

Advocating for Local Policies to Protect Immigrants



Panelists

Angie Junck, Supervising Attorney, Immigrant Legal Resource Center

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Immigrant Legal Resource Center



ILRC Attorney of the Day

- **Mon-Thu 10am-5pm**
- **Our AOD attorneys are available to answer inquiries by e-mail regarding immigration law and practice. Our attorneys will also schedule an appointment for a phone consultation if you request one in your e-mail inquiry.**
- **To access our AOD service, please contact Philip Garcia at 415.255.9499 x427 or via email at pgarcia@ilrc.org to set up a one-time consultation or a contract. For more information, please visit <http://www.ilrc.org/legal-assistance>**

ILRC Attorney of the Day

Free Attorney of the Day

- All CDSS Contractors and Subcontractors
- IOLTA Legal Services Programs in California
- All San Francisco Bay Area Non-Profits

Other Attorney of the Day

- Hourly rate pro-rated (6 minute minimum), or
- One-time consultation fee

United We Dream Network

IMMIGRANT YOUTH-
LED
RESILIENCE
DIGNITY
GRASSROOTS
ORGANIZING



Agenda



Federal Immigration Enforcement Programs

Secure Communities, 287(g), Detainers

Advocating for Sanctuary

Houston Beyond ICE: Sanctuary Campaign

30 Years of Local Immigration Enforcement

ICE Focus on Local Law Enforcement

Criminal Alien
Program

Since the
1980s

287(g)

Enacted 1996

Secure
Communities

Created 2008
Restored
2017

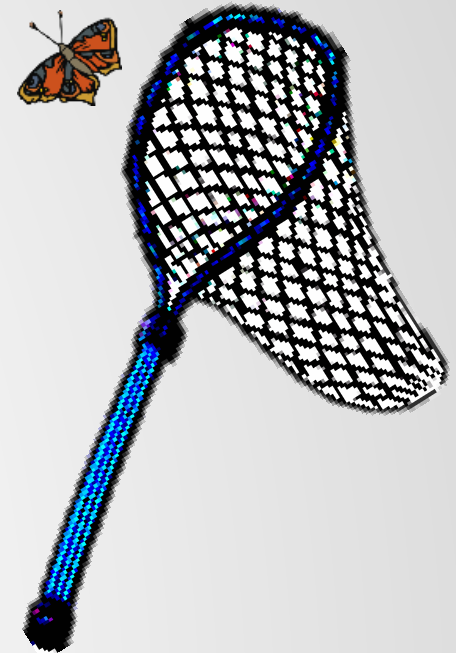
Priority
Enforcement
Program (PEP)

Launched
2015
Ended 2017

What is the difference?

Immigration enforcement is like a net trying to trap immigrants.

- **S-Comm** is a fingerprint sharing program that gives the first layer of information – fingerprints are just the rim of the net.
- **CAP** involves gathering all kinds of further information to identify and screen deportable immigrants in local jails and transfer them to ICE.
- **287(g)** enlists local officers to do that work themselves.



Local Immigration Enforcement

CAP
287(g)
SComm

All these ICE programs have the same overall goals

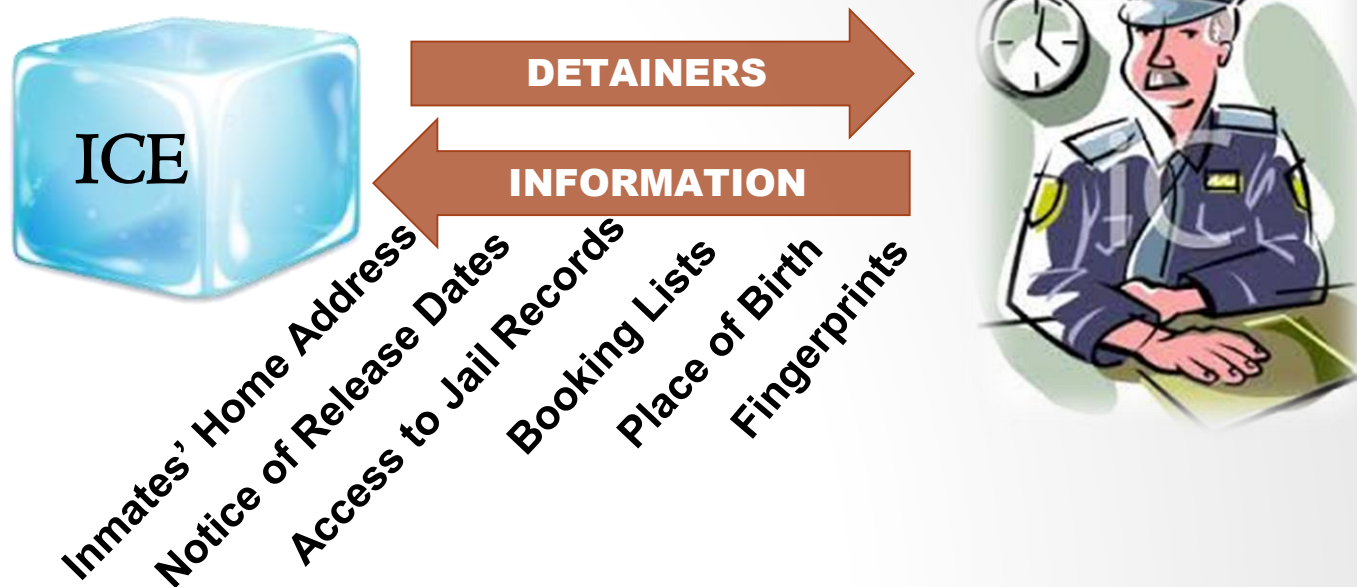
1. Identify and locate immigrants via local police or the criminal legal system

2. Seek transfer to ICE before they are released

ICE's Criminal Alien Program

The Criminal Alien Program includes all kinds of partnerships to **share information** and apprehend immigrants from state, local, and federal jails.

- ICE desk in the jail
- Coordinated transfers
- 287(g)



287(g) Program

The 287(g) Program enables local police officers and/or sheriffs department officers to act as immigration agents in the jail. Pending contracts in the U.S.

- Interrogations of inmates about immigration status and history
- Terminals to access DHS databases
- Issue detainers and transport to ICE detention
- Serve warrants and NTA

Who pays for this?

- All 287(g) officers are city/county employees and all costs are paid by the locality

287(g) Program

Task Force Model

- Old-style 287(g)
- Local law enforcement have full immigration arrest authority
- Conduct immigration enforcement at homes/street/worksites

Jail Model

- No street enforcement authority
- Local officers only do immigration questioning or activities in the jail
- No power to arrest/detain people to inquire into immigration status

Secure Communities

- Secure Communities (“S-Comm”): sends fingerprint data from booking at the local jail to check against immigration databases

How S-Comm Works



ICE detainers

An immigration detainer is a request from ICE to the local or state police, jail, sheriffs, or other law enforcement agency that says:

1. ICE is interested in this person
2. Please contact ICE before you release the person, to let ICE know when they will be let go

and/or

3. Please hold the person after their release date for an extra 48 hours to give ICE time to come get them



ICE detainer regulations

8 CFR 287.7(a) Detainers in general... “A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien...” request for notice prior to release in order to arrange for ICE pickup.

8 CFR 287.7(d) Temporary detention at Department request. Upon a determination by the Department 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 the Department.

ICE detainer litigation



Many people were held far beyond 48 hours, and there were many lawsuits...

- Some damages actions, some habeas
- Many challenges to the regulations themselves
- ultra vires
- unconstitutional...

Detainer Litigation

In 2014, federal courts said that holding people on ICE detainers violates the 4th Amendment.



In Galarza v. Szalczyk, the Third Circuit held that:

1. Detainers are requests, not commands from ICE
2. Local jails that hold someone illegally on a detainer can be liable

In Morales v. Chadbourne, the Rhode Island Federal District Court held that:

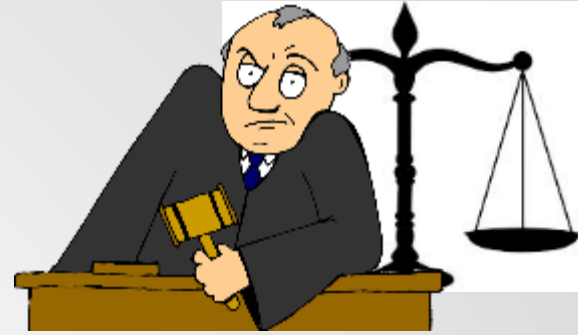
1. Holding someone on an ICE detainer is a *new arrest*
2. Detaining someone to investigate their immigration status (as per detainer form) violates the 4th Amendment

In Miranda-Olivares v. Clackamas County, the Oregon Federal District Court held that:

1. ICE detainer did not provide probable cause for arrest
2. Clackamas County had unlawfully detained Miranda-Olivares and *owed her damages*

Detainers ONGOING Legal Issues

Federal courts said that ICE detainers exceed ICE's own statutory authority.



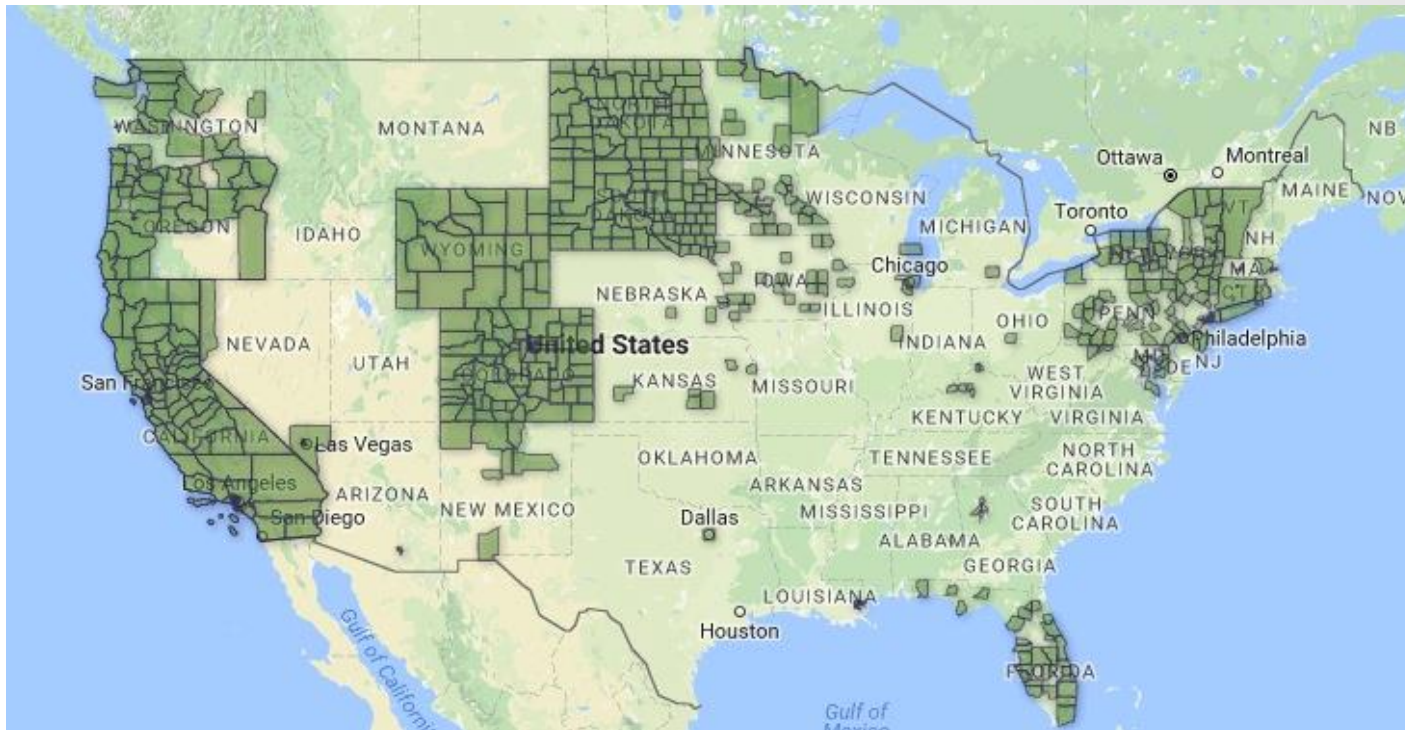
In Jimenez-Moreno v. Napolitano, the Northern District of Illinois held that

1. ICE detainers exceed ICE's statutory arrest authority
 - INA requires that ICE have: probable cause of deportability + reason to believe the person is likely to escape before a warrant can be obtained
 - Detainers are issued without any finding of risk of escape and without warrants
2. Invalidated all detainers issued out of Chicago Field Office (covers 6 states)

In Orellana v. Nobles County, the District of Minnesota agreed with *Jimenez Moreno* that an arrest for immigration without determination of likelihood of escape before a warrant is obtained is illegal.

Mapping the Detainer Revolt

As a result of the news that jails could be liable for damages for constitutional violations if they hold people on ICE detainers, hundreds of sheriffs stopped honoring them



ICE Warrants

If ICE needs either likelihood of escape or a warrant in order to issue a detainer...

They may issue a lot more ICE warrants



What is ICE warrant?

I-200 form often issued at ICE field office after arrest

Issued by designated immigration officers

Not reviewed by a neutral magistrate

What is the authority of ICE warrants?

Must be
issued
following
an NTA
8 CFR 236

Can only be
executed by
designated
immigration
agents
8 CFR 287.3

Authorizes
arrest but
no authority
to enter
private area

Local Law Enforcement Operations

What does ICE ask for?

- Fingerprints
- Detainers
 - 48 hour hold
 - Notice of release date
- Database access
- Desk or jail space
- Interviews with inmates
- Place of birth information
- Notifications from probation
- Ongoing communication and information

What CAN LEAs do on immigration?

- Respond to detainers
- Collect immigration information
- Provide information to ICE/CBP
- Share database access
- Invite ICE into jails, probation appointments, release processing areas
- Sign up for 287(g) to have greater authority

What CAN'T LEAs do on immigration?

- Hold in violation of the Fourth Amendment
 - Must have a warrant or probable cause of a crime
- Stop or arrest for civil immigration violations
- Prolong stop or detention to investigate immigration status
- **287(g) exceptions

Local Enforcement Authority Resources

Key Cases on Local and State Authority

- *Arizona v. United States*, 132 S.Ct. 2492 (2012)
- *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012)
- *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014)
- *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015)
- *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014)
- *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452 (N.D. Ill, Sept. 30, 2016).
- *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012)
- *Buquer v. Indianapolis*, 797 F. Supp. 2d 905 (S.D. Ind 2011)
- *Santos v. Frederick County Bd. Of Com'rs*, 725 F.3d 451 (4th Cir. 2013)

Legal and Policy Resources

- <https://www.ilrc.org/immigration-enforcement>
 - <https://www.ilrc.org/legal-analysis-immigration-detainers>
 - <https://www.ilrc.org/guide-criminal-alien-program>
 - <https://www.ilrc.org/life-under-pep-comm>
 - <https://www.ilrc.org/faqs-immigration-authority-local-law-enforcement>
- https://www.americanimmigrationcouncil.org/practice_advisory/motions-suppress-removal-proceedings-cracking-down-4th-amendment-violations

A large crowd of people, mostly young adults, are gathered at what appears to be a rally or protest. Many are wearing white t-shirts with the 'United We Dream' logo. In the background, a banner with the same logo is visible. The image is overlaid with a semi-transparent orange filter.

Sanctuary Campaign: Strategy Proposal



United We Dream®

Our Current State

The immigrant community is fearful of the this Administration's actions.

We need to ensure local collusion with ICE ends and local elected officials and leaders not only take a public stance, but concrete and meaningful action to protect our communities.

Local Power to Resist Immigration Enforcement

- **Cities and counties have no legal obligation to help enforce federal immigration laws, absent state laws requiring to do so, e.g., TX SB 4.**
- **In ceasing this voluntary cooperation, cities and counties can take important steps today to ensure that they do not serve as a pipeline to deportation.**

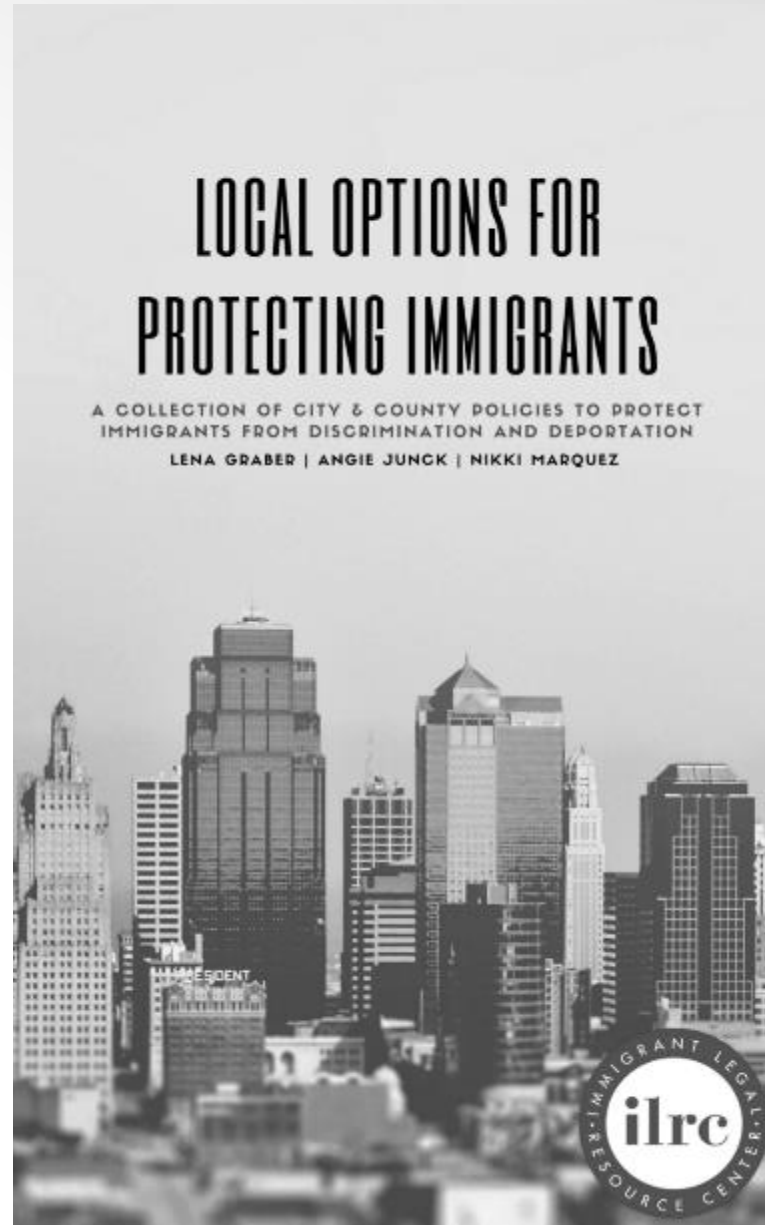
If we organize our immigrant community and allies to build visible Sanctuary campaigns, we can protect individuals and families from deportation and other criminalization--including increased protection and inclusion for other vulnerable communities such as The Latinx, Black, LGBTQ and Muslim communities.

UWD Definition of Sanctuary: Example

...as policy protection and a culture of safety for Immigrant, Latinx, Black, LGBTQ, Muslim communities and other marginalized groups.

Policies and practices that limit the extent to which local law enforcement and other government employees will go to assist the federal government on immigration matters. It will also include policy, legal protection and a culture of inclusion in other institutions such as schools, colleges, businesses, religious institutions, etc.

City & County Protections for Immigrants



1. County Officials Adopt & Implement Policies that Protect the Immigrant Community



Sheriff and probation ends collusion with ICE

District Attorney adopts immigration policy/practices to consider immigration consequences of criminal cases

Criminal attorneys are resourced to effectively represent noncitizens

Criminal Courts do not inquire into imm status or let ICE into the courtrooms

Sample County Provisions: Sheriff

- **Do not ask the detainee about his/her immigration status or place of birth.**
- **No detainers will be responded to unless supported by a valid warrant signed by a judge.**
- **DHS agents shall not be given access to County facilities or individuals in County custody**
- **Prohibition against working with ICE on joint patrols or raids**
- **County personnel shall not expend County time or resources responding to DHS inquiries or communicating with DHS regarding individuals' booking information, hearing dates, incarceration status, release dates, or home addresses.**

2. City Officials Implement Policies that Protect the Immigrant Community



Mayor adopts confidentiality policies and procedures for the City

Police department ends collusion with ICE

Sample Police Provisions

- **Forbid PD from making arrests on the basis of immigration warrants, detainers, or any other civil immigration document or removal order;**
- **Prohibit PD from holding people on ICE detainers at PD facilities;**
- **Prevent ICE agents from questioning, apprehending, or holding individuals within PD facilities without a valid criminal warrant; and**
- **Provide a clear written policy that PD will not inquire into the immigration status of anyone that they encounter.**

Other Sample City Provisions

- No department, agency, commission, officer or employee, or their designees or agents, of the City can use any City funds or resources to assist in the enforcement of federal immigration law to gather or disseminate information regarding the immigration status of individuals in the City.
- The city will not enforce any discriminatory federal policies that targets any community member based on gender, religion, ethnicity, national origin, or sexual orientation
- A policy that will protect immigrants from deportation in City buildings
- Create a City public defender's office for indigent immigrants in removal proceedings
- Include immigration status in hate crimes definition
- Policy on City services available to all regardless of legal status
- Agencies will broaden U Visa certification policies to permit undocumented victims of serious crimes the ability to apply for legal status that they are entitled to apply for on account of their victimization and helpfulness with law enforcement" – and "officers, investigators, and prosecutors will be trained to explain U Visa status to any victim who may qualify if lack of immigration status is revealed to the law enforcement officer.

3. Work in Coalition With Other Affected Groups

**Work hand in hand and
promote the advocacy
agendas defined by:**
LGBTQ Communities
Muslim Communities
Black Communities
**And other marginalized
groups.**



4. Local institutions declare their spaces “Sanctuary”

- Homes
- Schools
- Businesses
- All places of faith will protect all people



- Colleges:
Policies that protect undocumented students and no collaboration with ICE.

Recap of Goals

Goal 1: County Officials implement policies that protect the immigrant community.

Goal 2: City officials implement policies that protect the immigrant community.

Goal 3: Work in coalition with other affected groups.

Goal 4: Local institutions declare their spaces sanctuary.

Targets



- **Sheriff**
- **District Attorney**
- **Chief of Police**
- **Probation Department**
- **Judges**



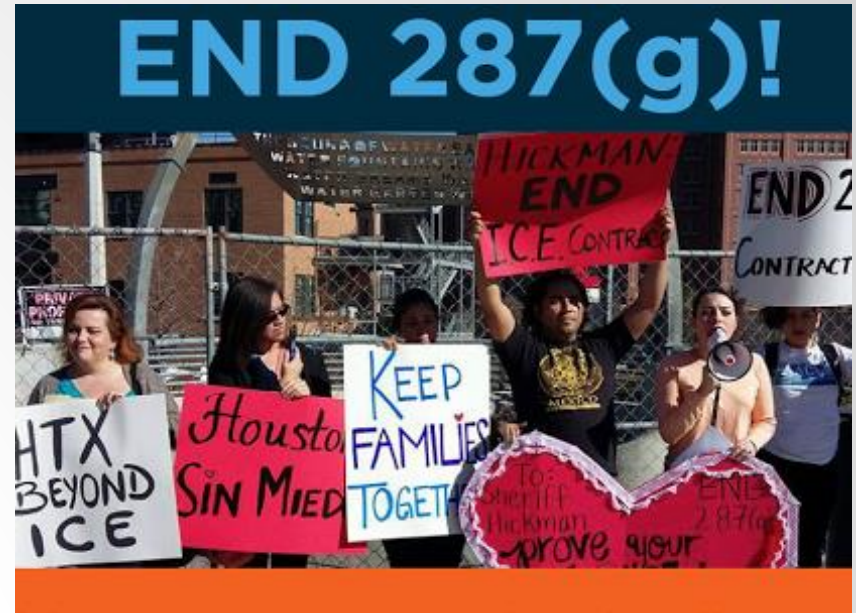
- **Mayor**
- **City Council**
- **School District**
- **Presidents of Universities and Community Colleges**

Tactics Brainstorm

- **Internal advocacy: meeting and communicating those in power and other decision makers, including elected officials**
- **Storytelling**
- **Creative direct action: escalation through protest**
- **Civic engagement: Political education, GOTV**
- **Communications: Sending our messages through press & social media**
- **Casework: supporting detained and incarcerated people, uplifting their stories**

Houston Beyond ICE: #END287g

- Long research phase
- Launch of campaign in February
- Building Intersectional narrative
 - intersectional wins!
- Keeping the focus on local wins/power





We Built

Victory!

How We Are
Building A
Movement

We
Advocated

We Got Out
the Vote

We
Marched



Analysis of Sanctuary Jurisdictions

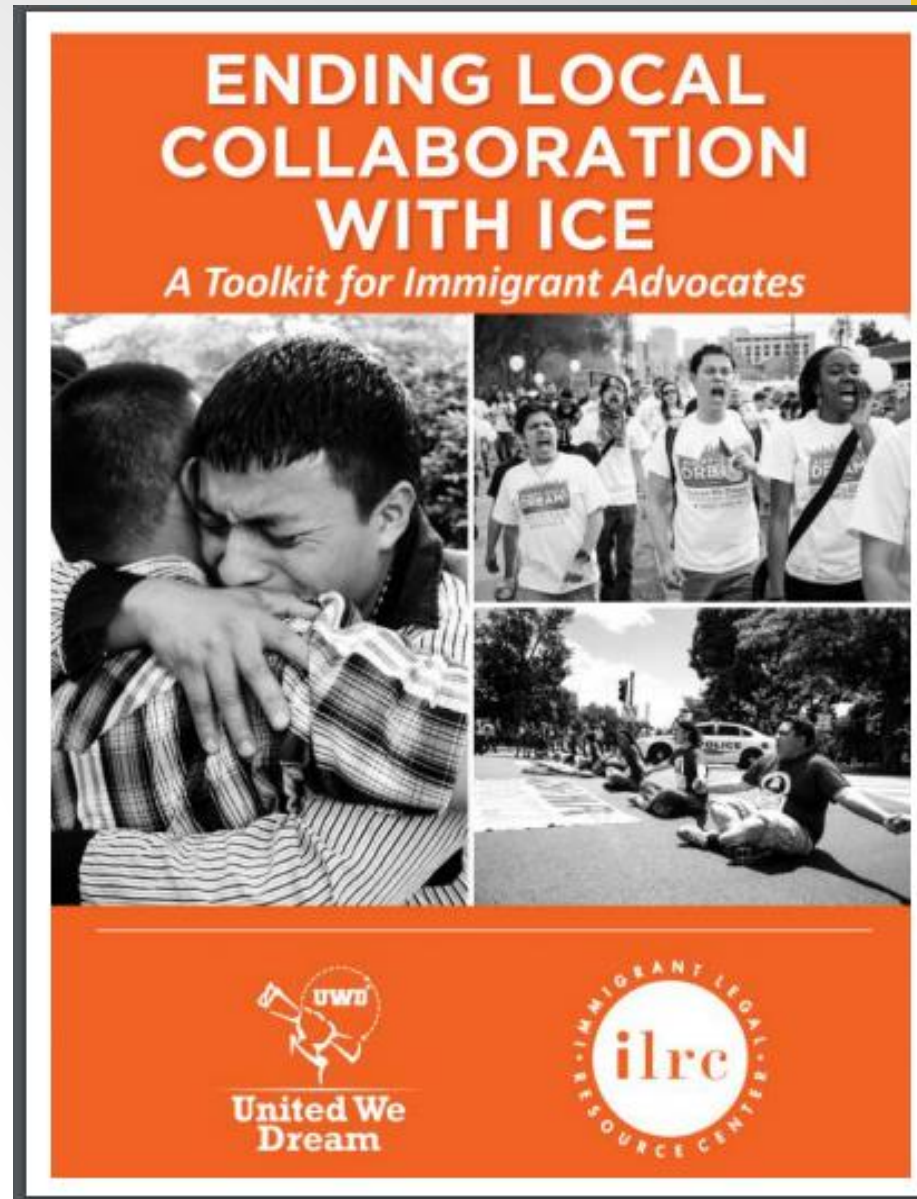
**National Map of Local
Police Entanglement
with ICE:**

<https://www.ilrc.org/local-enforcement-map>

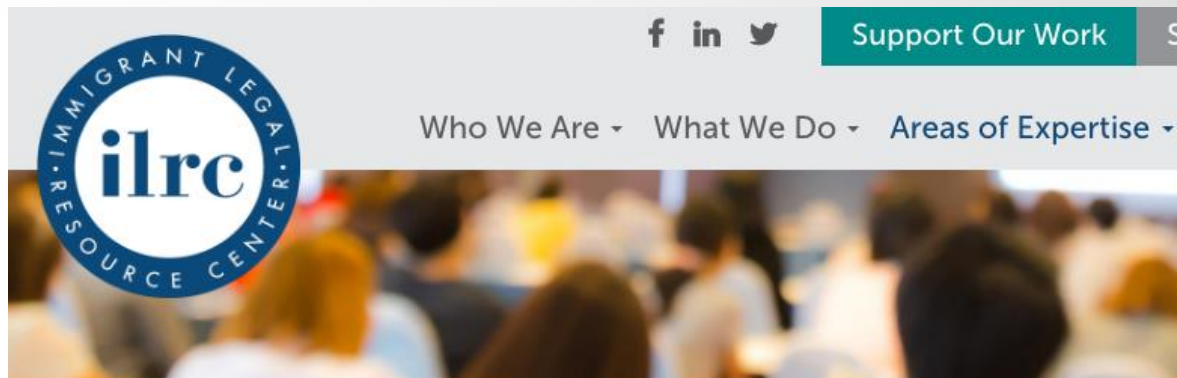


Ending Local Collaboration with ICE: A Toolkit for Immigration Advocates

<https://www.ilrc.org/ending-local-collaboration-ice-toolkit-immigration-advocates>



- www.ilrc.org/immigrationenforcement for new resources & updates



Enforcement

The Department of Homeland Security detains and deports hundreds of thousands of immigrants every year. The massive immigration enforcement regime has devastating effects on immigrant families and communities. The Immigrant Legal Resource Center (ILRC) has been at the forefront of campaigns locally and nationally to fight back against immigration enforcement and protect immigrant rights.

The ILRC provides resources and support to communities and organizations working on immigration enforcement issues, including background explanations, strategy tools for campaigns, legal and policy analyses, and ongoing assistance to campaigns fighting against unfair immigration enforcement.