

A Tool Kit for Communities to
Advocate Against
ICE Partnerships with Local
Law Enforcement Agencies

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Researched and written in October 2010 and updated in December 2012 and April 2013, 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. It is CLINIC's position that 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.

CLINIC has been monitoring closely three programs where local law enforcement agencies (LEAs) join forces with ICE in their 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 detainers 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 ICE ACCESS programs are: Asset Forfeiture/Equitable Sharing, Border Enforcement Security Task Force, Customs Cross-Designation, Document and Benefit Fraud Task Forces, Fugitive Operation Teams, Intellectual Property Rights Center, Law Enforcement Support Center, Operation Community Shield, Operation Firewall, Operation Predator, and Rapid REPAT.

This Tool Kit provides an overview of the Criminal Alien Program, the Secure Communities Program, and the 287(g) Program, and the use of civil immigration detainers to implement these programs. It also recommends strategies to advocate against the implementation and/or end these programs in communities.

THE CRIMINAL ALIEN PROGRAM

The Criminal Alien Program (CAP) is implemented in federal, state and local prisons and jails around the country. This nationwide enforcement program is administered by ICE. Under CAP, 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 throughout the country. According to the Department of Homeland Security (DHS), CAP helped ICE identify 48% of all removable immigrants in FY 2009.

No Formal Agreements

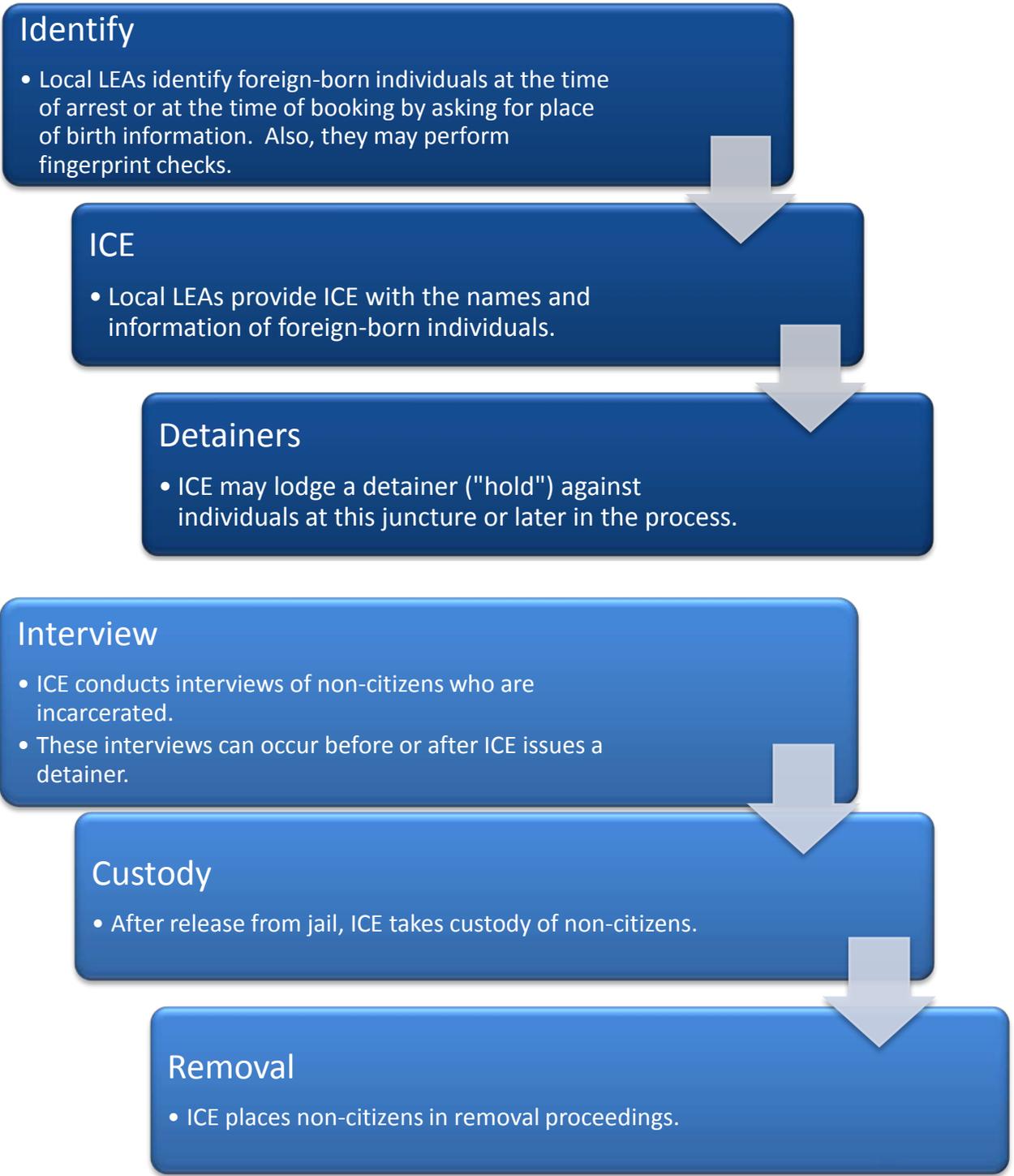
CAP is an essential component of ICE's focus on federal-local partnerships to target criminal offenders for removal. It is one of the agency's oldest immigration enforcement programs having been in operation for more than 27 years. Through CAP, the criminal justice system and the federal immigration authorities interface with one another. ICE's stated enforcement priorities and Congressional appropriations ostensibly guide the program.

While CAP has existed for decades, immigrant advocates and immigrant communities know little about how it is organized and how it operates. According to the CAP webpage, CAP is comprised of five loosely associated programs: Jails and Prisons, the Violent Criminal Alien Section (VCAS), the Joint Criminal Alien Removal Taskforces (JCART), Detention Enforcement and Processing Offenders by Remote Technology (DEPORT), and Rapid Removal of Eligible Parolees Accepted for Transfer. More information on these

programs can be found at:
<http://www.ice.gov/criminal-alien-program/>.

For the purpose of this document, CLINIC will focus on the Jails and Prison Program because it operates extensively in city, county, state and federal facilities throughout the country. CAP lacks any formal written agreements between the jails/prisons and ICE. Instead, the program functions informally based upon local practice. At some locations, ICE has a desk or an office on the jail/prison premises. 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 decisions to place a detainer on an individual 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.

HOW CAP WORKS



No Rights to Access

According to a January 2007 audit report by the Office of Inspector General at the U.S. Department of Justice, participation by jail staff in status check programs, such as CAP, is voluntary. Indeed, localities are not required to actively collaborate with ICE and give them open access to all arrested persons. Some advocates have persuaded their local and state jails to limit ICE's unfettered access. Advocates are concerned that cooperation between the local jails and ICE undermines the important relationship between local law enforcement agencies and the communities they serve

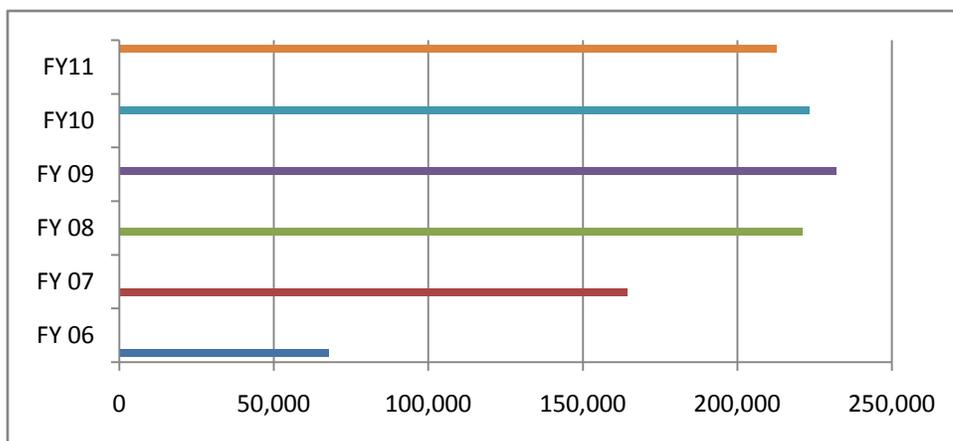
Questioning by Local Law Enforcement or ICE

Often when local law enforcement or ICE officers question individuals in the jails, the individuals have no legal counsel present. 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.

Expansion of CAP

CAP has expanded rapidly in a short period of time. As the chart below shows, the number of charging documents issued to noncitizens tripled from 2006 to 2009 and then has remained fairly constant from 2009 to 2011.



CAP charging documents issued to non-citizens during FY 06: 67,850.
CAP charging documents issued to non-citizens during FY 07: 164,296.
CAP charging documents issued to non-citizens during FY 08: 221,085.
CAP charging documents issued to non-citizens during FY 09: 232,000.
CAP charging documents issued to non-citizens during FY 10: 223,217.
CAP charging documents issued to non-citizens during FY 11: 212,744.

SECURE COMMUNITIES

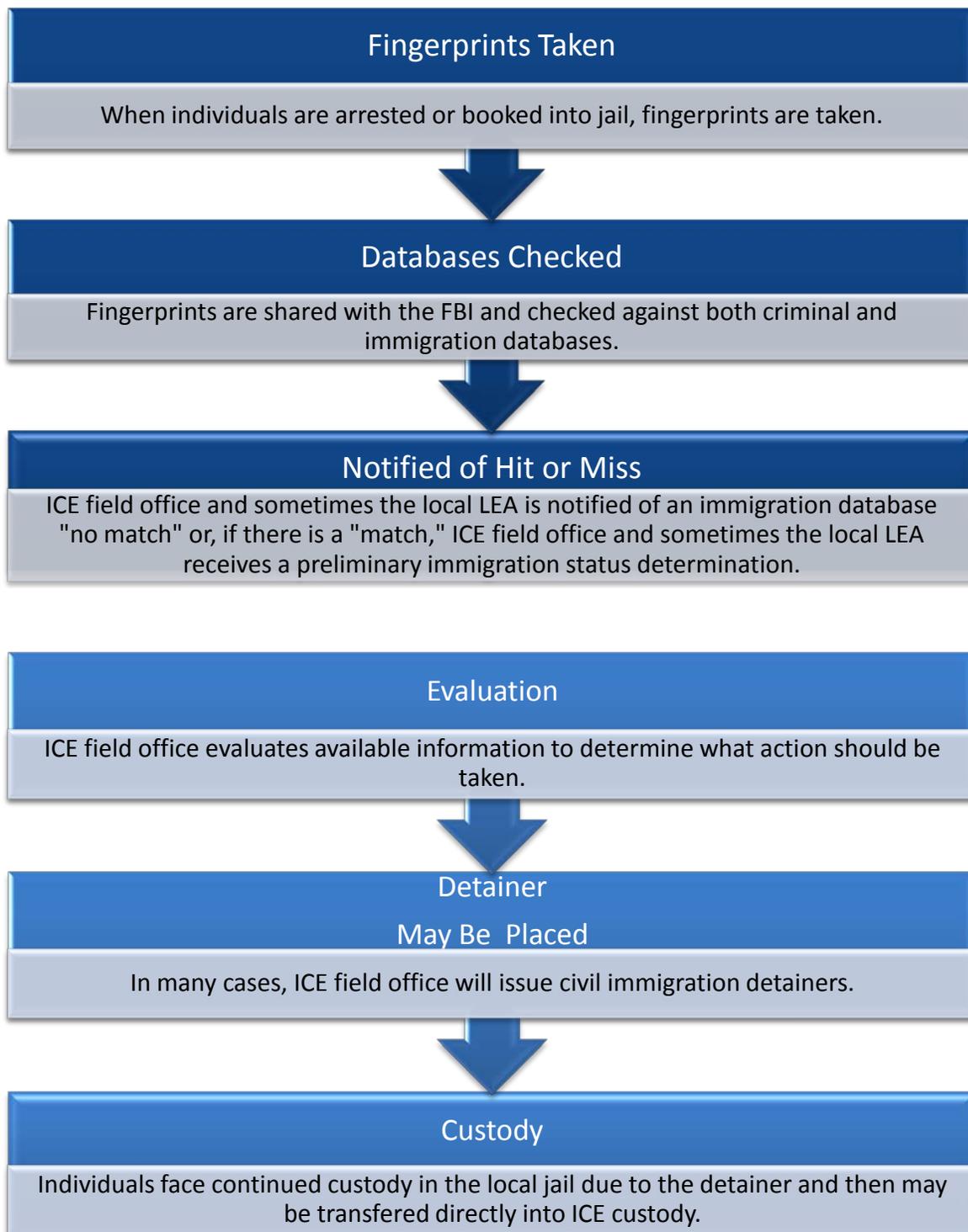
Secure Communities, administered by ICE, identifies noncitizens in U.S. jails who are deportable. Through Secure Communities, fingerprints taken by local police during the normal process of “booking” individuals *charged* with state or local crimes are checked against federal immigration databases. ICE field agents and local law enforcement agencies are notified if the fingerprint check reveals that the individual has an immigration history and may be removable from the U.S. ICE field agents then evaluate each case to determine the individual’s immigration status and whether the individual should be removed according to the agency’s priorities. In many cases, ICE will issue an immigration detainer for the jailed individual indicating that ICE should be contacted before the individual is released from custody. Through Secure Communities, ICE benefits from a technological presence in prisons and jails all across the country rather than a physical presence.

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 the crime for which they were arrested.*

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. Indeed, for FY 2013, ICE requested \$138.7 million for Secure Communities.

While DHS initially described Secure Communities as a voluntary partnership between local jurisdictions and the federal government, in August of 2011, DHS unilaterally rescinded all of the Secure Communities Memoranda of Agreement (MOAs) it had signed with localities and announced that participation in the program would be mandatory for all jurisdictions. Currently, the Secure Communities Program is active in 99% of jurisdictions across the country. Secure Communities aims to reach full activation nationwide during FY 2013.

HOW SECURE COMMUNITIES WORKS



Targets of Secure Communities

ICE asserts that Secure Communities targets criminal aliens that pose a threat to public safety or national security as well as repeat immigration violators. DHS data from FY 2011 shows that the agency has not exclusively focused its efforts in these areas. Indeed, in FY 2011, 26% of Secure Communities deportations were for individuals with Level 1 convictions (serious felony crimes); 19% of those deported had Level 2 convictions (one felony crime or three misdemeanor crimes); and 22% were individuals with Level 3 convictions (minor/misdemeanor crimes resulting in sentences of less than one year). 26% of individuals deported through Secure Communities in FY 2011 had immigration violations but no criminal convictions.

The rate of non-criminals deported through Secure Communities is much higher in several jurisdictions. In fact, in some jurisdictions, between October 2008 and June 2010, more than eighty percent of individuals deported through Secure Communities were non-criminals, according to an assessment of DHS data by Cardozo School of Law and others.

Concerns with the Secure Communities Program

Advocates are troubled by the Secure Communities Program. They are concerned that local law enforcement agencies and ICE have failed to follow the program's congressional mandate and ICE's stated focus to concentrate resources on the removal of immigrants that commit serious crimes.

Additionally, many advocates assert that ICE has not been transparent about how the program operates and where the legal authority for mandatory implementation lies. Advocates also argue that ICE has disregarded the legitimate interests of local communities that prefer to protect their communities' trust in law enforcement rather than engage in Secure Communities. In addition, advocates are disquieted about the program's lack of meaningful oversight.

Moreover, advocates have expressed dismay about the inadequacy of avenues to address allegations of civil rights violations incident to the program, such as pretextual arrests and discriminatory policing by local officers. Recent studies suggest that Secure Communities operates with a racial bias. For example, an October 2011 study from the University of California Berkeley demonstrates that Latinos make up 93% of individuals detained through Secure Communities while they only account for 77% of the undocumented population in the U.S.

Further, concerns exist as to the accuracy of the federal immigration databases upon which Secure Communities relies. As an example, data shows that 6% of "matches" from October 27, 2008 through December 31, 2009, were for U.S. citizens. Furthermore, advocates note that ICE has never issued regulations regarding the operation of the program and has failed to publicly release data accumulated as part of the statistical monitoring promised by DHS as a remedy for civil rights abuses.

Finally, advocates contend that Secure Communities places parental rights in jeopardy. There are approximately 5.5 million children in the U.S. who live with at least one undocumented parent, and most of

these children are U.S. citizens. Parents in immigration detention often face the loss of their parental rights while incarcerated, since they may not receive notice of court proceedings, may not have adequate legal counsel, cannot comply with the terms of family reunification plans mandated by the child welfare system, and are often not even told where their children are. Because of the

way Secure Communities works, an initial decision by a local officer to book an individual on a minor charge can turn into a prolonged detention and perhaps removal for an immigration violation, having a substantial effect upon the children and families of these individuals.

THE 287(g) PROGRAM

The 287(g) Program cross-designates local law enforcement officers to enforce federal immigration law as authorized under Section 287(g) of the Immigration and Nationality Act (INA). Under this section of the INA, local law enforcement agencies sign a standardized Memorandum of Agreement (MOA) with ICE to perform immigration-related duties on streets or in jails. The 287(g) officers are deputized ICE agents who must attend a four week immigration law training course. Under the provisions of the MOAs, the officers are under ICE supervision.

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 Model) or in jails (Jail Enforcement Model). Task Force officers have the authority to investigate and detain for civil immigration violations people they encounter in the field. Jail Enforcement officers work in state prisons and local jails by screening immigrants arrested and convicted of crimes. They can place detainers on individuals and process paperwork to initiate removal proceedings. In some jurisdictions, agencies perform both jail and task force functions.

As of October 2012, DHS had entered into 287(g) agreements with fifty-seven states and localities. Seventeen agreements were for the Task Force Model, thirty-two agreements were for the Jail Enforcement Model, and eight agreements were joint Task Force and Jail Enforcement Models.

Waning of Federal Support for the Program

In the fall of 2012, advocates, including CLINIC, sent a letter to DHS Secretary Janet Napolitano and ICE Director John Morton calling for an end to the current 287(g) Program. Shortly thereafter, DHS renewed most of the existing 287(g) Jail Enforcement agreements, but only through December 31, 2012. Additionally, on December 21, 2012, ICE announced that it had decided not to renew any of its agreements with state and local law enforcement agencies that operate Task Forces under the 287(g) Program. ICE reported that it had concluded that other enforcement programs, including Secure Communities, are more efficient uses of resources. In its FY 2013 budget request, ICE reduced its request for the 287(g) Program by \$17 million – a 25% reduction compared to FY 2012. It also terminated agreements with the least productive LEAs and is not considering any new applications for the program. Thus, while it still exists, the 287(g) Program appears to be winding down and there are no new opportunities for communities to opt into the program.

HOW THE 287(g) JAIL ENFORCEMENT MODEL WORKS

Identify

- Local LEAs question jailed individuals about their alienage and immigration status and/or perform immigration status checks.



Custody and Proceedings

- Local LEAs may lodge immigration detainees and/or place individuals into removal proceedings.



ICE

- ICE plays insufficient oversight role.

DETAINERS

The civil immigration detainer (known simply as a “detainer” or an “ICE hold”) is the central enforcement mechanism of the Secure Communities program and is critical to the operation of all other ICE ACCESS programs. DHS issues approximately 250,000 detainers each year.

The detainer ([Form I-247](#) titled “Immigration Detainer – Notice of Action”) is a notice issued by DHS to other LEAs that are holding individuals who may be of interest to DHS. It requests an LEA to continue to detain an individual, up to 48 hours, after the lawful basis for the LEA’s custody expires.

Detainers may be issued at any point in an individual’s criminal proceedings, even immediately after the initial lawful contact with a police officer (such as a traffic stop). These detainers can be issued whether the person has been charged with a crime or not – that is, well before a criminal conviction.

A detainer permits DHS to ensure that an individual currently in state or local criminal custody remains in **continuous detention** until DHS decides whether it can or wants to place the individual into removal proceedings. Advocates have identified several problems with DHS’s current detainer practices.

Lack of Compliance with Evidentiary Standard

Finding removable individuals in local custody through ICE Access Programs is of limited value without a mechanism to ensure that DHS could still easily obtain custody over such individuals. The detainer represents this mechanism.

The detainer form, Form I-247, permits DHS to indicate which of four situations best describes the basis for the immigration hold:

- Determined that there is reason to believe that the person is removable from the United States;
- Initiated removal proceedings against the individual and served a Notice to Appear or other charging document;

- Served a warrant of arrest for removal proceedings; or
- Obtained an order of deportation or removal from the United States for the individual.

There are concerns that, in practice, DHS is not restricting its use of detainers in all circumstances to situations in which, at a minimum, it has "reason to believe" that an individual is actually removable from the United States. The “reason to believe” evidentiary standard is the immigration equivalent to the "probable cause" required by the Fourth Amendment of the U.S. Constitution in order for someone to be arrested. DHS adopted this standard when revising its policy on the issuance of detainers (and the detainer form itself) on December 21, 2012.

In theory, this means that ICE must first investigate and acquire specific evidence

that an individual is removable prior to issuing a detainer. However, there are reports that, in practice, ICE officers continue to issue detainers based solely on a mere suspicion that someone may be removable. Additionally, it has been reported that immigration holds have been mistakenly lodged against U.S. citizens.

No Lawful Basis for Criminal Custody

Courts and the Board of Immigration Appeals (BIA) have found that individuals held pursuant to detainers do not necessarily enter into DHS's legal custody and may in fact technically remain within the local criminal LEA's legal custody. Importantly, the Form I-247 is neither a criminal detainer nor an administrative or criminal arrest warrant. Indeed, as the U.S. Supreme Court clearly stated in its 2012 opinion in *Arizona v. United States*, state and local law enforcement officers lack the Constitutional or statutory authority to detain someone solely because s/he may lack a lawful immigration status or may be removable from the U.S. Thus, the Supreme Court's opinion in this case casts doubt on the legality of the practice by state and local jails of holding potentially removable individuals in local custody solely pursuant to a detainer, even for 48 hours.

Uncertain Statutory Authority for Current DHS Detainer Regulations and Practices

The Immigration and Nationality Act (INA) references the validity of detainers only in the narrow context of controlled substance offenses. But DHS detainer regulations and practice extend far beyond these criminal offenses. In the past, the Immigration and Nationality Service has taken the position that these detainers are proper not to the

controlled substances portion of the INA but to its authority under the INA to make warrantless arrests for immigration violations. Courts have interpreted that warrantless arrest authority, however, to require "probable cause." As discussed above, the Form I-247 issues in many circumstances short of "probable cause."

Interference with the Criminal Process

An individual who is subject to a detainer is often denied bail on the underlying criminal charge or given a much higher bail. This practice interferes with the individual's ability to fight his/her case and to take care of his/her family while doing so. Alternatively, the issuance of a detainer may shortcut an individual's criminal proceedings by effectuating transfer into ICE custody before the person has had his/her day in court or has answered the charge that brought the person to ICE's attention in the first place.

What is a "Conditional Detainer"?

The detainer [Form I-247](#) permits ICE or the issuing law enforcement official to check a box making the detainer "conditional," or operative only upon conviction. In responding to the reform recommendations made by the DHS Task Force on Secure Communities, ICE stated that, with respect to certain minor traffic offenders who do not fall into a higher priority category, it "will only consider making a detainer operative upon conviction for the minor traffic offense."¹ This "conditional detainer,"

¹ U.S. Immigration and Customs Enforcement, *ICE Response to the Task Force on Secure Communities Findings and Recommendations* (April 27, 2012), p. 14.

however, would amount to a wholly new legal mechanism that has not existed prior to this date, and ICE has not yet explained how this kind of detainer would operate in practice. In addition, ICE has failed to offer a way to track data on whether and when detainers are being issued consistently with its policy. Moreover, this policy statement does not clearly indicate that ICE has no intention of placing any type of detainer on individuals charged only with minor traffic offenses or, indeed, those only charged with other, non-traffic-related minor offenses such as jaywalking.

Restricting Local Enforcement of Detainers

Detainers only request but do not mandate that local LEAs continue to detain people. California's Attorney General recently issued a legal opinion affirming the voluntary nature of local compliance with detainers. Several jurisdictions across the country have put in place "anti-detainer" ordinances or policies that restrict enforcement of detainers to those situations that local law enforcement consider to be a public safety risk. Thus, many of these "anti-detainer" policies do not permit police to hold individuals charged only with minor traffic violations solely on the basis of a detainer. For a more complete discussion of recently adopted "anti-detainer" policies, see CLINIC's update from August 2012: "[Latest Developments in State & Local Pushback Against Detainers.](#)"

PROSECUTORIAL DISCRETION

ICE states that its highest priority for civil immigration enforcement is the removal of non-citizens who pose a danger to national security or a risk to public safety. Several recent ICE policy memoranda set out these enforcement priorities and guidelines for the proper use of “Prosecutorial Discretion” consistent with the priorities:

- Memorandum of U.S. Immigration and Customs Enforcement Director John Morton dated March 2, 2011, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention and Removal of Aliens” <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf> ;
- Memorandum of U.S. Immigration and Customs Enforcement Director John Morton dated June 17, 2011, “ Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens” <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> ;
- Memorandum of U.S. Immigration and Customs Enforcement Director John Morton dated June 17, 2011, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs” <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf> .

In these memoranda, ICE has set out a three-tiered system to prioritize the identification, detention and removal of noncitizens:

- **Level 1** applies to those individuals convicted of the most serious offenses (“aggravated felonies” as defined by federal immigration law or two or more crimes punishable by more than one year, with particular focus on violent felonies such as murder, kidnapping and major drug offenses);
- **Level 2** applies to those individuals convicted of any felony or three or more misdemeanors; and
- **Level 3** applies to those individuals convicted only of misdemeanor offenses.

ICE has begun training personnel on the proper use of discretion in initiating and continuing removal proceedings against individuals who are not high priorities or have certain equities. Nonetheless, use of Prosecutorial Discretion has been both inconsistent and slow. Legal representatives still must actively seek the application of Prosecutorial Discretion in each case. Advocates remain concerned about whether Prosecutorial Discretion is being applied to the substantial population of *unrepresented* individuals, especially those who are detained.

An important application of Prosecutorial Discretion occurred on June 15, 2012 with the announcement by DHS of **Deferred Action for Childhood Arrivals (DACA)**. Under DACA, certain young people who were brought to the United States as young children, who do not present a risk to

national security or public safety, and who meet several key criteria will be considered for relief from removal from the country or from being placed into removal proceedings.

Individuals who demonstrate that they meet the criteria noted below are eligible to receive deferred action for a period of two years, subject to renewal, and are eligible to apply for work authorization. The eligibility criteria includes: 1) came to the United States under the age of sixteen; 2) have continuously resided in the United States for at least five years preceding June 15, 2012 and were present in the United States on this

date; 3) are currently in school, have graduated from high school, have obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States; 4) have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety; and 5) are not above the age of thirty. For more information about DACA, please visit CLINIC's webpage at <http://cliniclegal.org/resources/deferred-action-childhood-arrivals>.

CONCERNS WITH CAP, SECURE COMMUNITIES, 287(g), AND DETAINERS

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 has been 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 is stopped for driving without a license would be 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 false perception that immigrants are likely to commit crimes. Crime statistics show that immigrants are less likely to commit crimes than the native-born population. Also, new racial and ethnic profiling incidents as more and more state and local law enforcement

research suggests that growth in immigration may be responsible for a decrease in crime in big cities during the 1990s and early 2000s.

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 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 programs marginalize 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 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 Expenditure 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. Additionally, the costs to communities not only include the cost of detention and personnel but also other social costs that ensue when primary caretakers and breadwinners are incarcerated and charged with civil immigration violations.

Misuse of Detainers

As noted previously, 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. In recent years, advocates have witnessed ICE's growing reliance on detainers and their misuse. For instance, ICE may issue 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. 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 either misunderstand or are misinformed by ICE about the meaning of a detainer and retain the individual in custody beyond the 48-hour maximum period. Furthermore, it is unclear how (if at all) DHS tracks or monitors local violations of detainer policies, including violations of the 48-hour rule.

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 available about the operation and procedures of these programs. Further, these programs lack adequate requirements for data collection, audits, and oversight.

ADVOCACY: FIRST STEPS FOR COMMUNITIES

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

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 some 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 or into your state prison?
- 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 is collected by police during booking?
- Are fingerprints taken and run through Secure Communities databases?
- 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 or state prison?
- 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 officer 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 or badges 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?
- Does your local law enforcement agency have a written policy with respect to honoring detainers?
- 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?
- Once bail is posted for the underlying offense, how long before the individual is in ICE custody?

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

- After the criminal 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

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

Communities most often need to mount a campaign that pursues multiple strategies to advocate against the implementation or halt the continuation of the Criminal Alien Program, the Secure Communities Program, and/or the 287(g) Program. These strategies often include support for a local or state-wide “anti-detainer” policy, or a policy that restricts enforcement of detainers to those situations that pose a real risk to public safety. It is critical that communities immediately start a campaign for two reasons. First, challenging local enforcement initiatives is time consuming. Second, it is likely that 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 Strategy
- III. Advocacy Strategy: Engagement with the Local Law Enforcement Agency
- IV. Advocacy Strategy: Engagement with Decision Makers
- V. Community Education
- VI. Media Strategy

I. GRASSROOTS ORGANIZING TO BUILD A BROAD-BASED COALITION

One of the most powerful efforts that community members can take to advocate against a proposed federal/state partnership agreement, to end an existing agreement, or to reduce enforcement of detainers 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).

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.

Success Stories: Excellent examples can be found at the National Immigration Project of the National Lawyers Guild webpage at <http://www.nationalimmigrationproject.org/>.

II. LEGAL STRATEGY

Coalition members should consider developing a legal team and formulating a legal strategy to advocate against 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.

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

- File a Freedom of Information Act (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 longer than 48 hours.
 - Document civil rights abuses and file complaints/charges with appropriate agencies or courts.
 - 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 need to be located nearby.

TIP: 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.

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 THE 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 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 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 how the agency benefits from the program. Do not take the agency's explanations at face value. If the rationale is to prevent terrorism, ask what the program is doing for national security. If the rationale is to promote public safety, ask how the program makes the community safer.

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 – such as traffic violations?
- 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 frequent is the contact? Is the contact in person or remote (via computer, telephone)? Are there written performance reviews?

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 likely 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 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 for pretextual stops, these offenders should be exempt from fingerprint checks.

IV. 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.

V. 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 constitutional 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 through numerous mediums, including ethnic newspapers, radio, television and community forums.

TIP: Train individuals who 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.

VI. MEDIA STRATEGY

Through the media, the coalition can increase 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 considering their votes.

Some practices that coalition members can follow to engage the media include: developing personal relationships with reporters; responding to reporters' inquiries 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; and writing op-eds. The coalition can send out its own press releases 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: Florida advocates argued that 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.

Washington, DC: Advocates in DC convinced community leaders that the decision about whether to implement some of ICE ACCESS Programs is a civil rights and community safety issue, not an immigration issue.

New Mexico: 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 and compromise public safety and civil rights.

LESSONS LEARNED

- Research what is happening in your community. While the ICE ACCESS programs may look and sound benign, they are not.
- Get started! This type of campaign takes months/years of time. Look to build a coalition with a long term strategy. Advocates believe that ICE will likely find more ways to collaborate with local law enforcement agencies. Thus, build a coalition that will also be able to 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 about 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 request or ask that your city/county council hold a hearing to understand

how the program is working in your area.

- It is important to remember that implementation of these ICE programs is ultimately a local issue. Local decision makers do have the power to change laws by determining if the local jail or law enforcement agency cooperates with ICE in one of these programs. Educate and empower your local law enforcement leadership to make the difficult decision to opt-out of these programs, if possible.

THE PROCESS FOR FILING COMPLAINTS

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

Homeland Security:

Detailed instructions about how to file a complaint can be found at:

http://www.dhs.gov/sites/default/files/publications/dhs-complaint-avenues-guide_10-03-12_0.pdf

For more information about the Office for Civil Rights and Civil Liberties, visit its website or contact them at civil.liberties@dhs.gov or (866) 644-8360.

Additionally, complaints can be reported to other federal authorities:

1. Telephonically to the DHS Office of the Inspector General's toll free number 1-800-323-8603.
2. Telephonically to the Joint Intake Center in Washington, DC at the toll free number 1-877-246-8253 and by email Joint.Intake@dhs.gov.

CLINIC member agencies, please also let CLINIC know of any complaints filed with any of the agencies listed above by contacting Allison Posner at aposner@cliniclegal.org.

CONCLUSION

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. 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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