**Keeping Families Together: Reforming Secure Communities and ICE Holds**

**Introduction**

Founded in 1972, Asian Americans Advancing Justice - Asian Law Caucus is the nation’s first public interest law office representing the civil and human rights of Asian American and Pacific Islander communities. Each year, we assist thousands of immigrants with legal services in the areas of criminal justice, immigration, housing, workers’ rights, and national security and civil rights.

We have seen the devastating impact of local law enforcement entanglement with immigration enforcement -- due process violations, racial profiling, erosion of confidence in law enforcement, the separation of families, and the deportation of community members who have built their lives in this country. We co-led a successful campaign to pass the TRUST Act in California, which went into effect in January 2014 to limit the holding of immigrants for extra time in local jails for immigration enforcement. Our work directly serving immigrant community members has given us significant expertise in the failure of the status quo, and we make the following recommendations for the Secure Communities Program, the Criminal Alien Program, ICE hold requests, and U visas.

**Recommendations for Secure Communities Programs**

**1. Make S-Comm an Opt In/Opt Out Program, as originally envisioned by DHS**

The S-Comm Program undermines decades of progress in community policing by causing immigrant community members to fear coming forward to trust local law enforcement. Under S-Comm, every fingerprint taken at booking is sent to DHS for an immigration background check, thereby reporting all arrestees to immigration even if the individual was innocent, unconstitutionally arrested, overcharged, or not deportable. Local governments should be given the choice as to whether they would like to “opt-in” to this harmful program. S-Comm is not mandated by law; rather, it is merely an ICE program that was initially contemplated by Congress and DHS as a voluntary. Just as S-Comm was turned on jurisdiction by jurisdiction, it can be turned off.

**2. Limit Fingerprints Submitted to S-Comm to Serious Felony Convictions**

The stated purpose of S-Comm was to focus on identifying and deporting individuals with serious or violent felony convictions. However, in practice, the vast majority of fingerprints submitted to DHS and the vast majority of ICE hold requests and deportations that result are for individuals with no convictions or low level charges (e.g., traffic violations, misdemeanors, illegal entry). From 2009 to 2014, about 68 percent of all individuals deported under S-Comm did not have a serious or "Level 1" conviction. Fingerprints submitted to S-Comm should be limited to serious or violent felony convictions.

**3. Suspend S-Comm in Jurisdictions with Pronounced Racial Profiling and Civil Rights Violations**

S-Comm encourages local law enforcement to conduct pre-textual arrests because all fingerprints, no matter if the person actually committed a serious offense, are submitted to DHS at the point of arrest. Individuals are often transferred from the local jail into ICE custody prior to even receiving a day in court on the alleged charges for the arrest. S-Comm should be suspended in jurisdictions where there are complaints filed of racial profiling or where there is a high number of individuals transferred to ICE custody who do not have serious convictions. Additionally, S-Comm should be suspended in states like Arizona, which mandate racial profiling through unconstitutional state statute.

**4. OIG Report on S-Comm and the Next Generation Identification Program**

The Office of Inspector General conducted an audit and issued a report in 2012 on the highly discredited S-Comm Program. This report was an opportunity to openly and accurately review dishonest representations about the program made by DHS. Instead, Former Acting and Deputy Inspector General of DHS Charles Edwards failed to uphold the most basic function of his office—independent oversight of DHS—consequently denying the public access to the truth about S-Comm and further miring the program in controversy and opacity. A report released in April 2014 by the Subcommittee on Financial and Contracting Oversight of the Senate Committee on Homeland Security and Governmental Affairs exposed numerous areas of misconduct by Mr. Edwards. The DHS Inspector General’s role is to provide independent oversight. Instead, Mr. Edwards engaged in frequent improper communications with top DHS officials, failed to secure independent legal advice, and abused agency resources. Of particular concern were the report’s findings of misconduct surrounding the 2012 OIG report on the S-Comm deportation program. The Senate report details how Mr. Edwards changed language in the OIG report, which addressed whether ICE has misled the public regarding the program, at the request of DHS officials. Mr. Edwards also altered the release date of the report in accordance with directions from DHS, and did not inform his audit staff about these communications. The report was not released until after the director of ICE testified in Congress regarding the program. Mr. Edwards himself resigned from his post three days before a scheduled congressional hearing. In the wake of these revelations, the current OIG should conduct another audit and issue a new, independent report on S-Comm. Furthermore, this report should be expanded to review the civil liberties and civil rights implications raised by the Next Generation Identification Program, which is a national biometric sharing program that is the larger vision behind the S-Comm Program.

**Recommendations for ICE Holds and ICE Access Programs**

**5. Prohibit ICE From Conducting Enforcement at Court Houses and Probation Check Ins**

We have received numerous reports of ICE conducting enforcement activities at courthouses and with probation departments. For instance, an individual will show up for his or her court hearing regarding an alleged charge, only to be arrested by ICE. These enforcement tactics interrupt the criminal justice process because they make immigrants afraid of attending hearings in court. Family members also are not able to attend hearings for fear they will also be detained by immigration. In addition, ICE has been arresting individuals when they meet with their probation officers. These enforcement tactics undermine rehabilitation programs, deter individuals from meeting with their probation officers, and interfere with c probation compliance. ICE should be prohibited from engaging in enforcement activities at court houses and with probation officers.

*Case Example:*

We have received three cases from Stanislaus County with similar facts. Two involved Indo-Fijian Legal Permanent Residents and one involved an Iranian Legal Permanent Resident. These individuals were on probation and received phone calls from their probation officer for an unscheduled check-in. When they showed up for the check-in, an ICE officer was waiting and immediately arrested them.

**6. Suspend Criminal Alien Program interviews in Local Jails**

Through ICE’s Criminal Alien Program (CAP), ICE officers ask for and receive access to local jails to interview and seek transfer of individuals suspected of being removable into ICE custody. Similar to S-Comm, ICE’s CAP program is entirely discretionary. Each year, the White House has requested increased funding for the CAP program from Congress, most recently in the FY 2015 budget proposal. We have received complaints from community members of ICE using their access to local jails to engage in racial profiling. ICE has been singling out individuals who appear Asian or Latino for immigration enforcement interviews and then using coercive tactics in these interrogations. This includes telling the individual that he/she has no rights, denying access to attorneys, denying phone calls to family members, and threatening individuals with prolonged immigration detention if they do not sign stipulated removal orders or voluntary departure forms. Criminal Alien Program interviews should be terminated in jurisdictions where ICE officers are engaging in racial profiling and using coercive interrogation tactics.

*Case Example: Mr. Mendoza*

On Saturday, April 20, 2013, at around 2 or 3 am, Mr. Mendoza was arrested shortly after leaving a Mexican restaurant in Sacramento County. California Highway Patrol and Sacramento County Sheriff deputies pulled Mr. Mendoza over and accused him of tossing a cigarette butt out his window. They then arrested him for a misdemeanor DUI. The officers took Mr. Mendoza to Sacramento County Main Jail. They placed him in a holding cell and an immigration officer came within an hour or two to interview Mr. Mendoza along with other Latino arrestees. The officer asked Mr. Mendoza questions related to his immigration status, placed him in ICE custody, and then transferred him to Sacramento Sheriff’s Rio Cosumnes Correctional Center in Elk Grove. The next day, immigration officers tried to coerce Mr. Mendoza into signing a voluntary departure agreement, repeatedly telling him he had no right to an attorney and that he had to sign the form. After he refused, he was flown to New Mexico, where he was held for over six months in an immigration detention facility. In October 2014, four ICE officers forced Mr. Mendoza to place his fingerprints on a document and then deported him. He leaves behind two U.S. citizen children who depend on him financially and emotionally. A complaint regarding the ICE officers’ conduct in the immigration detention facility has been filed with DHS’s Office of Civil Rights and Civil Liberties and is currently pending.

**7. End ICE Hold Requests Because They Are Unconstitutional**

In *Miranda-Olivares v. Clackamas County*, a federal district court in Oregon held that detentions of individuals by local law enforcement in response to ICE hold requests violate Fourth Amendment constitutional protections against unreasonable search and seizure. *See Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST., 2014 WL 1414305, at 5-7\* (D. Or. Apr. 11, 2014). The court reasoned that once a person is entitled to release after resolution of her state charges, holding that individual for additional time in response to an ICE hold request constitutes a new seizure and thus requires a probable cause basis independent of that given for the original arrest. *Id.* at 11\*. The Attorney General in California and in Maryland also have issued advisory opinions citing constitutional concerns with ICE hold requests. As a result of these legal developments, at least 280 jurisdictions thus far have adopted policies limiting responses to ICE hold requests. However, ICE continues to issue hold requests that place local law enforcement in the precarious position of denying these requests or being subject to legal liability for violating Fourth Amendment protections. ICE also is misleading local law enforcement by issuing what are essentially ICE hold requests (I-247 form) dressed up in other forms. These forms, including I-200, I-203, and I-205, have “warrant” misleadingly written across the top. However, they are merely ICE hold requests as they are not signed by a judge and not based on probable cause. Given that ICE holds violate Fourth Amendment Constitutional protections, ICE holds, in all its various forms, should not be issued to local law enforcement.

**8. Issue U Visas for Individuals Who Were Held Illegally on ICE Holds**

When local law enforcement violates local or state law that limit detentions of individuals for extra time in response to ICE hold requests, the individual is the victim of false imprisonment. When local law enforcement violates federal law by holding individuals for over the 48 hour maximum allowed by an ICE hold request, the individual also is a victim of false imprisonment. Local law enforcement should be encouraged to sign U visa certification to rectify these violations and to USCIS should grant these visa applications.

*Case Example: Mr. Del Agua*

On Friday, February 7, 2014, at around 7:30 pm, the Sacramento County Sheriff's Department arrested Mr. Del Agua without a warrant at his home after a neighbor, who has been harassing Mr. Del Agua based on race, made a noise complaint. Mr. Del Agua was listening to music in his garage with his young children. Even though Mr. Del Agua was being cooperative, two Sheriff Deputies tackled him onto his garbage can and then threw him on the hood of his truck. Mr. Del Agua was arrested and taken to Sacramento County Main Jail. On Saturday, his wife learned that although no charges were filed against her husband, he was being held on an ICE hold in violation of the California TRUST Act. Mr. Del Agua was also selected along with other Latino detainees and interviewed about his immigration status while in jail. On Sunday morning, his wife was able to call a local immigration attorney. After the attorney brought a written notice to the Sheriff’s Department that they were violating state law, Mr. Del Agua was released on Sunday night. Advancing Justice – Asian Law Caucus has filed an administrative complaint for the TRUST Act violation and will be seeking a U visa for Mr. Del Agua.