

PROTECTING THE RIGHTS OF IMMIGRANT SURVIVORS: INSECURE COMMUNITIES



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Current policies and programs that enmesh immigration enforcement with local law enforcement are jeopardizing survivors' chances to be free from violence in their lives. This document provides a background of selected Immigration and Customs Enforcement (ICE) programs and how they impact survivors' safety. This document also provides additional considerations for working with survivors against the backdrop of these policies. Finally, the outline provides some advocacy strategies when working with systems to help ensure safety for our communities.

I. BACKGROUND: INTERSECTION OF THE CRIMINAL SYSTEM WITH IMMIGRANT SURVIVORS' SAFETY.

- The Immigrations and Customs Enforcement ("ICE") ACCESS Programs use the criminal justice system to channel non-citizens into the deportation system, regardless of whether the non-citizen has convictions that make him or her deportable.
- Immigration enforcement now happens at every point of the criminal system: arrest, courts, jails and probation or parole.
- Any non-citizen who is stopped or arrested by law enforcement is very likely to have contact with immigration authorities and risks apprehension by ICE and placement into removal proceedings, whether or not the arrest results in criminal charges, conviction or a jail sentence and regardless of whether local law enforcement agencies have 287(g) agreements². A non-citizen calling law enforcement for assistance may also be exposed to potential ICE or Customs and Border Patrol ("CBP") enforcement actions.

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² Section 287(g) of the Immigration and Nationality Act, as amended, authorizes the federal government to enter into agreements with state and local law enforcement agencies to train officers to assist in identifying those individuals who are in the country illegally. U.S. Immigration and Customs Enforcement (ICE) is responsible for supervising state and local officers under this program. *See INA section 287 (g)*.

- These kinds of enforcement programs make survivors feel less safe because immigrant victims of crimes of violence are less likely to call 911 due to the survivors' fears that they or their abusers will be removed from the country or that the survivors' older children will be arrested when law enforcement intervenes.
- As a consequence, our communities are less safe and perpetrators are free to move in our communities from victim to victim without any accountability.
- Convictions, even misdemeanors, can prevent undocumented persons from getting lawful status, may result in green card holders and refugees losing their status and being deported, and can get survivors deported.
 - Sometimes survivors are charged with crimes of domestic assault while they are, in fact, defending themselves. As such, it is crucial to ensure that survivors have an opportunity to defend themselves and to set the record straight at every step of the process. Survivors facing deportation due to convictions have few rights. If convicted of certain crimes, the survivor may be subject to mandatory detention.
- Perpetrators make survivors invisible to the system by threatening to call immigration, or forcing their victim into criminal activity to ensure she is arrested and vanishes. This power over immigrant victims perpetuates their victimization and endangers the safety of our communities.
- This threat to survivors is now more than ever a reality because of the existing immigration enforcement programs in our communities that undermine the primary role of local law enforcement to focus on public safety and community policing.

II. STRATEGIES TO WORK WITH IMMIGRANT SURVIVORS AT RISK

1. Screening

Safety as defined by survivors is paramount to the work we do with women. In light of all the existing programs, safety is now being defined more broadly based on the conditions that enforcement programs have created in immigrant communities.

The first step in helping the survivor seek safety is to recognize those situations in which survivors may be at imminent risk of being removed from the country, thus leaving their children with the abuser. The following factors are red flags:

1. Being arrested by Customs and Border Patrol (CBP) and given papers to see a judge (there is the potential for an *in absentia* order of removal)
2. Being arrested by ICE and given papers to see the judge. This can mean removal proceedings have started, potential *in absentia* order of removal if she did not

- follow the judge's orders, or voluntary departure violation.
3. Having been before an immigration judge and not following the judge's order.
 4. Having been arrested by law enforcement and not following the conditions of release, probation, etc., even in the traffic violation context.
 5. Having been charged prosecuted or convicted of a crime of violence, drugs, theft or use of false identity. (May subject survivor to mandatory arrest with no bond).

Intakes must also include open-ended questions regarding immigration status to determine when to partner with immigration advocates. Before asking these questions, crisis and safety issues should be addressed as standard protocol. If a client is going through a crisis, remember to return to these questions at a later time when the client is more focused.

Explain that based on current enforcement programs, you want to make sure she is not arrested by immigration or law enforcement. Explain also that these questions will allow you to address the best assistance in her case. Give her a chance to not answer the questions at that moment, leaving the door open to making the assessment at a later time, especially if she is going through a crisis.

The intake should include the following or similar questions. That is because any contact with the criminal justice system will place your client at a higher risk of detention. Therefore, if your client answers "Yes" to any of the following questions you should refer her to an immigration advocate or lawyer.

- a. Immigration detention questions
 - a. Have you ever talked to anyone at the border in uniform?
 - b. Did these people fingerprint you, take your picture, give you papers?
 - c. Have you ever spent any time in jail or in a detention facility?
 - d. Do you know if you have a final removal/deportation order?
- b. Criminal system questions:
 - a. Have you ever been accused of any crimes?
 - b. Have you ever received a traffic ticket that you did not pay?
 - c. Do you know if you have an immigration detainer on you?
 - d. Have you signed any papers asking for your status or place of birth?
 - e. Has anyone tried to speak to you about your immigration status? Have you told them anything?
 - f. Have you been granted bail and, if you have, are you going to pay it?
 - g. Do you have an order of deportation or did you ever not show up to court?

Your work with her around safety planning must also include how to address situations where she is arrested and:

- a. Her children are alone at home or daycare,
- b. She did not pick up her last paycheck,
- c. The perpetrator has her passport and access to her money,
- d. There is a question regarding her ability to pay her bond (criminal or

- immigration), or,
e. The abuser may be neglecting the children.

These may be some of her immediate concerns but it is helpful to have her think about all other potential issues and address them in advance. This will avoid her signing her removal without first defending her rights.

2. Develop internal protocols

Your staff and volunteers should agree on what kind of guidelines you will follow to respond to survivors who have been arrested by law enforcement or immigration. The following is an example of the internal policy for detained clients. This protocol was adopted in a legal clinic setting:

Protocol for Detained Clients: Emergency Cases

- A) Before survivor is detained, at any initial contact with clinic or agency, the survivor will be provided with a safety card with a 1-800 hotline and advised of her rights to remain silent if arrested by ICE or law enforcement. Potential client will be advised to consult with an immigration attorney. If the client is indigent, she will be scheduled for a consultation meeting at the clinic. At any contact with the clinic or agency, the client will be provided with a safety card and 1-800 hotline number and disclaimer for ICE or law enforcement. Potential client will also be given a “know your rights as an immigrant”.
- B) If a client is detained, the client will contact her advocate at the 1-800 hotline included on the safety card provided to them by their counselor.
- C) The advocate will contact the immigration attorney on the mobile phone number provided in initial contact or consultation meeting.
- D) The assigned professor will then take over the case with assigned clinic student and advocate.

3. Building key partnerships, first responders

Partnering with immigration advocates and lawyers is key to representing immigrant survivors and responding to their safety concerns. You can call your local Bar Association or your State Coalition Against Domestic Violence and/or Sexual assault. For more information on who is in your area contact:

National immigration Project
ASISTA
Casa Esperanza
Futures Without Violence

Ellen@nationalimmigrationproject.org
questions@asistahelp.org
rhidalgo@casadeesperanza.org
Monica@futureswithoutviolence.org

Train your local immigration attorneys on the dynamics of domestic violence and sexual

assault so they can better screen survivors and include key questions in their intakes as well. For a comprehensive intake, please visit our website at asistahelp.org.

Invite your Domestic Assault Response Team (DART) and Sexual Assault Response Team (SART) to a face-to-face meeting. It is crucial to provide additional trainings regarding issues facing immigrant survivors and develop protocols to ensure your teams are connected to your office and able to refer survivors to you if immigration is involved.

Make sure that your local schools, nurses and hospitals have also information on rights of immigrants. Immigrant survivors of sexual violence may hesitate to make reports in light of the enforcement programs.

Now more than ever, it is crucial to conduct outreach, including know your rights information. This should be done not just for “outreach” sake alone but to also work on safety and prevention of on-going violence.

4. Documents you may want to have in a client’s file

The following documents are very helpful when fighting removal (also known as deportation). You should have copies of them in her file to be prepared to provide to an attorney or immigration advocate if necessary and always with her written consent.

1. G-28. This form allows an attorney or representative to enter his/her representation on behalf of clients. Sometimes a letter stating that you are seeking representation on the individual’s behalf is helpful because it will help them get continuances before any
2. I-246. Allows anyone to request stay of removal. It must bear the applicant’s signature and comply with ALL requirements. Therefore, reading the “instructions” part is crucial to understand how to better assist clients to prepare this request just in case is needed in the future
3. U visa form I-918. This Form is only for victims of certain crimes of violence that have assisted law enforcement, prosecutor, judges or other authorities in the investigation or prosecution of the case.
4. I-360 form. For survivors of domestic violence who are or were married to United States citizens or lawful permanent residents. Also for parents of abusive United States citizen children who are over 21 or children of abusive United States citizens or lawful permanent residents.

These are just some of the forms that support your client’s eligibility for relief. They should be kept on file always encouraging the client to seek legal advice from experts. The forms are only part of the safety planning in order to help ensure prompt release when applicable and will help her legal representative save some time.

III. CURRENT PROGRAMS THAT IMPACT SAFETY OF IMMIGRANT SURVIVORS OF CRIMES OF VIOLENCE

The following is a summary of selected programs that affect your clients' safety, including some practice tips for immigration advocates and anti-violence advocates when working together.

SECURE COMMUNITIES

1. What is it?

Fingerprints taken at arrest/booking are used to automatically and immediately search for person's criminal *and* immigration history. Most law enforcement agencies send fingerprints to the Federal Bureau of Investigation (FBI) database (current practice). Under Secure Communities, these fingerprints are also sent to the Department of Homeland Security (DHS) databases if there is a database "hit" (arrested person is matched to a record indicating immigration history), ICE and the jail are automatically notified.

TIP:

If your client discloses a potential encounter with the criminal system during your screening, file a skeletal application as soon as possible. On U visa cases, make sure you get the I-918B first.

ICE then evaluates each case to determine what, if any, enforcement action will be taken. Generally, ICE will issue a detainer against the person. ICE will most likely issue the detainer but advocates can submit in writing a request for prosecutorial discretion, sending copies to Office of Chief Counsel (OCC) & ICE. ICE has stated that, on average, the process from submission of fingerprints to issuance of ICE detainer takes approximately four hours.

Undocumented persons with no immigration history will not be identified through Secure Communities (S-Comm), however they may be identified through additional questioning regarding their place of birth under the Criminal Alien Program (CAP) program.

2. Do police or local governments need to sign an agreement with ICE to sign on to Secure Communities?

DHS unilaterally rescinded all contracts with local governments and said they can move forward in implementing the Secure Communities program without the need for any agreements. They maintain that the program will be implemented in every jurisdiction

throughout the country by 2013. When local jurisdictions send the fingerprints of individuals who have been arrested to the FBI database, those fingerprints will automatically be shared with the ICE database.

3. How does it work?

Secure Communities: A person who is arrested and booked places their hand on a fingerprint pad. The fingerprints are simultaneously sent to DHS and the FBI. If the person has a match in the system, then DHS will return that information to the local agency. ICE agents may try to obtain proof that the person is a noncitizen through a phone, video or in-person interview with the inmate or personnel in the police department or jail. ICE will decide if they will lodge an immigration detainer, “ICE hold,” on the person. Detainers can be issued without presence of ICE agents in jails. However, there is overlap between the Criminal Alien Program (CAP) and Secure Communities (S-Comm).

4. What is the impact on immigrant survivors?

The program puts communities at a heightened risk for domestic violence and domestic violence fatalities. With fewer victims reporting, community policing fails and there is a general decrease in public safety. Victims become invisible and predators are not apprehended or held accountable. Witnesses are also afraid to come forward when they view local law enforcement as an arm of the federal immigration enforcement agencies.

A dual arrest of both the abuser and survivor by mistake will result in victims being apprehended by ICE. ICE retains fingerprints even after the charges are dropped, because they will have been transferred at the time of the victim’s arrest and booking, even if subsequently no charges are brought against her. Currently, there is no way to retract fingerprint data once they are forwarded to ICE, even if the charges are ultimately dropped or the arrest was unjustified. Survivors are at a higher risk of being referred to ICE or arrested in the future.

Victims of Human Trafficking are at a higher risk than anyone else. Often, victims are arrested with perpetrators. They may also be arrested for crimes of prostitution, drug offenses, etc.

When arrested and reported to ICE, victims are very likely to be removed (deported). Unless they are in contact with a non-profit advocacy organization, they often lack resources and information, as well as legal representation. If arrested and not properly identified and referred to victim services, there is no reintegration, forcing victims into a continuum of violence.

5. Destruction of federal protections

Congress created specific immigration remedies to encourage victims of certain crimes of

violence to report crimes and collaborate in the investigation or prosecution of their crimes.

U and T visas were specifically created with the dual intent to enhance the ability to investigate matters while protecting victims. As victims become more aware of the negative impact of being involved with the criminal justice system, they fail to report or collaborate. This affects all our communities since they are less safe by not apprehending criminals and allowing the perpetuation of violence.

DETAINERS § 287.7 Detainer provisions under section 287(d)(3) of the Act.

1. What is it?

A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an undocumented immigrant (whom they often refer to as an “alien”) presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. An immigration officer may issue a detainer on Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency.

2. How does it work?

Upon a determination by DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by DHS/ICE. This means that once the individual has been released from the custody of the local law enforcement agency, DHS is **requesting** (**Note: it is only a request**) that the law enforcement agency continue to detain them for an additional 48 hour period so that an ICE official can take custody of that person.

There is no fiscal obligation on ICE until the actual assumption of custody takes place.

ADVOCACY :

- **Provide your client with a card from your office requesting your presence and advising clients not to answer questions- make sure you or someone from your office is available.**
- **Give your client a letter from your agency stating that she is receiving services and counseling from your office and to contact you.**
- **Request to meet with the Office of Detention and Removal to provide brochures about your services and screening tools to identify survivors.**

How detainers impact a person:

In practice, detainers keep an immigrant in criminal custody for a longer period of time. Most often, detainers are used to deny criminal bail or make it higher. Detainers impact what kind of jail they will be incarcerated in or what kind of rehab programs they have access to. An individual may also be detained unlawfully under an immigration detainer because localities can “over-detain” beyond the 48 hour period permissible by law. In those cases, advocates should contact an immigration attorney or local civil rights organization to take action to obtain their release.

What does ICE need from police or a jail to lodge the detainer?

There is no standard of proof to lodge a detainer. Any evidence of “alienage” will do. Generally, they obtain that evidence by asking the person where they were born or through booking forms that request “place of birth” or detention classification, pre-trial or probation forms that collect place of birth. Persons with lawful status (LPR, refugees) without deportable convictions.

U.S. citizens sometimes wrongfully get detainers, particularly naturalized citizens. Usually, ICE lodges detainer with place of birth information or Secure Communities fingerprint data. An admission at arrest or during booking that they were born outside U.S. (or are not U.S. citizens) can trigger a detainer. Police or jail give ICE access to booking information.

Can you remove a detainer?

Generally, you can negotiate with ICE Detention and Removal Offices to lift the detainer. Removal of the detainer usually requires proof of US citizenship/lawful status. However, you can do some advocacy around exceptions based on prosecutorial priorities and discretion.

What you can do:

Develop protocols with SART and DART and how to respond to survivors when police intervene on a Domestic Violence or Sexual Assault case to avoid a detainer. Make sure your local jail does NOT hold a survivor that has been issued a detainer. Finally, make sure your client is released after 48 hours if immigration has not assumed physical custody.

What you should know: The 48-hour rule on detainers

The detainer requests that jail/police hold someone 48 hours after the criminal case is resolved (e.g. dismissed, sentence concluded, innocent) OR when bail has been posted.

(weekends and holidays are excepted from the 48 hour period). Being held beyond 48 hours is unlawful imprisonment. This violation could mean liability to local government or jail. **Ensuring that your client is released after the 48 hours is crucial because she may be able to avoid further detention by ICE.**

Advocacy on the 48 hours rule

- **Meet with your local detention facility to ensure they are familiar with the prosecutorial discretion policies**
- **Advocate for protocols not to fingerprint individuals in a dual arrest and to properly screen for potential victims and witnesses before fingerprinting**
- **Advocate for protocols not to agree to detainer requests when the individual was not charged with a crime or charges were dropped**
- **Develop protocols to release survivors after criminal bond**
- **Work with your client by informing her of her rights and formulating a plan**

What is “287(g)”?

287(g) refers to a section of the federal immigration laws (Immigration and Nationality Act). Section 287(g) of the INA allows DHS Secretary to enter into agreements (MOA) that give powers to local police to enforce civil provisions of immigration law. Without 287(g), police can ask about immigration status but cannot arrest for possible deportation. Essentially, the 287(g) program deputizes local law enforcement officers to also serve as federal immigration agents, thus blurring their roles.

What is a 287(g) MOA?

Police have authority to detain people on civil violations that they encounter in the course of their criminal enforcement duties in the field. Deputized 287(g) officer must attend a 4-week immigration law training course. All deputized 287(g) officials are supposed to be under ICE supervision. Currently there are 72 agreements in 26 states. Rhode Island withdrew January 2011. Over 1,075 officers have been trained. Despite ICE’s stated goal of targeting “serious criminal aliens,” primary and aggressive focus was on “easy” targets – those arrested for minor misdemeanors.

ADVOCAY AROUND 287 g.

- **Get information about whether your state or local jurisdiction has signed a 287(g) agreement with DHS.**
- **Talk to your SART and DART about their interaction with this program and how it harms the goals they are intending to accomplish**
- **Know your Latest Policy Memoranda Assisting Survivors (Prosecutorial Discretion)**
- **Propose exceptions for survivors and encourage law enforcement to address issues of victimization and safety and not immigration because of the chilling effect on victims reporting.**

POTENTIAL ADVOCAY STRATEGIES AROUND ACCESS PROGRAMS

MEETING WITH LAW ENFORCEMENT AND KEY PLAYERS; SYSTEMIC ADVOCACY FOR PREVENTION AND SAFETY OF VIOLENCE IN IMMIGRANT COMMUNITIES

Safety is paramount to all existing programs. Apprehending criminals and ensuring that aggravated felons and habitual offenders of immigration law are not at large is the selling point of all existing programs today.

Safety cannot be achieved through any of these programs at the cost of victims that are in the shadows for fear of being arrested under the auspices of the current programs.

ORGANIZING 101

You may choose several forms of advocacy and organizing around ensuring safety for immigrant survivors. Whether you choose to start or join a campaign or have a meeting to develop protocols and address safety issues for your clients, it is important that you bring key information to the table. Many law enforcement officials are not aware of existing exceptions to general policies or how the current policies are affecting survivors.

WHAT TO BRING TO YOUR MEETING

Do not assume that your local law enforcement or specific ICE officers are familiar with their own policies and practices. Bring the following:

1. A copy of the ICE memo of June 17, 2011, issued by the ICE Director, John Morton, on prosecutorial discretion

2. Two to five local stories from survivors about how the possibility of being detained is affecting their safety and limiting their access to critical services and protections
3. Copy of the 48 hours § 287.7 Detainer provisions under section 287(d)(3) of the Act.

SUGGESTIONS ON WHO TO INVITE TO A MEETING

This is work that must be done with multidisciplinary partners. The main messenger should be the one who is recognized as the expert on the subject. When working with survivors, local agencies, domestic violence organizations or shelters, and SA programs are the key messengers.

While you do not want to overpower the other groups, you want to ensure you have participants who are knowledgeable regarding the impact of these policies in the community (immigrant and non-immigrant). You will not be able to invite everyone that can be helpful, but you can certainly follow up your meeting with some letters expressing concern and relating the detrimental impact of these programs in our communities. Here are some suggestions of potential participants:

1. D.A.R.T & S.A.R.T teams
2. The Executive Director of your State Coalition Against Sexual Assault or/and Domestic Violence
3. Select strategically the number of DV or SA advocates to invite that can relate specific real stories and facts
4. Selected faith based and community-based organizations that work with immigrants
5. Legal services organizations that provide services to immigrants
6. Immigration rights and civil rights organizations

WHAT TO REQUEST AT YOUR MEETING OR IN THE ALTERNATIVE, WHAT TO ADVOCATE FOR IN WRITING

1. Provide a list of your agencies with 1-800 hotline numbers and key contacts for prompt referrals and ensure everyone gets the information upon arrest and detention.
2. Provide brochure or simple checklist questions for detainees who are victims of violence to self identify³
3. Request for ICE office to check against their own data base

³ See attached questionnaire to identify potential survivors of crimes of violence in English and Spanish. You can also download the document at www.asistahelp.org

- a. Does this individual appear in the database as protected by 8 USC 1367 (VAWA self-petitioner, U visa, T visa applicants)?
4. When a survivor is identified:
- a. Law enforcement should NOT refer survivors to ICE
 - b. ICE should NOT issue a detainer
 - c. Request ICE or Local Law Enforcement to refer victims to local community-based organizations (CBOS) with expertise in working with such victims (e.g., counseling and other support services)?
 - d. Request to allow survivors to contact your agency or the 1-800 hotline
 - e. Check individual referrals to ensure that the individual was NOT referred to ICE or law enforcement by a partner with criminal domestic assault record
5. **If the detained survivor does Not Meet Enforcement Priorities ICE should not issued the detainer or, if they do issue a detainer, then local law enforcement should not enforce the detainer:** If any of the following is true, the detainer should not be enforced:
- A. The individual was not convicted of a crime
 - B. The individual was convicted of the following level of crime:
 - o Level 2: minor drug offenses & mainly property offenses such as burglary, larceny, fraud, and money laundering; or
 - o Level 3: other offenses
6. **The agency should also provide the complaint notice** if issuing a detainer:
- a. I certify that (name) has been provided with written instructions on how to file complaints with DHS' Office of Civil Rights and Civil Liberties for unlawful arrests, detainers, or violations of the 48-hour rule.

Remember to set up attainable goals that they can agree to in order to make some progress. Do not forget to FOLLOW UP WITH A LETTER AFTER YOUR MEETING!

ADDITIONAL CONSIDERATIONS FOR ADVOCACY AND ACTION!

1. Money money money...

Request in writing an explanation or detailed accounting of how much the ACCESS programs are costing your state or local government. This is a good

advocacy tool to demonstrate how this program is costly for localities without federal reimbursement for the additional time individuals spend in jail under a detainer.

2. "Intelligence" gathering

Know what position your local officials have with respect to the ICE ACCESS programs and who can be an ally with authority and influence to help further safety protocols and measures for victims. Know what programs are operating in your area. They don't all operate the same way.

3. Connect with DART and SART

Meet with your teams to collect facts and stories about any challenges they are facing now when responding to a domestic assault in immigrant communities as well as their recommendations.

4. Get your story straight!

Collect compelling local stories of the real impact of ACCESS programs to immigrant victims.

5. Stay on the case- Advocating 101

Even if you choose not to get involved with other advocacy strategies, every case is an opportunity to advocate and change systemic responses that fail keeping survivors safe. Bring your case to light and advocate for systemic changes.

6. Start now!

Push for creation of protocols and policies that protect victims such as limiting detainers.

7. Continue to train community of their rights and law enforcement on the rights of survivors

8. Choose the right messengers and allies

While survivors themselves may be a compelling strategy, peer-to-peer advocacy may be very effective. Help your allies to carry the message to their own.

9. Work with your local judges to order ICE out of the courthouse

Since one of the contact points for ICE is the criminal system survivors are now being arrested when going to pay traffic tickets to the court house or reporting for probation. Make sure ICE is out of the Court to ensure survivors comply with the orders from the judge without being penalized by being arrested at the Court house.

10. Connect and network

You are not alone. There are thousands of advocates nation wide working together to ensure safety for immigrant survivors. Before spending many hours in developing toolkits, talking points, materials, letters or whatever your strategy may be, go to existing resources, national organizations and other allies that are actively working on

this issue. If you develop strategies that assist your clients, make sure to let others know.

RESOURCES

Deportation 101: Available in Spanish and English

<http://www.familiesforfreedom.org/httpdocs/deportation101.html>

Handout on ICE ACCESS, titled “A Dangerous Merger”

<http://www.immigrantjusticenetwork.org/immigrantjusticenetwork/HandoutFinal5.pdf>

Uncover the Truth Toolkit

<http://uncoverthetruth.org/resources/factsheets/uncover-the-truth-toolkit/>

GET INSPIRED! THIS IS HAPPENING AROUND THE COUNTRY NOW

Uncover the Truth Behind ICE and Police Collaboration

Teach-in Toolkit



May 2010



national
IMMIGRATION
project
of the national lawyers guild



Introduction

One of the most troubling aspects of recent immigration enforcement is the degree to which state and local police have become partners with the Department of Homeland Security in the enforcement of federal immigration law. In the past few years, an explosion of programs such as 287(g), Secure Communities and the Criminal Alien Program has driven a staggering increase in detention and deportations in this country while creating serious civil rights concerns. The programs depend on pulling people into the criminal process where immigration status can be checked, even if an arrest was based on racial profiling or no crime was committed. Today, these partnerships are being systemized, formalized, and aggressively promoted by the Obama administration, DHS and Immigration and Customs Enforcement (ICE).

The toolkit is designed to help advocates get started in responding to ICE enforcement programs in their communities: to research what programs are operating and how they work, ask questions of police and politicians, join forces with allies, and follow up with formal requests for information under federal and state law. We hope that this will be a useful resource as you strive to make your communities free from state-sponsored racial profiling and human rights abuses.

If you need more information about these programs, feel free to contact the organizations on this toolkit or check information developed for an in-depth Webinar on ICE-Police collaborations in the State and Local folder in the Immigration Advocates Network Library (free but requires registration). www.immigrationadvocates.org

Feel free to contact any of the organizations on this teach-in toolkit for more information. Also, if you need Word documents of any documents in the toolkit, we will email all Word documents that we have. This toolkit is part of the Uncover the Truth campaign: www.uncoverthetruth.org convened by the Center for Constitutional Rights, National Day Laborers Organizing Network, and the Cardozo Immigration Justice Clinic.

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Information Gathering Part I: How do I find out if my locality has signed up?

- Check the ICE website: www.ice.gov

Go to “Programs” and click on the “Office of State and Local Coordination” in the bar on the left hand side. Then, ‘click’ on ACCESS programs. You will see a list of the ICE collaboration programs, including Secure Communities, 287(g) and the Criminal Alien program. Don’t forget to check their public announcements site as well. ICE *may* have announced whether your community has signed up for Secure Communities and/or 287(g). ICE does not maintain information about Criminal Alien Program sites on its website.

287(g) programs could be here:

http://www.ice.gov/pi/news/factsheets/section287_g.htm#signed-moa

Secure Communities:

http://www.ice.gov/doclib/secure_communities/pdf/sc_dep.pdf

- Check the ICE Electronic Reading Room: ICE posts Memoranda of Agreements (MOAs) on their website, but it is not a complete list.

<http://www.ice.gov/foia/readingroom.htm>

- Call the ICE Office of Public Affairs. <http://www.ice.gov/about/news/contact.htm>
Headquarters tel number: (202)732-4242

Information Gathering Part II: Check your contacts in the Criminal Justice System

- Call a Public Defender or a Prisoner’s Rights Litigation group: Although a public defender may not be familiar with the actual names of the program, he or she will likely have an excellent sense about how noncitizens are treated within the criminal justice system. Schedule a meeting with the person assigned to address the immigration consequences of criminal convictions or the Chief Defender. Sometimes, public defenders file their own public record act requests with local jails to learn more about immigration enforcement practices. That information could be useful to your campaign.

- Police Chief or Sheriff: If you have contacts within the police department, ask if ICE has contacted them recently. Also, ask if they have made any decisions about whether to participate in a program.
- Representative at the Department of Corrections or county jails: Contact the communications office of the jail or prison. Sometimes, a public defender or a representative from a prisoner's rights group may be able to ask the questions you would like to the chief counsel of the facility.
- Local City or State Government officials (e.g. Councilmembers, Mayor's Office or the Office for New Immigrants): These offices might be based in city or state governments. If you have an ally here, they may be able to ask questions on your behalf.
- Prosecutor or any other law enforcement official with whom you have good ties. They may know of conversations or meetings with ICE. Often domestic violence groups may hold existing relationships with these groups.

Information Gathering Part III: Research before or soon after that will support the building blocks of a campaign

- ✓ Does your locality have a policy around immigration enforcement?
If you have a local ordinance, find out whether your local ordinance has been violated by language or in principle. Sheriff's manuals may have information re: immigration enforcement practices.

- ✓ Do you have a community policing program or an office of police complaints? Do any policies involve immigrants or immigrants' access to law enforcement? Does your police department or Sheriff's office have an anti-racial profiling policy or prevention program? Are any statistics or information related to the racial profiling publically available?
What material has the police department or sheriff's office published on their community policing programs. Have they audited their community policing programs? Who is the liaison for the community policing department with the public and do you know someone who has a relationship with them?

- ✓ Who are your allies or champions in local government or law enforcement? What decision maker has a strong immigrant constituency? Do they oversee public safety? Have a record of protecting civil rights? If an agreement exists, did they consult with the community before they partnered with ICE?
Knowing this information will help you decide who to approach first or neutralize opponents.

- ✓ Is there an interpreter or language access policy in your police department, jail or local government? Is there a coalition already focused on interpretation services? What language access laws or regulations are available, if any?
Knowing what accommodations are in place to serve individuals who do not speak English - especially during police encounters – helps you figure out an advocacy or litigation strategy. It can also help develop alliances with other immigrant communities.

- ✓ Is there a Human Rights Commission, Human Relations Commission, or Police Misconduct Review Board in your area? What is the extent of their powers?
This may help with the development of a local complaint mechanism. Sometimes these commissions can make recommendations to police departments or local governments.

- ✓ When is the next oversight hearing scheduled for your elected officials, police, sheriff or county commission?
Oversight hearings are useful events to raise the profile on these programs, place community testimony on the record, or target elected officials on their support for programs.

✓ Where are individuals arrested and booked? What kind of information is collected about place of birth in the jail or the police? What kind of information does the jail or police forward to ICE?

This information will help you start the conversation about existing ICE-police/jail collaboration in your area and how these ICE programs will expand it. For example, will an ICE program deepen ICE police collaboration from its previous state. Also, it may help to understand how these programs are funded or supported by local groups.

✓ Do you understand immigration detainers? Or can you find someone around you who is knowledgeable about them?

Learning more about detainers will help you pinpoint if there are detainer violations – something that may open the door to lawsuits for illegal detention. Also, it will help you learn more about how immigration agents operate within the jail or police department. Also, you need to be able to distinguish programs to describe their impact on local constituencies.

✓ Has anyone sued your city for police or detention abuses? What happened?

This may help make the case that your locality is simply not ready to deal with more detention or the enforcement of immigration law.

✓ Who else might be concerned about this issue? Can you involve groups that make it broader than just an immigrants rights issue?

Groups who are not solely immigrants rights groups may find these policies offensive because of the way it impacts their constituencies. For example, driving offenses that trigger Secure Communities will be of concern to taxi drivers who do not expect to be checked in a DHS database for errors; city vendors will be impacted by licensing crimes, etc. Examples: Labor, faith, domestic violence groups, day laborer groups, taxi driver alliances, business allies, criminal justice groups, civil rights organizations (e.g. ACLU, NAACP), language access coalitions, youth groups, public defenders, prisoner's rights groups.

**Questions for your first meeting with an elected official or police
(see Appendix for samples for a letter requesting a first meeting)**

Depending on who you are meeting with, strategically select questions. You might be meeting with an official who has never even heard of the program or perhaps official is trying to decide whether to sign on to the agreement. Meetings are a combination of educating decision makers, gathering information from them, and making an “ask” (short-term, long-term, big or small). Some questions can be submitted in written form and serve as a good reason to follow-up post meeting while others may take priority in the actual meeting.

- ❖ Do you know who decided to “opt in” to the Secure Communities program? If so, there should be a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA). Can we have a copy of that? Has the program been implemented or is it operational?

- ❖ How does Secure Communities, 287(g) or the Criminal Alien Program improve public safety?

- ❖ Can you please explain step by step how you believe Secure Communities operates? *There is a lot of misinformation from law enforcement and elected officials on the basic way the program functions. (please see appendix for fact sheet)*

- ❖ How will you track whether incidents of racial profiling are increasing as a result of the Secure Communities, Criminal Alien Program, and/or the 287(g) program?

- ❖ How will you assess whether the program is succeeding in reducing crime?

- ❖ How will you measure the impact of these immigration programs on other community policing programs?

- ❖ Will you consider auditing the implementation of Secure Communities, 287(g), or the Criminal Alien Program? How will you collect complaints about these programs?

- ❖ How will you fund implementation of the ICE ACCESS program and how will you track the program’s cost? Did you or will you plan to apply for any grants to cover the cost of signing on to these programs? Has ICE promised you any money for signing on to Secure Communities, 287(g), or the Criminal Alien Program.

- ❖ Can you tell us how you forward information or support to ICE? For example, how often do you place detainees in the arrestees file? Do you plan to accept calls from ICE if they have questions about booking information?

- ❖ Will you inform arrestees that information will be sent to ICE? If not, why not?
- ❖ How will you protect domestic violence victims from immigration enforcement? (or any other concerned constituency)
- ❖ What kind of training is planned within your department to address new ICE programs?
- ❖ How will you protect the confidentiality of juvenile arrestee information – even if they are eventually charged as adults?

Possible “asks” for decision makers during or after the meeting

The following is a list of possible "asks" or requests you can make to your decision makers at the first meeting or as your campaign progresses. They vary from small requests to ultimate goals of terminating the program. Depending on your local politics your coalition can discuss what demands to make, when to make them, and to whom. Some key local and state decision makers include: the police Chief and/or Sheriff, the Department of Corrections, the Mayor, the City Commissioners or Councilmembers, the Attorney General, the State Legislature, and the Governor.

- 1) Can you please follow-up with information on the questions left unanswered. Help us get information?
- 2) Can you please write a letter to another decision maker expressing your concern about the program and asking for information?
- 3) Can you please hold a public hearing or attend a community forum about the program?
- 4) Will you consider sponsoring legislation? ('emergency' legislation asking for moratorium, local ordinance creating firewall between ICE and local police, etc.)
- 5) Can you please request a meeting on our behalf with another key decision maker?
- 6) Will you make a public statement at a press conference expressing your concern about the program?
- 7) Will you consider opting out of the program entirely?

Answers to Misinformation that Police or Local Government May Hear from ICE on Secure Communities

Do communities have to participate in Secure Communities?

No law or rule mandates that communities participate in Secure Communities, but ICE has made the answer to this question as unclear as possible. ICE is actively campaigning to have local law enforcement agencies agree to participate, but tells advocates that local police or jails don't have to be part of the program. At the same time, ICE provides no guidance to communities that want no part of Secure Communities and leaves them with the impression that they must participate if the state agency through which fingerprints are sent to the FBI and now DHS (called a State Identification Bureaus or SIB) has signed a Memorandum of Agreement with ICE to do this.

Advocates should push back against claims that participation in Secure Communities is mandatory.

Does Secure Communities help community policing?

No. Although ICE brands Secure Communities as a community policing program, Secure Communities hurts community policing. Community policing depends on trust between communities and the police. If people fear that getting arrested for any reason will result in deportation, they may be reluctant to have any contact with the police. For example, a domestic violence victim who is accidentally arrested along with her abuser could face deportation without any charges or conviction. This discourages others from reporting crime because they see that police interactions will lead to deportation. Similarly, witnesses are reluctant to report crime because they perceive the police as immigration agents.

Does Secure Communities only target people after they have been convicted?

No. Fingerprints are checked when people are booked after an arrest. That's at the beginning not the end of the criminal process. So even if charges are dropped or the person is acquitted, ICE is able to identify who it wants to deport.

Does Secure Communities target the most serious offenders?

No. ICE's own statistics show that the vast majority of people identified as a result of Secure Communities have been arrested for less serious crimes, including traffic offenses.

Is Secure Communities collaboration with ICE?

Yes. ICE says that Secure Communities program is just a technology program. But ICE must rely on local enforcement agents to arrest people and then collect or forward

information about immigration status that was acquired during booking. ICE then places detainees on people it wants to deport and requires jails to hold these persons for 48 hours after the criminal process finishes or the person is released on bail. Local law enforcement agents are involved at every step of the process until ICE takes custody of the individual.

Building a local campaign:

Many coalitions may want to build a campaign to stop the implementation of an ICE program. Depending on the capacity of your local community and coalition you might consider pursuing the following areas of work:

Coalition and political work: Who is your target? Who is willing to be your allies or your messenger? Who will educate the decision makers? Who will decide when to hold press conferences or develop actions around important political events (e.g. police misconduct hearings)? Who will coordinate the coalitions and bring diverse groups to the table? Convene public hearings to put sentiments of your community and decision makers on the record.

Public education: Create materials to inform coalitions, constituencies and local government about the program. Factsheets, presentations, and talking points are critical to any campaign. Know Your Rights presentations – modified to reflect the programs – are essential in informing the public and also in base building for your campaign. Develop a complaint mechanism that communities can use (examples are available www.immigrationadvocates.org) and dedicate time to a consistent public education campaign.

Legal team: Who understands the intersection of the criminal justice and immigration systems? Submit a public record act request to learn more about what happens locally and review the responses for information relevant to a litigation strategy or the political committee. Can someone help you identify where there might be detainer violations, Miranda violations, monitor or create policies to prevent racial profiling, or use rights under Title VI (includes access to interpretation) to create advocacy demands?

Some examples of outcomes (this is **NOT** an exhaustive list):

District of Columbia's local legislative body introduces legislation to keep immigration enforcement a federal responsibility
www.uncoverthetruth.org

Anti-Racial profiling prevention legislation, SB 325

<http://www.ajc.com/news/georgia-politics-elections/anti-racial-profiling-law-284865.html>

Litigation: Detainer lawsuit filed in Colorado

<http://www.aclu.org/immigrants-rights/aclu-sues-colorado-sheriff-illegally-imprisoning-colorado-resident-suspected-immig>

Police and Immigration Enforcement Campaign websites:

Example: Florida Immigrant Coalition (FLIC)

www.floridaimmigrant.org

Appendix

1. DHS Statistics
2. Sample Factsheet about Secure Communities *
3. Sample Powerpoint on Secure Communities – DC specific *
4. Talking points from the “Uncover the Truth” campaign *
5. Letter to police chief requesting a meeting *
6. Three Samples of Public Records Act requests
7. DC case: Perspective on DC organizing by Sarahi Uribe (NLDON) and MacKenzie Baris (DC Jobs with Justice)
8. 3 op-eds (police chief, police NGO, professor in racial profiling)

- available in Word or Powerpoint upon Request; contact Paromita@nationalimmigrationproject.org (subject heading: tool kit documents)

Santa Clara County Ends Collaboration with ICE, Creates Local Protections Against Controversial "Secure Communities"

Program By Raj Jayadev and Fernando Perez Click to see video of supervisor comments and gathering directly after vote:
<http://vimeo.com/30766345>

San Jose, CA -- In what has been heralded as the most progressive policy in the nation, Santa Clara County today voted in a new set of guidelines for civil immigration detainers, which in effect ends the county's collaboration with Immigration and Custom Enforcement (ICE). Supervisor George Shirakawa, who championed the policy, told an audience of supporters after the County Board of Supervisors' vote, "Today is historic. We now have the most progressive policy in this field, and the whole nation will be looking at us as Santa Clara County makes it official: we don't do ICE's job." Civil immigration detainers are requests from ICE to the county to detain jailed individuals after the completion of their sentence from a criminal charge in order for them to get picked up for immigration detention and deportation proceedings.

For immigrant advocates and county officials, the new policy -- which will only honor detainer request if, "there is a written agreement with the federal government by which all costs incurred by the County in complying with the ICE detainer will be reimbursed" -- is a way to exert local control in the face of a controversial federal ICE program called Secure Communities. Having been rolled out in 2008, Secure Communities uses fingerprints gathered at jails to notify ICE agents of immigration status of individuals to then initiate detainer requests. The program has received pushback from counties and states who say Secure Communities violates targeted individuals' constitutional protections, places financial hardships on cash-strapped counties, and jeopardizes public safety by making immigrant communities fearful of law enforcement. In describing the often contentious relationship with ICE regarding Secure Communities, Supervisor Dave Cortese said, "Frankly, there has been a lack of integrity from ICE on these issues. Today, we are sending a message, one county at a time, you need to fix what's broken before you ask us to enforce bad laws."

Cortese's frustration comes from a history of written commitments he says "were reneged upon" by ICE. The agency initially told counties that they had the option to opt out of Secure Communities only to rescind that offer after counties attempted to do so in 2010. Santa Clara County was one of the first in the country to attempt the opt-out. In the wake of ICE's re-positioning around the opt-out, counties critical of Secure Communities were at a crossroads as to how to limit the fallout of the program.

Santa Clara County formed a taskforce of law enforcement agencies, informed by County Counsel, to craft a policy around the principle operating mechanism of Secured Communities -- the detainer request -- given ICE's shifting information regarding the program. On October 5,

2011, the taskforce came up with a policy that would limit the county to only honor detainers after conviction (through Secure Communities, even those who had not been found guilty of the crime that placed them in jail were still vulnerable to a detainer hold), would not honor detainer requests for juveniles, and would only honor requests for a specific list of “serious” and “violent” felonies. Given that individuals convicted of this subset of criminal charges would go to the state prison system, rather than stay in the county jail once convicted, the policy in practice would mean only a narrow few would be subject to county detainer holds. Yet, as the taskforce recommendation moved along to the full County Board of Supervisors for a final vote, Supervisor Shirakawa, the head of the Public Safety and Justice Committee, added an amendment which further limits the scope of when the county would honor detainer requests. His amendment added language around only considering detainer requests when given a written agreement for reimbursement by the federal government, and stating that except for particular circumstances, “ICE agents shall not be given access to individuals or be allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend County time or resources responding to ICE inquiries or communicating with ICE regarding individuals’ incarceration or release date.” In explaining the amendment to the rest of the Board, he said, “ICE has lied to us in the past with Secure Communities. We need to say enough is enough.”

Jazmin Segura, a policy analyst for Services, Immigrants Rights and Education, is part of a cross-ethnic county-wide coalition of civil rights organizations who has been pushing for the policy since Secure Communities was first introduced. She says, “We congratulate the County Board of Supervisors for taking this historic step in sending a clear message to immigrant communities that local law enforcement is not ICE,” Segura says since Secure Communities was introduced, her office has received an uptick of calls from immigrant residents who were victims of crime, yet fearful to contact law enforcement.

While Segura says the policy change will greatly impact immigrant communities in Santa Clara County, some advocates see the policy as a signal that the tide is shifting as local communities develop similar strategies to respond to an increase in ICE enforcement. Angela Junck, a staff attorney with the Immigrant Legal Resource Center, works with similar coalitions as the Santa Clara group in regions across the country. She says, “This policy sends the message that local participation in the enforcement of immigration laws is not mandatory and that due process and equal treatment under the law applies to all persons in the U.S.”

THIS QUESTIONNAIRE SEEKS TO DISCOVER HOW THE NEW GEORGIA LAW IS AFFECTING UNDOCUMENTED VICTIMS OF CRIMES. PLEASE DISTRIBUTE TO OTHER SERVICE PROVIDERS/ADVOCATES IN YOUR ORGANIZATION AND TO SIMILAR ORGANIZATIONS. WE ASK THAT YOU READ THE QUESTIONS TO IMMIGRANT VICTIMS WITH WHOM YOU WORK AND WRITE THEIR ANSWERS DOWN FOR THEM. PLEASE PROVIDE AS MUCH INFORMATION AND EXPLANATION AS YOU CAN; WE DO NOT EXPECT YOU OR YOUR CLIENTS TO KNOW ALL THE DETAILS OF THE LAW. SIMILARLY, SOME OF THESE QUESTIONS ARE DESIGNED TO DETERMINE WHETHER SOMEONE MAY BE ELIGIBLE FOR IMMIGRATION STATUS AS A VICTIM OF CRIME, BUT YOU DO NOT NEED TO KNOW THE DETAILS OF THESE KINDS OF STATUS TO COLLECT THIS INFORMATION. IT'S OK TO USE FAKE NAMES AND TO OTHERWISE PROTECT THE IDENTIFY OF THOSE SUPPLYING THE ANSWERS. IF YOU RUN OUT OF SPACE IN ANSWERING ANY SPECIFIC QUESTION, PLEASE CONTINUE YOUR ANSWER IN THE SPACE AT THE END. THANK YOU FOR PARTICIPATING IN THIS IMPORTANT PROJECT!!

I. GEORGIA LAW HB 87 Victim's QUESTIONNAIRE

a) All questions contained in this questionnaire are strictly anonymous.

B.	C. Date:	
How does House Bill 87 affect you?		
1. Do you fear traveling by motor vehicle? If Yes, why?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Do you fear being in public? If Yes, why?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Do you fear traveling by public transportation ? If Yes, how?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>4. Are you afraid of getting public benefits for your US citizen children, if you have them? If Yes, why and had you done so previously?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>5. Are you afraid of contacting sexual assault or domestic violence agencies? If Yes, please explain?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>6. Are you willing to contact law enforcement if you or your children are harmed? If No, why?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>7. Are you willing to contact law enforcement if you witness a crime that causes serious harm to another? If No, please explain.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>8. Has your partner or another ever threatened to tell your “status” to family members, co-workers, or law enforcement? If yes, please explain and provide example(s) .</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>9. Has you or your children ever been threatened or harmed by anyone? (see note to Q 9)</p> <p>D. E. F. G. H. I. J. K. L.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>10. If answered yes to question 10, Did you report that to law enforcement? (Please explain)</p>		
<p>11. If you answered no, would you report that to law enforcement now? (Please explain)</p>		

M. 12. Is there anything else you'd like to share about how you feel about the new Georgia law (HB 87) or how it affects you, your family or your community?

DETAILS CONTINUED (please note the Question you are answering).