular police duties. Jail Enforcement Officers work in state prisons and local jails by screening immigrants arrested and convicted of crimes. They can place detainees on individuals and process paperwork to initiate removal proceedings. In some jurisdictions, agencies perform both functions.

The 287(g) officers are deputized ICE agents who must attend a 4-week immigration law training course. Under the provisions of the MOAs, they are under ICE supervision. Currently there are 71 active MOAs under the 287(g) program; many of these are located in rural areas and with

sheriff's departments. A copy of the standardized MOA is available at: [http://www.ice.gov/pi/news/factsheets/section287\\_g.htm](http://www.ice.gov/pi/news/factsheets/section287_g.htm)

## ▪ Targets of 287(g)

In July 2009, ICE instituted a three tiered system for targeting criminals, similar to those of the CAP and Secure Communities programs. ICE claims that its new enforcement priorities emphasize the identification, detention, and removal of immigrants who have been convicted of serious offenses, pose a threat to the public safety, or have been ordered removed. Advocates have voiced skepticism that local law enforcement agencies will implement and follow these priorities. Certainly, this was not the focus prior to July 2009, where deputized officers often concentrated on easy targets -- those with misdemeanor or traffic violations.

# Concerns with the Criminal Alien Program, Secure Communities and the 287(g) Program

These programs and other ICE ACCESS programs raise significant concerns. CLINIC's major concerns are listed below.

## ▪ The Criminalization of Immigration

These programs tend to “criminalize” the entire issue of migration. Once a person is caught up in the criminal justice system, ICE often labels him/her a “criminal alien” regardless of whether the person is convicted of a crime and regardless of the type of crime. To date, ICE has failed to provide a legal or official definition of “criminal alien.” The term can refer to any non-citizen apprehended by ICE through the criminal justice system. As an example, a woman who accidentally grabbed the wrong purse when leaving her apartment and was stopped for driving without a license is guilty of a misdemeanor offense in North Carolina. Under ICE's broad application, this woman could be deemed a “criminal alien.” Additionally, ICE uses the term “criminal alien” to promote and defend its programs and to justify the need for more funds. However, the expansive use of this term misinforms the public and Congress about where and on whom ICE expends its resources.

These programs also perpetuate the perception that immigrants are likely to commit crimes. This is a false perception. The review of crime statistics shows that immigrants are less likely to commit crimes than the native-born population. Also, new research suggests that growth in

immigration may be responsible for a decrease in crime in big cities during the 1990's and early 2000's.

## ▪ Harm to Community Safety

ICE ACCESS programs can significantly undermine the building of safe, inclusive communities. These programs are often viewed by immigrants as working partnerships between local law enforcement agencies and ICE. These partnerships often destroy the trust needed for effective community policing and instill fear among members of the immigrant communities. As our law enforcement officers know well, without the trust and cooperation of immigrant witnesses and victims of crime, local law enforcement's ability to identify, arrest and prosecute criminals is seriously jeopardized and makes the entire community less safe. Additionally, ICE ACCESS marginalizes an already vulnerable population by making immigrants feel more isolated and excluded. Therefore, they are more susceptible to exploitation and to becoming victims of crime.

## ▪ Rights Violations

Civil rights and community organizations have reported on the increasing number of

racial and ethnic profiling incidents as more and more state and local law enforcement agencies take on immigration responsibilities. For example, reports by advocates as well as the Office of the Inspector General at DHS have shown that the dearth of training in a complex area of law, coupled with the lack of consistent and quality supervision, has resulted in legal mistakes, costly litigation, and the deprivation of rights in the implementation of these programs. Additionally, CLINIC is concerned that law enforcement agencies may arrest individuals for low level offenses just so that the individuals will have their immigration status screened through the criminal justice system and then be placed in removal proceedings.

## ▪ **Diversion and Expenditures of Scarce Resources**

Programs such as CAP, Secure Communities, and the 287(g) Program divert scarce law enforcement resources from more effective safety and crime prevention methods that promote the common good for everyone in the community. Additionally, the costs to communities not only include the cost of the detention and personnel but the other social costs that ensue when primary caretakers and breadwinners are incarcerated and charged with civil immigration violations.

## ▪ **Misuse of Detainers**

Detainers play a central role in all three programs because they are the tool that ICE uses to enmesh state criminal justice systems in federal immigration enforcement. ICE issues detainers to notify law enforcement agencies that ICE seeks custody of alleged non-citizens arrested on criminal charges, for the purpose of arresting and removing them for immigration violations. Detainers are a *request* that the law enforcement agencies notify ICE when non-citizens will be released from their custody, so that ICE may assume custody within a designated 48-hour period during which the law enforcement agencies can continue to detain them.

In recent years, advocates have witnessed ICE's growing reliance on detainers and their misuse. For instance, all too often, ICE issues detainers against individuals based upon *arrests* for less serious crimes rather than *after convictions* for serious crimes. Additionally, all too often, ICE issues detainers without sufficient evidence of an individual's removability. Also, arrested persons and their attorneys often are not apprised that a detainer has been issued and are not told how to challenge a detainer. Moreover, law enforcement agencies often misunderstand and are misinformed by ICE about the meaning of a detainer and retain the individual in custody beyond the 48-hour period.

## ▪ **Other Concerns**

CLINIC is concerned about the devolution of immigration enforcement from the federal government to local law enforcement agencies where there are no federal regulations, insufficient training, minimum oversight, and a lack of transparency. Additionally, there is too little public information about the operations and procedures of these programs. Further, these programs lack adequate requirements for data collection, audits, and oversight.

# Advocacy: First Steps for Communities

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Find out as much as you can about what is happening to foreign-born persons who are arrested in your area.

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Communities need to gather as much information as possible about what is taking place in their neighborhoods. They need to find out if a pipeline exists from the criminal justice system to the deportation/removal system and how it works. Below are relevant questions and considerations for communities.

## **What is happening in the community?**

- What are the practices of the local police in your community? Do they cooperate with ICE formally or informally?
- Does your community have the Criminal Alien Program (CAP)? Do CAP Teams go into local jails?
- Perhaps your community does not have CAP, but does ICE obtain booking information from the local jail? If so, what kind of arrangement makes this possible?
- Does your community have Secure Communities operating in the local jail?
- Does your community have 287(g)-designated officers working on the street or in the local jail?

## **Stop and Arrest: What are the practices of the local police?**

- Are the police asking individuals about their birth place and/or immigration status at the time of a stop and/or arrest?
- Do you have 287(g)-designated officers stopping and arresting immigrants?

## **Booking into Jail: What are the practices of the local police?**

- Do the police have authority to ask immigration questions?
- What information are the police collecting at booking?
- Are fingerprints taken and run through Secure Communities?
- Do the police in your community run the names of all arrested persons through any DHS database?

## **Jail: What is happening in the local jail?**

- Does your community have 287(g)-designated officers working in your local jail?
- Is CAP in place and are ICE officers obtaining biographical information and booking information from your local jail?
- If there is no CAP program, does the local jail allow ICE to come into their facility to look at booking information and/or to interview individuals?
- Does ICE have an office and personnel stationed at the jail?
- Does ICE interview detained people? If so, how and when do they do this?
- Do incarcerated individuals know that ICE has a jail presence and/or that ICE officers come to the facility on a regular basis?
- Do ICE officers wear their ICE uniforms when they speak to individuals at the local jail?
- Can individuals refuse to speak with ICE?
- Does ICE issue detainers after speaking with people and/or does ICE issue detainers through Secure Communities?
- How many people are being held on civil detainers in the local jail?

## **Bail: Are noncitizens able to ask for and get bail?**

- If a detainer has been issued, does it affect bail?
- Does a detainer cause the judge to demand a higher bail?

## **Criminal Charges and Disposition: What happens after the case is concluded?**

- After the case has concluded, is ICE notified?
- If so, how and when is ICE notified?

## **Post-Conviction: Where is ICE in this process?**

- If not convicted, is the person released from custody?
- If not convicted, is a detainer placed on the person or has it already been issued?
- If a detainer is placed on the individual, how long does the jail keep the individual?
- Is it longer than 48 hours?

# Advocacy: Next Steps for Communities

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Develop a campaign with multiple strategies to challenge the implementation of the program or halt its continuation.

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Communities most often need to mount a campaign that pursues multiple strategies to challenge the implementation or halt the continuation of the Criminal Alien Program, the Secure Communities Program, and/or the 287(g) Program. It is critical that communities immediately start a campaign for two reasons. First, challenging local enforcement initiatives is time consuming. Second, ICE will continue to find new and different ways to collaborate with state and local entities in the future.

## **The components of a campaign may include the following:**

- I. Grassroots Organizing to Build a Broad-Based Coalition
- II. Legal Team and Strategy
- III. Advocacy Strategy
  - Engagement with the Local Law Enforcement Agency
  - Engagement with Decision Makers
- IV. Community Education
- V. Media Strategy

# I. Grassroots Organizing to Build a Broad-Based Coalition

One of the most powerful efforts that community members can take to challenge a proposed agreement or halt an existing agreement is to build a coalition of individuals and groups that do not want their local police involved in enforcing immigration law. Community members should focus on building a broad, credible coalition that reaches out to different individuals and groups.

## Potential allies and coalition partners may include:

- Immigrants living and working in the community,
- Local office of the public defender,
- Religious groups and churches,
- Labor unions,
- Police and sheriff's departments,
- Community organizations that assist immigrants (especially domestic violence shelters),
- Civil rights and social justice groups,
- Ethnic organizations,
- Neighborhood advisory groups,
- Elected officials, and
- Chambers of Commerce and other business organizations, especially those that employ immigrant workers (hospitality industry, construction, farms).

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**TIP: Include everyone.** The message to the coalition is that everyone can do something – every person and every group can help.

**TIP: The coalition should become an expert on the program.** Learn the particular aspects of the program and determine the impact on the community.

**TIP: For the coalition to be effective, it must be *credible*.** When the coalition collects information and meets with the public, decision makers, and the media, it should avoid making generalized statements. Instead, it should present facts and information that is specific, detailed and can be verified.

**TIP: Determine where you can use your resources best.** If you are confronting a partnership between ICE and a statewide law enforcement agency, you will need to determine what areas of the state have the best organizational structure and the capacity. It may not be feasible to organize the whole state.

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## Success Stories:

- Santa Fe advocates formed a broad-based coalition. They have been successful in ensuring that their local police do not share booking information with ICE or allow ICE access to individuals incarcerated in the local jail.
- New York City advocates built a broad-based coalition. They worked with the New York Department of Corrections to ensure that ICE officers at Rikers Island wear a uniform and tell individuals that they do not have to talk to the officers.
- Florida advocates have begun developing a statewide coalition. They focus on areas where they have organizers and capacity on the ground. They have been successful in getting some law enforcement agencies to reject 287(g) agreements. However, they have seen these same agencies sign up for Secure Communities.
- DC advocates have formed a broad-based coalition. They were successful in having a DC city council member introduce legislation to block DC from taking part in Secure Communities. All of the city council members signed on as co-sponsors of the legislation. Subsequently, the Chief of Police withdrew the agency's agreement to participate in Secure Communities.
- Advocates in Northern Virginia formed a broad-based coalition. They were successful in convincing the County Board in Arlington to opt-out of the Secure Communities Program. Other communities that voted to opt-out of Secure Communities include the Santa Clara Board of Supervisors and the San Francisco City Council.

*Note: As indicated on page 9. It is unclear if and how communities can opt-out of the Secure Communities Program because of conflicting information recently reported by DHS.*

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## II. Legal Team and Strategy

Coalition members should consider developing a legal team and formulating a legal strategy to challenge a program or halt its continuation. This team is essential to obtaining information, documenting testimonies, filing complaints, and supporting the community's decision not to cooperate with ICE.

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Below is a list of responsibilities that the legal team can undertake to challenge a program or halt an existing program.

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- File a Freedom of Information (FOIA) request to understand what program is being implemented and how it is being operated.
  - Document the stories of individuals who have been impacted by the program. This information can be used for litigation, education, contacts with the media, reports, and testimony. It also can be given to decision makers and individuals in an oversight capacity.
  - Develop position papers to share with local law enforcement agencies and others stating that there is no legal duty or legal obligation to cooperate with ICE.
  - File complaints against a jail or prison for misuse of detainees, including holding an individual beyond the 48 hour rule.
  - Document civil rights abuses and file charges with the appropriate agency or court.
  - Educate public defenders and criminal attorneys about the immigration consequences of crimes.
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**TIP: Look for expertise and legal resources in your community.** Remember that law schools can help with research and analysis and they do not have to be located nearby.

**TIP: Get to know your local public defenders and become more familiar with the criminal justice process and system in your area.** At the same time, help local public defenders understand how ICE ACCESS Programs operate in the community.

**TIP: Set up a hotline to document how these programs are affecting the community.** The hotline can be run by volunteer attorneys and law students.

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**Success Story:** Casa De Maryland set up a hotline in Frederick, Maryland after the Frederick County Sheriff's Office signed a 287(g) agreement. The hotline, maintained by volunteer attorneys and law students, recorded the experiences of residents in the community with local law enforcement officials. It also offered advice to individuals who were detained. Through the hotline, the agency learned of individuals whose constitutional rights were violated and subsequently brought a lawsuit against the Frederick County Sheriff's Office.

# III. Advocacy Strategy: Engagement with Local Law Enforcement Agency

The coalition will need to work to keep the lines of communication open between the community and the local law enforcement agency involved with ICE ACCESS programs. It is important that the community understand the agency's immigration policies. Likewise, it is important for the coalition to explain the impact that the program will have or has had on the immigrant community and the greater community. By keeping the dialogue open, the coalition can work toward collaborative partnerships for public safety and crime control purposes. Hopefully, the coalition will dissuade the local law enforcement agency from agreeing to partner with ICE or, at the very least, modify the agreement so that its impact on the community is minimal.

## ▪ Important Questions

In this discourse, it is important to question your local law enforcement agency about its reason for cooperating with ICE. It is also important to learn what the agency is getting out of the program and how the agency benefits.

Do not take the agency's explanations at face value. If the rationale is terrorism and national security, ask what the program is doing for national security. If the rationale is safety, ask how the program makes the community safe. For example, in DC, when the Chief of Police was asked why she signed an agreement to participate in Secure Communities, she replied that the program would become mandatory in 2013 and she preferred to work with ICE now to modify the agreement so that it meets the needs of DC. In response, advocates argued that DC should modify the program but not implement it until forced to do so.

## ▪ Other Questions that Should Be Posed to the Agency:

- When and how does the law enforcement agency contact or notify ICE?
- How frequent is the contact between the local law enforcement agency and ICE?
- Who is considered a *criminal alien*?
- Who is issued an ICE detainer?
- Does the law enforcement agency have the option of not entering into an agreement with ICE or refusing ICE access to jails?
- Whose information is checked through the Secure Communities system and when (at booking, at conviction) ?

- Are there any offenses that will be exempt from fingerprint checks in Secure Communities?
- Do the local officers receive training on immigration law? If so, where, for how long, and what topics are taught?

- Do ICE officers supervise the local law enforcement officers? If so, what is the nature of the supervision? How often is the contact? Is the contact in person or remote (computer, telephone)? Are there written performance reviews?

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**TIP: It is important to help educate the local law enforcement community about the importance of operating independently from ICE and to create a climate where local law enforcement can easily say “no” to ICE cooperation.** This is a long term endeavor and may take years. Remember, ICE considers local partners as force multipliers. They will continue to look for ways to expand the reach of immigration enforcement.

**TIP: It is essential that the local law enforcement agency track the ethnicity of the individual and the crime that led to the arrest.** In other words, what groups of individuals and crimes are funneled through the criminal justice system pipeline into the immigration removal pipeline? This information is important so that advocates and attorneys can assess who is being arrested and what crimes are triggering the issuance of detainers and subsequent removal proceedings. Both community members and law enforcement agencies can benefit from this information.

**TIP: It is essential that the local law enforcement agency exempt traffic offenders from being run through the Secure Communities database.** Law Enforcement officers know that laws having to do with motor vehicles can be used to stop anyone. Thus, to eliminate the possibility that traffic violations will be used as a pretextual stop, these offenders should be exempt from fingerprint checks.

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## **Success Stories:**

In DC, advocates pursued two strategies: (1) block the implementation of Secure Communities by working with city council members, and (2) exempt certain offenses from the program. The Chief of Police in DC worked with advocates to exempt 22 offenses from being part of the Secure Communities Program. In addition, the DC City Council introduced legislation to block the implementation of Secure Communities in DC. Because of the legislation, the Chief of Police withdrew the agency’s agreement to participate in Secure Communities.

In late September 2010, the Board of Supervisors in Santa Clara, California and the County Board in Arlington, Virginia voted unanimously to opt-out of the Secure Communities Program. Conflicting information from DHS makes it unclear whether they will be allowed to do so.

# Advocacy Strategy: Engagement with Decision Makers

It is crucial that the coalition engage decision makers (city and county council members, mayor's office, governor's office, state legislators) on the issue of having local law enforcement agencies enforce immigration law. Decision makers need to be fully engaged in whether to implement the program and provide sufficient oversight of the program if it is put into practice.

## Some useful questions include:

- Why should the state/locality consider this program?
- How does the state/locality benefit from the program?
- How much does the program cost to operate?
- Who is paying for the program?
- How much liability does the state/locality incur by running the program?
- What is the impact of the program on the state, locality, etc.?

- Does the program divert law enforcement officers from other important programs and duties?
- Who will provide oversight of the program?

Because these programs dramatically impact communities, coalition members should request that the appropriate decision maker hire an outside monitor to review the program, its outcomes, and its impact on the community. The results of the outside monitor's review should be widely disseminated to the public and media for review and comment. If the coalition is not successful in having an outside monitor appointed to evaluate the program, the coalition should request that the appropriate decision maker hold regular hearings to obtain the necessary information about the operation of the program and how it impacts the community.

## Success Story:

In DC, advocates successfully worked through a member of the city council to include the testimony of 22 witnesses about Secure Communities at a Government Oversight Hearing. The last witness of the day was the Chief of Police who not only testified about the program, but also responded to questioning by city council members. Following the hearing, city council members introduced legislation to try to stop the implementation of the Secure Communities Program. As noted previously, it is not clear that DC can opt-out of the Secure Communities Program.

## IV. Community Education

The coalition may need to educate the public, leaders, decision makers, and members of the community about the enforcement program. One way to do this is to hold a series of town hall meetings. Additionally, the coalition should consider developing educational and advocacy materials including talking points, letters to decision makers, letters to the editor and op-eds, as well as testimonies for members of the coalition to distribute at public meetings or before the legislature.

### Training

These programs involve enforcement measures. Thus, it is critical that the coalition educate members of the community about their rights if they are stopped, detained, and/or arrested by law enforcement officials. It is especially important that community members

understand their right to remain silent and the importance of not providing foreign birth information to law enforcement officials. “Know Your Rights” materials and sessions should be available in multiple languages and multiple mediums, including ethnic newspapers, radio, television and community forums.

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**TIP: Train individuals that work and live in the community to provide the “Know Your Rights” trainings.** These are the individuals who are most trusted. Additionally, provide information and “Know Your Rights” training at community events, including, regular religious services, family night at the local community center, local street fairs, etc.

**TIP: Train individuals to document what is happening in the community.** It is important for members of the immigrant community to know how to document and prepare written accounts of what they and others are experiencing.

## V. Media Strategy

**T**hrough the media, the coalition can increase the widespread communication and dissemination of information about the program. This method also gains the interest of decision makers who often pay attention to the media and public opinion in planning their priorities and contemplating their votes.

Some practices that coalition members can follow to engage the media include: developing personal relationships with reporters; responding to a reporter's inquiry in a timely manner; providing good quotations when asked; responding to any negative press with a letter to the editor or by asking for a meeting with the reporter and his/her editor; writing op-eds and letters to the editor. Additionally, the coalition can send out its own press release to communicate directly with the media. Moreover, the media can be used to educate community members about their rights.

## **Educating the Public through Effective Messaging/Sample Talking Points:**

- Immigration is a federal responsibility.
- Immigration law is a highly complex and technical legal area. Having local law enforcement officers act as immigration agents requires costly training and invites costly lawsuits.
- These programs undermine the building of safe communities and the common good by eroding the trust between the community and the local law enforcement agency.
- These programs deprive individuals of their dignity and constitutional rights. This is a civil rights issue not an immigration issue.
- These programs are often divisive; undermine the building of strong, inclusive communities; and harm families.

- These programs divert scarce law enforcement resources from more effective safety and crime prevention methods that promote the common good.

## **Examples of Effective Messaging:**

**Florida Advocates:** These programs harm victims and negatively affect community policing. They do not focus on and arrest serious criminals but go after easy targets, including long-time productive members of our communities.

**DC Advocates:** Secure Communities is a civil rights and community safety issue, not an immigration issue.

**New Mexico Advocates:** Advocates in Santa Fe made the strategic decision not to promote their message publicly. However, they educated judges, police chiefs, and decision makers about CAP and Secure Communities. They successfully argued that these programs are costly. Additionally, they framed the discussion around liability issues, civil rights, public safety, and the lack of fairness and due process.

# Lessons Learned

- While the programs look and sound benign, they are not. Research what is happening in your community.
- Get started! This type of campaign takes months/years of time. Also, look to build a coalition with a long term strategy. Advocates believe that ICE will find more ways to collaborate with local law enforcement agencies. Thus, build a coalition that can respond to the next idea, the next initiative, and the next program.
- Advocates need facts and hard data about who is being targeted, what crimes are being committed, and the effects of the program on the community because this information counters DHS rhetoric that it is targeting serious offenders.
- Follow the money and follow the detainers to see what is happening in your community and why. Remember, a drain on city, county or state resources can be a powerful argument.
- Form a positive working relationship with local law enforcement agencies, including jail staff. This may take years, but it will also help. Remember, as indicated above, ICE is always looking for partners and force multipliers.
- Press your local law enforcement agencies for answers to your questions. If necessary, file a FOIA or request that your city/county council hold a hearing to understand how the program is working in your area.
- It is important to remember that these ICE programs ultimately are local issues. Do not let ICE intimidate your community. Local decision makers do have the power to change immigration laws by determining if the local jail or local law enforcement agency cooperates with ICE in one of these programs.

# The Process for Filing Complaints

Victims of misconduct/abuse with CAP, Secure Communities, and the 287(g) Program can file a formal complaint with the U.S. Department of Homeland Security's Office for Civil Rights and Civil Liberties (OCRCL). This office investigates and resolves complaints filed by members of the public concerning abuses of civil rights, civil liberties, and racial profiling.

Detailed instructions about what a complaint letter should include can be found at [http://www.dhs.gov/xabout/structure/editorial\\_0373.shtm](http://www.dhs.gov/xabout/structure/editorial_0373.shtm). For more information about the Office for Civil Rights and Civil Liberties, visit their website or contact them at [civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov) or (866) 644-8360.

## **Additionally, complaints can be reported to other federal authorities as follows:**

1. Telephonically to the DHS Office of the Inspector General's toll free number 1-800-323-8603.
2. Telephonically to the ICE Office of Professional Responsibility at the Joint Intake Center in Washington, D.C. at the toll free number 1-877-246-82553 and by email [Joint.Intake@dhs.gov](mailto:Joint.Intake@dhs.gov).
3. Mail to: Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, P.O. Box 14475, Pennsylvania Avenue, NW, Washington, DC 20044.

Please also let CLINIC know of any complaints filed with any of the agencies listed above by contacting Ann Atalla at [aatalla@cliniclegal.org](mailto:aatalla@cliniclegal.org) or Allison Posner at [aposner@cliniclegal.org](mailto:aposner@cliniclegal.org).

# Conclusion

**T**he civil enforcement of immigration laws should be left to the federal government and not transferred to local law enforcement authorities whose critical role is maintaining public safety and fighting crime. As explained above, the costs to the community for cooperating with the Criminal Alien Program, the Secure Communities Program, and the 287(g) Program outweigh the benefits. These programs have a propensity to “criminalize” the entire issue of migration. They also often erode years of trust and cooperation between the local law enforcement agency and the immigrant community. Given the complexity of immigration law and the limited supervision of local law enforcement agencies, these programs can lead to the deprivation of individuals’ constitutional and civil rights. Additionally, they can often divert scarce resources from more effective safety and crime prevention methods that promote the common good.

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*Written in October 2010: If you have questions or comments about this information, please contact Karen Herrling, State and Local Advocacy Attorney at CLINIC at [kherrling@cliniclegal.org](mailto:kherrling@cliniclegal.org). This information is for educational and advocacy purposes only. The contents do not constitute legal advice. Consult an immigration attorney for legal advice.*