

**ADDRESSING “SECURE COMMUNITIES”:
STRATEGIES ON HOW TO ADVOCATE FOR IMMIGRANT SURVIVORS AT RISK UNDER ICE ENFORCEMENT PROGRAMS**

Presented by
Gail Pendleton & Sonia Parras, *ASISTA*
Rosie Hidalgo, *Casa de Esperanza*
Ellen Kemp, *National Immigration Project*

This project was supported by Grant No. 2011-TA-AX-K047 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

FACILITATORS & RESOURCES

- www.asistahelp.org
 - gailpendleton@comcast.net
- www.CasadeEsperanza.org
 - rhidalgo@casadeesperanza.org
- www.nationalimmigrationproject.org
 - ellen@nationalimmigrationproject.org

GOALS

- Provide brief background on selected immigration enforcement programs & entanglement with the criminal system
- Analyze the impact of these programs on the safety of immigrant survivors
- Provide strategies to improve safety for survivors individually & the systemic responses in light of the programs

Selected immigration enforcement programs & entanglement with the criminal system

ELLEN KEMP
NATIONAL IMMIGRATION PROJECT



What immigration programs are we talking about

- The ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) initiative
 - Aims to collaborate with state, local, and tribal agencies
 - Primarily works within our criminal justice agencies
 - Targets "criminal aliens" – what is that?



Secure Communities – uses technology and databases to identify noncitizens for removal

287(G) – AN AGREEMENT TO GIVE AUTHORITY TO LOCAL POLICE AND JAILS TO ENFORCE IMMIGRATION LAW

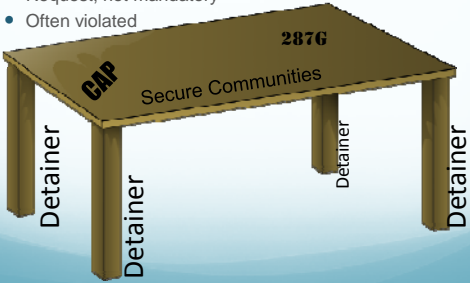


Criminal Alien Program: ICE agents work in jails and prisons to identify suspected noncitizens for deportation. Supposedly targets “noncitizens”



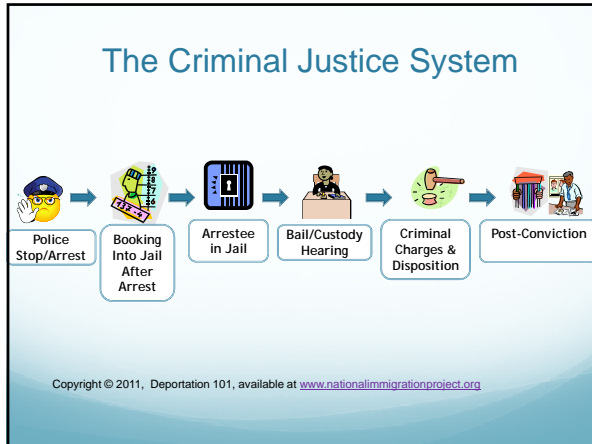
Detainers

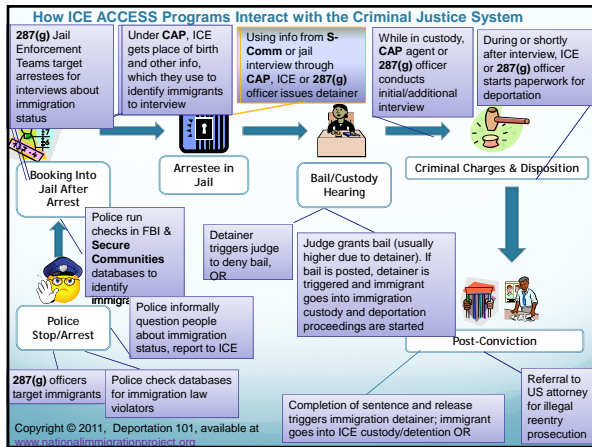
- ICE's key tool, 8 CFR § 287, Form I-247
 - Request, not mandatory
 - Often violated



How ICE Gets Information Local Law Enforcement. . .

- Collects bio data at booking which flags status for ICE
- Allows ICE to interview noncitizen arrestees without telling their attorneys/judges
- Forwards lists of foreign-born individuals
- Asks immigration status and then contacts ICE
- Complies with ICE detainer requests (improperly or properly)





Impact on Immigrant Survivors

Increased ICE Entanglement with Local Law Enforcement
 ROSIE HIDALGO
 CASA DE ESPERANZA

Detrimental Impact on Survivors

- Immigrant victims often face barriers with limited knowledge of U.S. legal system, fears of police and courts from countries of origin, as well as limited English proficiency
- Current ICE programs increasing fear of calling the police if police viewed as arm of Immigration agency, rather than focused on public safety
- Undermines community policing if victims and witnesses afraid to come forward

Implementation Issues

- While initial goals claimed to target convicted serious offenders, in reality, more than half have been arrested for minor traffic violations, misdemeanors or have had charges dropped
 - Over 1 million people deported in past 3 years
- Potential for increased Racial Profiling
- Pretextual Arrests
- Separation of Families
- Human Rights and Civil Rights concerns

Impact on Communities

- Recent report of Warren Institute – Berkeley School of Law, based on public FOIA records of Secure Communities:
 - Programs have expanded so fast that due process is being overlooked
 - Access to legal services is nonexistent for many
 - Evidence of racial profiling since Latin@s are being disproportionately detained
 - Thousands of U.S. citizens are being apprehended who should have never been placed in immigration custody
 - 40% of those detained by ICE have spouses or children who are U.S. citizens
 - 67% of those arrested were non-criminals or low-level offenders

Case Studies impacting victims of domestic violence

- Bolanos case in MD – DV victim called the police; subsequent pretextual arrest led to ICE detention (see Washington Post article)
- California case – Dual arrest for DV resulted in rapid deportation of DV victim even though county DA had chosen not to prosecute; unaware of rights (See Sacramento Bee and LA times articles)
- NY Case – Abuser’s family brought false credit card fraud charges against DV victim; though no charges brought, she was detained by ICE

Evolution of “Secure Communities”

- ICE has reported implementing “Secure Communities” in over 1500 jurisdictions in 43 states since 2008
- Numerous states and cities began seeking ways to “opt out” due to detrimental impact on community policing, public safety and DV victims
- ICE later declared that they don’t need contracts with states and cities; fingerprints entered in FBI database will automatically be shared with ICE database
- “Secure Communities” to be operational in **every** jurisdiction in U.S. by 2013 according to ICE

ICE General Prosecutorial Discretion Memo

- ICE Memo of June 17, 2011 “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency..”
 - ICE statement that its limited resources should be focused on higher priority cases
 - “The following positive factors should prompt particular care and consideration.....:
 - Victims of domestic violence, trafficking, or other serious crimes;
 - Pregnant or nursing women;
 - Individuals who suffer from a serious mental or physical disability;
 - Individuals with serious health conditions”(See page 5 of ICE memo)

ICE Prosecutorial Discretion Memo for Victims and Witnesses

- June 17, 2011 additional ICE Memo "Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs"
 - "In these cases [specifically noting domestic violence], ICE officers, special agents and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice."
 - "Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime." (See page 1 of Memo)

DHS/DOJ Reviews of Pending Deportation Cases

- In August, 2011, Administration announced that DHS and DOJ will conduct a review of approximately 300,000 pending deportation cases to apply Prosecutorial Discretion guidelines
- Opportunity to assist or identify DV/SA immigrant victims with pending deportation proceedings

ICE Memos not Self-Implementing

- Requires vigilance and pro-active involvement of DV and SA programs
 - Specialized safety planning with immigrant survivors
 - Trainings and protocols with ICE, local law enforcement and Courts
 - Serving as a resource to assist immigrant victims
 - Outreach with immigrant communities
- Example of recent New Mexico case – DV immigrant victim detained by ICE in Family Court while seeking Order of Protection
 - Use of Prosecutorial Discretion Memo and VAWA Confidentiality provisions to secure her release

Strategies for working with survivors and increasing safety to counter immigration enforcement impact

SONIA PARRAS KONRAD
ASISTA



Red Flags

- REVIEW YOUR INTAKE!!!
- BUILD TRUST
 - Stopped at the border
 - Asked to sign papers at the border
 - Scheduled for hearing in front of immigration judge
 - In absentia removal order, final orders etc
 - Any encounter with criminal system: arrested, charged, convicted, on probation
 - Warrant
 - Under Department of Transportation investigation



One-on-One Advocacy

- On your first meeting:
 - Address whether your client is a potential target of an enforcement program.
 - Ask open-ended questions and stay at her safety concerns.
 - Some potential questions to determine risk:
 - Have you ever been stopped at the border, talked to anyone at the border, sign any papers, talk to anyone in uniform
 - Did anyone ever gave you any papers at the border ?
 - Did you ever get any notices on the mail about hearings
 - Have you ever been arrested, charged, convicted, release from probation, not pay traffic tickets?

One-on-One Advocacy

- **Avoid a crisis**, identify issues on day one
- Your work with her around safety planning must also **include** how to address situations where she is arrested and:
 - Her children are alone at home or daycare
 - She did not pick up her last paycheck
 - The perpetrator has her passport and access to her money
 - There is a question regarding her ability to pay her bond (criminal or immigration)
 - The abuser may be neglecting children
 - Medical concerns, trauma issues, memory gaps
- 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.

One-on-One Advocacy

- Be pro-active; identify internal challenges
 - Develop internal protocols to respond effectively to clients at risk of detention and removal including authorization release of portions of her file
 - Provide a business card with a direct number
 - Train your staff on handling ICE calls
 - Keep "positive equities" on file
 - Medical issues for kids and self including trauma counseling
 - Records to sustain potential immigration remedies
 - Pictures, police reports, no contact orders, G-28, signed I-246, birth certificate, notice of receipt (Form I-707), FOIA, etc.

One-on-One Advocacy

- **IF DETAINED BY POLICE- KEY: NO DETAINER!!!**
 - Review action plan if on file
 - People to call to address her concerns with children etc, including legal representative, faxing of relevant portions of files with request for release on her own recognizance (O.R).
 - Ask to talk to staff with authority to release client
 - If denied, call allies such as officers assigned to DART or SART team to assist with advocacy
- **IF DETAINED BY ICE**
 - Hand a request for prosecutorial discretion to DRO with authority and OCC including equities
 - Request release OR. Be prepare to assist in request of stay of removal (I-246).

Potential Remedies for Survivors

- U visa
- T visa
- VAWA self petition
- Cancellation of removal
- Motions to Reopen final orders of removal
- Gender asylum, withholding of removal, CAT
- Other general remedies

Systems Advocacy

Before a Survivor is identified

When a survivor is identified:

- Law enforcement should NOT refer survivors to ICE
- ICE should NOT issue a detainer
- 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)?
- Request to allow survivors to contact your agency or the 1-800 hotline
- Check individual referrals to ensure that the individual was NOT referred to ICE or law enforcement by a partner with criminal domestic assault record

Advocacy Strategies

ON 287G

- 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 (ICE Prosecutorial Discretion Memos)
- 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.

Additional general systemic strategies

Initial Goal Setting

- Discuss initial goals of campaign
 - May change once you learn more information
- Some Possible Goals:
 - Opt out of S-Comm; no CAP campaign
 - Adopt/modify detainer policies
 - Limit collection/sharing of info w/ICE
 - Implement policy limiting ICE access to inmates
 - Target racial profiling by LEAs
 - Pass city county/ordinance re: enforcement

Advocacy Strategies

- On detainers:
 - 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

Who can create a policy to protect noncitizen defendants or victims?

- Administrative – Police Department, County Jail, Sheriff, Department of Corrections
 - Mayor, Governor, State Attorney General
- Legislative – political body such as Council, Commissioners, State legislature
- Judicial – courts, probation departments

MORE RESOURCES

- ICE Memorandum on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, June 17, 2011, available at <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>
- www.uncoverthetruth.org
- www.immigrationadvocates.org. (requires joining, which is free for non-profits and will give you access to lots of useful information on immigration laws, including those designed for immigrant crime survivors.)
- We Belong Together Campaign <http://webelongtogether.org>
Mujeres Unidas por Nuestros Hijos y Familias
