

DENYING ACCESS: WEBINAR 1

BUILDING A SUCCESSFUL LOCAL
CAMPAIGN AGAINST THE
CRIMMIGRATION MERGER

2-3:30pm EST, Wednesday, June 22nd, 2011



WEBINAR TECHNICAL SUPPORT

- ◉ If you are having difficulty hearing or seeing the webinar -
- ◉ Please contact Emily Tucker, Policy and Advocacy Director at Detention Watch Network at
 - etucker@detentionwatchnetwork.org
 - or
 - (202) 393-1044 Extension 223

WEBINAR ONE PRESENTERS

- Angie Junck
 - Immigrant Legal Resource Center
- Jumana Musa (moderator)
 - Rights Working Group
- Paromita Shah
 - National Immigration Project of the National Lawyer's Guild
- Aadika Singh
 - Rights Working Group

FOR MORE BACKGROUND

- ⦿ Last year's webinars can be viewed at:
[http://www.immigrationadvocates.org/nonprofit/webinars.](http://www.immigrationadvocates.org/nonprofit/webinars)

GOALS OF WEBINARS 1 & 2

- ◉ Identify key components to consider including in your campaign
- ◉ Highlight relevant issues and challenges in building a campaign
- ◉ Outline possible goals and strategies
- ◉ Provide analysis and tools to develop a successful campaign

FOCUS OF WEBINAR ONE

- ◉ Collecting information & mapping your landscape
- ◉ Getting necessary documentation through public records requests and FOIA requests
- ◉ Conducting negotiations with jails and other criminal justice system actors (and ICE)
- ◉ Link to Webinar Two which will outline additional strategies and provide more analysis and tools to develop a successful campaign

FOCUS OF WEBINAR TWO

- ◉ Advocating for policies limiting police involvement in immigration enforcement and ICE access to jails
- ◉ Litigation and organizing related to police/ ICE collaboration
- ◉ Crafting effective messaging around police/ ICE collaboration

Challenging ICE Efforts To Merge Immigration Enforcement Into Criminal Justice System

ICE ENFORCEMENT PROGRAMS

- Focus here on 3 primary ICE Enforcement Programs:
 - Criminal Alien Program (CAP) - CAP teams deployed to local jails to ID and assume custody of noncitizens;
 - Secure Communities (S-Comm) - Extension of CAP by running booking fingerprints through ICE data bases to ID noncitizens in local jails;
 - 287(g) Programs - ICE agreements to involve law enforcement agency directly in immigration enforcement of noncitizens encountered in course of law enforcement duties.

ADDITIONAL RELEVANT PROGRAMS

- ◉ State Criminal Alien Assistance Program (SCAAP) - DOJ's Bureau of Justice Administration disperses \$ to local jails to reimburse a portion of costs of detaining certain noncitizen defendants
 - Undocumented noncitizens convicted of 1 felony or 2 misdemeanors detained for 4 or more days.
 - Look up \$\$ to your local jail at: <http://www.ojp.usdoj.gov/BJA/grant/scaap.htm> and click on Archive information link at bottom
- ◉ Intergovernmental Service Agreements (IGSA) - ICE contracts with local jails to house ICE detainees. <http://www.ice.gov/foia/library/>

COMMON DENOMINATOR: DETAINERS

- Primary tool used by ICE to track jailed noncitizens in criminal proceedings;
- Form I-247 filed with jail after arrest/booking;
- Impacts custody/release from jail;
- Voluntary or required?
 - Detainers are NOT required; they are requests.
- 48 hour limitation
 - Once triggered (by release from criminal custody) jail can only hold an additional 48 hrs to allow ICE to assume custody of person.

Building Your Advocacy Team and Mapping Your Local Landscape

BUILDING YOUR ADVOCACY TEAM

- Identify who should be on your advocacy team - important to include:
 - Representatives who understand your local criminal justice system
 - Example: public defenders
 - Immigration legal expert/lawyer who can assist in navigating relevant legal issues
 - Example: whether proposed policies raise problems with federal laws
 - Other alliances (domestic violence, faith, labor)
 - Other individuals/agencies with political influence

POLLING QUESTION

- ◉ Do you work with criminal defense attorneys or public defenders?

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

WHO ARE THE KEY PLAYERS

- ◉ Identify key players and their roles - individuals within specific agencies

- ◉ Who has the power to shift/influence/provide information re: policies and practices

- ◉ Examples:
 - Sheriff (deputies and key jail staffers)
 - Police
 - City/County Councilmembers/Commissioners (key staffers)
 - State officials (Governor's office, State Attorney General)
 - Local and national ICE staff
 - Federal Congressional representatives
 - Foreign consulates

WHAT POLICIES CURRENTLY EXIST IN YOUR COMMUNITY?

- What is known about current collaboration with ICE?
 - What programs is local LEA participating in? CAP? Scomm? 287(g)?
 - Are there any written formal or informal agreements?
 - Email communications?
 - Ordinances - good or bad?

WHAT POLICIES CURRENTLY...CONT'D

- What are the police arrest policies and procedures?
 - How are people entering the system? Ex: traffic checkpoints, stops?
 - Do they report to ICE directly?
 - Are there instances of racial profiling or due process violations? Look at...
 - Legal basis, gender, race
 - Location and time of arrest
 - Who was making the arrest
 - Were people brought into custody or not

WHAT POLICIES CURRENTLY EXIST (CONT'D)

- What are current practices at local jails re: ICE collaboration?
 - What relevant info is collected (e.g. POB) and why?
 - What/how is it shared with ICE?
 - What access does ICE have to inmates?
 - Ask to go on a tour of your local jail

WHAT POLICIES CURRENTLY EXIST CONT'D

- What are the detainer policies and practices?
 - What does the jail believe the authority of the detainer to be?
 - How and when placed? Criminal charges? Convicted?
 - How/when triggered & what happens?
 - How many/how soon are suspected noncitizens being transferred into ICE custody?
 - Are there any 48 hour violations?
 - What impact does the detainer have on bail?

INITIAL MAPPING ... CONT'D

- What costs are associated with ICE collaboration?
 - Is the jail receiving SCAAP reimbursement \$?
How much?
 - Does local jail have IGSA?
 - How long are noncitizens with detainers held on charges compared to their citizen counterparts?
 - Are there any instances of children of noncitizen parents entering the child welfare system as a result of ICE enforcement?

MEET WITH PEOPLE TO LEARN ABOUT ENFORCEMENT TRENDS

- Conduct meetings with key players
 - Determine what authority they have to make decisions
- Conduct meetings with community members who are directly affected by local policies or with advocates who are working with these populations
- Conduct meetings with advocates who have developed successful responses to similar issues
- Internet Research
- Public Records Act/Freedom of Information Act Requests (later)

STORY COLLECTION

- ◉ Develop a process for collecting stories within your coalition.
- ◉ Consider your audience
- ◉ Consider your ask
- ◉ Where do you find stories? What do you do with them?

STORY COLLECTION

- ◉ Map existing story collection projects
 - Learn from successes and challenges of partners
- ◉ Protect safety and identity of individuals

STORY COLLECTION (CONT.)

- ◉ Consider community documentation projects or regional ones
- ◉ What will you document?
 - Examples of racial profiling
 - Violations of the 48 hour rule
 - Harmful interrogation practices
 - Other due process violations
 - People wrongfully arrested

POLLING QUESTION

- ◉ Does your coalition have a process for collecting stories?

FILING A COMPLAINT WITH THE DHS OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES

- ◉ File a complaint with the DHS Office for Civil Rights and Civil Liberties at http://www.dhs.gov/xabout/structure/gc_1273526572731.shtm
- ◉ DHS OCRCL complaint process asks for:
 - Description of circumstances
 - Relevant documents
 - Steps taken to resolve the issue

CHALLENGES WITH THE DHS OCRCL COMPLAINT PROCESS

- ⦿ Confidentiality
 - Fear of immigration, legal, or other consequences
- ⦿ Time intensive process, requires great effort
 - Putting together complaint
 - Response time from OCRCL
- ⦿ Language access
- ⦿ Technology limitations
- ⦿ What are the results?

WHY IS IT IMPORTANT TO CONTINUE FILING COMPLAINTS WITH OCRCL

- ◉ DHS cannot deny problems if they see complaints
- ◉ Developing a pattern and practice
- ◉ OCRCL new complaint review process
 - Protections against retaliation
- ◉ Important tool in changing administrative policies

SET UP A LOCAL/STATE COMPLAINT PROCESS

- ◉ Ask your locality or state to set up a complaint process
- ◉ Complaints should be submitted to the agency/facility (e.g., local jail) that commits the abuse as well as another agency that could hold them accountable locally (e.g., city council)

IN-DEPTH INFORMATION COLLECTION

- Why is it important to do additional information gathering?
 - The targets are not necessarily apparent and so this helps to select primary and secondary target
 - How?
 - By building wedges between police/jails and ICE
 - Identifying allies

WEBSITE INFO COLLECTION

- ◉ Places to begin collecting information
- ◉ ICE websites:
 - http://www.ice.gov/secure_communities/
 - <http://www.ice.gov/criminal-alien-program/>
 - <http://www.ice.gov/287g/>
- ◉ Browse city/county websites for information
 - Traffic stop data
- ◉ Gov't watchdogs such as Inspector General, DOJ civil rights pages e.g. Office of Special Litigation
 - (e.g. Prior litigation against county/LEA)
 - <http://www.justice.gov/crt/about/spl/findsettle.php>

COLLECTING INFORMATION

- Reporters
 - Local newspapers - e.g. Frederick Newspost conducted Traffic StopWatch
- Oversight hearings in your county
 - Oversight commissions
 - County meeting reports
- Open society/open record organizations
 - DC Partnership for Civil Justice has policing policies
- Ask for it

PUBLIC RECORD ACT (PRA) REQUEST V. FREEDOM OF INFORMATION ACT (FOIA) REQUESTS

- ◉ PRA Request: Information relating to conduct or performance of a governmental function which is prepared, used or retained by any state or local agency/entity
- ◉ FOIA: Applies to federal records (5 U.S.C. §552)
- ◉ Great resources:
 - <http://www.rcfp.org/foia/>
 - http://www.citizen.org/litigation/free_info/

POLLING QUESTION

- ◉ Have you filed a foia or public record act request?
- ◉ Has it been denied?

INFO AVAILABLE UNDER FOIA AND PRA

- Documents, data, Correspondence, email, memos, drafts, notes, outlines, policies, procedures, regulations, directives, instructions, orders, bulletins, pamphlets or brochures, scripts, handouts, training manuals, guidances, guidelines, data, technical manuals, technical specifications, analyses, evaluations, reports, summaries, writings, logs written record or records by other means such as records on computers, computer sources, electronic communications, computer disks, CD-Rom, video or digital video disks, audio tapes, videotapes, faxes, emails

BUT.. DO YOU WANT TO ASK FOR EVERYTHING?

- ◉ Not always. Good to narrow request if possible.
 - Specific policy
 - Take a specific period of time and examine patterns and trends

WHO CAN MAKE THE REQUEST?

- ◉ *PRA*: Generally, no limitation. Some states reference ‘citizen.’
- ◉ *FOIA*: “any person” may request documents under the Act. 5 U.S.C. § 552(a)(3).⁴ Courts have long held that the “any person” standard applies to both U.S. citizens and foreign citizens. Any person includes organizations.
 - Caution: However, sometimes government tries to bar some noncitizens from making the request.

AGENCY WILL LIKELY REFUSE TO PROVIDE RECORDS OR “REDACT”

- *Redact: censor or remove text or info*
 - *Blacked out page or may tell what is redacted*
- **FOIA: 5 U.S.C. § 552(b)(1)-(9) and PRA have some similar exemptions:**
 - Violate personal privacy or vital governmental interests
 - Examples: Name of police officers,
 - Investigative functions of law enforcement and other agencies with investigative responsibilities

OTHER REDACTIONS...

- Legitimate business interests of other citizens
 - Contracts between private entities
- Inter-agency or intra-agency memoranda or letters relating to policy
 - Email exchanges on how to tackle
- Positions being developed by the agencies
 - Discussions about adopting a particular political position

ARGUMENTS IN RESPONSE TO REDACTIONS

- ◉ Government failed to justify redaction
- ◉ Redaction is overly broad; not narrowly tailored
- ◉ Interferes with public's right to know and sufficient oversight
- ◉ Privacy interests cannot be outweighed by due process violations

TIMELINE: DOES IT WORK WITH CAMPAIGN TIMELINE?

- FOIA: must respond within 20 days; then appeal and litigation
 - Expedited processing available - must show compelling need
 - Months/years
- PRA: depends on state statute
 - Weeks/months
- Tip: targeted request
 - Making it too broad may result in interminable delays ---

COSTS AND FEE WAIVERS: HOW DOES IT IMPACT CAMPAIGN

- ◉ Reasonable cost and expenditure: #/page
- ◉ Generally, FOIA and PRA statute encourage agencies to waive fees where disclosure would benefit the public interest.
- ◉ FOIA: news representatives, educational institutions are also granted fee waivers because of their ability to provide info to public
 - Growing basis of denial: commercial because commercial interest can be litigation

WHAT DO YOU DO WITH INFO

- ◉ Who will review the information?
 - NDLOM v. ICE (FOIA litigation on Scomm)
- ◉ Analyze information?
- ◉ Appeal or file litigation in case info is not provided?
 - Law school clinics
 - Volunteers?

USING DATA TO DEVELOP OR
NEGOTIATE BETTER
POLICIES WITH YOUR JAIL
OR POLICE DEPARTMENT

USING DATA TO SELECT TARGETS, CREATE WEDGES AND BUILD ALLIANCES

- Sheriff v. police departments
 - sheriffs overstepping authority to make arrests (e.g. TN 287(g) agreement)
 - Interference with community policing or fear of racial profiling
 - Costs
 - Federal investigations
- Local v. state governments
 - Losing control over local information
 - Funding
 - LEA mistrust of federal authorities

NEGOTIATIONS WITH JAILS, SHERIFFS, COURTS

- Sheriffs, Jails, Police Department:
 - Accountability - who and what
 - County
 - Human Rights commissions or other commissions
 - State or County agencies: oversight
 - Election cycles
 - Costs and Funding threats
 - Liabilities
 - Bad press or federal investigations:
 - Has your county already been investigated and paid damages?

NEGOTIATIONS WITH COURTS

- Courts: Who are the stakeholders and who can the public advocate with?
 - Court administrators
 - Justice commissions
 - Public defenders--potential restrictions on lobbying or advocacy
 - Prosecutors
- Examples of policies where courts have attempted to limit accumulation of data on immigration status or limit contact by ICE
 - Connecticut, Kings County, WA, Madison, WI, Cook County, IL, Massachusetts

RIKERS, NY EXAMPLE: NEGOTIATING WITH LOCAL JAIL

- Rikers Know Your Rights programs on Detainers
- Negotiations with NY Dept of Corrections
 - Know Your Rights in the jail
 - Notices about detainers before info sent to ICE
 - Rights sheets
- Impact: Interferes with ICE access to prisoners
- Who: Immigrant Defense Project, Families for Freedom, Bronx Defenders

POLLING QUESTION

- ◉ Have you tried to take a tour of your local jail?

LONG TERM RELATIONSHIPS WITH POLICE OR JAIL

- ◉ Influence or create new policies and practices in the jail
 - Detainer policies: examples
 - detainer policies with jails: NM, RI, San Francisco
 - Requiring notice & consent to ICE interviews
 - Provide training and resources to LEA
- ◉ Administrative Advocacy support:
 - speaker's bureau
 - targets for op-ed writing
 - support in lobbying activities

Questions?

IN CLOSING . . .

- Last year's webinars can be viewed at:
<http://www.immigrationadvocates.org/nonprofit/webinars>
- The next webinar in this series covering litigation strategies, policy reform, organizing and messaging will be held in one week on Wednesday, June 29th from 2-3:30 pm EST. To register, go to
<https://www1.gotomeeting.com/register/271320705>

CONTACT US . . .

- ◉ Angie Junck
 - Immigrant Legal Resource Center; ajunck@ilrc.org
- ◉ Jumana Musa
 - Rights Working Group; jmusa@rightsworkinggroup.org
- ◉ Paromita Shah
 - National Immigration Project of the National Lawyer's Guild; paromita@nationalimmigrationproject.org
- ◉ Aadika Singh
 - Rights Working Group; asingh@rightsworkinggroup.org