

# DENYING ACCESS: WEBINAR 2

BUILDING A SUCCESSFUL LOCAL  
CAMPAIGN AGAINST THE  
CRIMMIGRATION MERGER

2-3:30pm EST, Wednesday, June 29nd, 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](mailto:etucker@detentionwatchnetwork.org)
    - or
  - (202) 393-1044 Extension 223

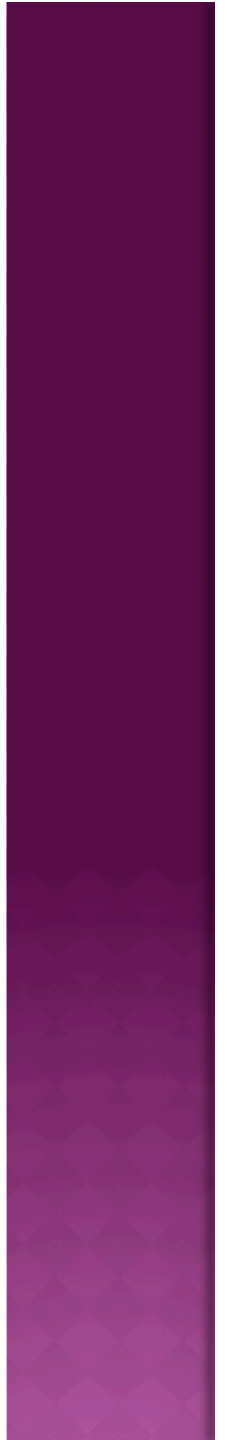
# WEBINAR 2 PRESENTERS

- ◉ Joan Friedland, National Immigration Law Center (moderator)
- ◉ Debbie Smith, Catholic Legal Immigration Network, Inc. (CLINIC)
- ◉ Melissa Keaney, National Immigration Law Center & Sarahi Uribe, NDLOM
- ◉ Alisa Wellek, Immigrant Defense Project

# TODAY'S WEBINAR

- ◉ Policies that can limit your local law enforcement's participation in ICE ACCESS
- ◉ Litigation strategies that can help fight back against ICE ACCESS
- ◉ Messaging approaches to consider in framing and talking about ICE ACCESS

**POLICY PROPOSALS:  
LIMITING LOCAL  
ENFORCEMENT OF  
IMMIGRATION LAW**



# STOPS & ARRESTS

- **THE PROBLEM:**

- 1<sup>st</sup> step in funneling non-citizens from state and local custody to ICE custody
- Most stops for vehicle code violations which otherwise mere citation
- Lack of drivers license turns citation into arrest

# PROPOSALS FOR STOPS & ARRESTS

- ◉ Limit stops for minor infractions, burnt tail-light, etc.
- ◉ Adopt policy against questioning about immigration status
- ◉ Educate police about state law prohibiting stops based on licensing
- ◉ Monitor police activities
- ◉ Examples of policies:
  - Sacramento; Santa Clara

# PROPOSALS TO PERMIT EXPANDED DEFINITION OF ID DOCUMENTS

- Accept photo ID documents
  - Out-of-state documents
  - School documents
  - Municipal ID
  - Foreign documents
  - Local government issued cards
- Accept secondary evidence in conjunction with less traditional ID



# PROPOSALS TO CONTROL FINGERPRINTING

- ◉ Establish range of misdemeanors not requiring fingerprinting if state law permits
- ◉ Limit sharing of fingerprinting results with state and federal agencies
- ◉ Institute oversight mechanisms

# PROPOSALS TO LIMIT S-COMM

- ◉ Refusing to participate
  - Massachusetts
  - New York
  - Illinois
- ◉ Opt out
  - Santa Clara
  - San Francisco
- ◉ Proposing specific legislation
  - California
  - Illinois

# POLL

- ◉ Which is true about advocacy against S-Comm in your community?
  - There is a campaign against S-Comm
  - There is a campaign to support state legislation against S-Comm
  - There is both a campaign against S-Comm and a campaign to support state legislation against S-Comm

# PROPOSALS TO LIMIT DETAINERS

- Limit detainers to consideration only where eligible for federal reimbursement
- Limit detainers to those convicted of certain crimes
- Limit detainers only to individuals where probable cause to believe committed serious and violent crime
- Monitor time person held to conform to 8 CFR Section 287.7
- Provide information to detainees
- Refuse to submit to detainers

# DETAINDER POLICIES

- Locations with informed detainer policies
  - New Mexico
  - San Francisco
  - Rhode Island
- Locations campaigning for better policies
  - New York
  - Santa Clara
- Detainer campaigns supplement S-Comm/  
CAP campaigns

# PROPOSALS TO LIMIT ICE ACCESS TO STATE & LOCAL JAILS

- ◉ Limit local jails from compiling records of inmate surnames, race or ethnicity, SS#, or place of birth
- ◉ Limit access to those convicted of a crime
- ◉ Limit ICE's access to these records, if such records exist

# PROPOSALS TO LIMIT ICE ACCESS TO STATE & LOCAL JAILS

- ◉ Jail policies should include:
  - Notifying inmates that ICE seeks access
  - Informing inmates that their own statements can be used against them
  - Clarifying that inmates may decline to be interviewed
  - Require inmates written consent to participate in ICE interview
  - Require ICE to wear uniforms in the jails

# POLL

- ◉ Which limitation on ICE access to jails is most possible in your community?
  - Limit jail from compiling records
  - Limit ICE access to those convicted of a crime
  - Require inmates' written consent to participate in ICE interview
  - Notify inmates that ICE seeks access



# ICE IN STATE COURTS

## ◉ **No ICE in state courtroom policies:**

- Washington State
- Connecticut

# KNOW YOUR RIGHTS

- Provide **Know Your Rights** materials to immigrant communities to ensure individuals understand
  - Right to remain silent, right to not sign anything
  - Significance of ID documents
  - Time limits on detainers
  - Importance of sharing personal experiences to permit documenting abusive practices

LITIGATION: SUING THE  
GOVERNMENT FOR  
PRACTICES RELATED TO  
STATE AND LOCAL  
INVOLVEMENT IN  
FEDERAL IMMIGRATION  
ENFORCEMENT



# POLL

- ⦿ I think of litigation as:
  - The be-all-end-all way to stop police/ICE collaboration
  - An important tool, among many, to stop police/ICE collaboration; OR
  - Totally irrelevant to the work I am doing to stop police/ICE collaboration.

# WHY FILE A LAWSUIT

- ◉ To get information
- ◉ To get bad practices stopped
- ◉ To collect damages for an injured party
- ◉ To make participation in ICE ACCESS programs costly
- ◉ To get someone released from jail
- ◉ To use in organizing and advocacy
- ◉ To expose government misconduct
- ◉ To reframe the debate

# POSSIBLE LAWSUITS

- ◉ Appeal of a Freedom of Information Act (FOIA) or state public record act request
- ◉ Petition for writ of habeas corpus
- ◉ Civil rights suit for damages or changes in policies

# RECORDS REQUEST

- **When to file the lawsuit:**
  - Government has not answered the request
  - Government has not turned over relevant documents
  - Government has made improper claims that the records should not be released
- **How to sue:**
  - Lawsuit in federal court for federal Freedom of Information Act (FOIA) requests
  - Where permitted under state law, lawsuit in state court for state public records requests
- **Who to sue:**
  - Agency or agencies that failed to adequately respond or that improperly alleged that records should not be released

# RECORDS REQUEST (CONTINUED)

## ◉ Possible results

- Judge orders agency to conduct additional search for records
- Judge orders agency to turn over records
- Attorney's fees and costs of litigation



# NDLON LAWSUIT

- Example: NDLON lawsuit in federal court to get federal government to disclose S-Comm documents
- Results:
  - Disclosure of thousands of pages of previously undisclosed documents
  - Disclosure of government deception
  - Government will likely have to pay attorneys' fees and costs of lawsuit

# HABEAS CORPUS PETITION

- ◉ Who can file: person wrongfully in custody of the government
- ◉ Where to file: federal or state court
- ◉ Who to file against: individuals responsible for detention (usually the Sheriff or Warden of the jail)

# HABEAS CORPUS (CONTINUED)

- Example: Ocampo v. Gusman - habeas petition in Louisiana federal court for individual held on detainer for 95 days past expiration of the 48-hour period
- Possible results:
  - Jailed person is released from custody
  - ICE takes custody of jailed person
  - Attorney's fees and costs
  - Sets the stage for filing civil rights action for damages resulting from the illegal detention

# SUING THE GOVERNMENT UNDER FEDERAL CIVIL RIGHTS LAWS

- ◉ Who can sue:
  - People or organizations injured when the government violates federal or state laws protecting civil rights
- ◉ Where can they sue:
  - Federal court
  - State court
- ◉ Possible results:
  - Money damages
  - Information through discovery on government conduct or policies
  - Change in policies (injunctive relief)
  - Attorney's fees and costs
- ◉ Who to sue:
  - Local or state officials responsible for policies that violate civil rights
  - Federal government officials

# SUING THE GOVERNMENT UNDER FEDERAL CIVIL RIGHTS LAW (CONTINUED)

## ○ Common Fact Patterns & Examples:

- Violation of the 48-hour limitation on immigration detainers
  - Example: NYC lawsuit for money damages resulting from prolonged detention after 48 hour limit for detainer expired (NYC agreed to pay \$145,000 in damages for wrongful detention)
  - Example: New Orleans suit on behalf of two individuals for damages resulting from Sheriff's department unlawful detention on purported authority of immigration detainer

# SUING THE GOVERNMENT UNDER FEDERAL CIVIL RIGHTS LAW (CONTINUED)

## ◉ Common Fact Patterns & Examples:

### ■ Police Misconduct/Racial Profiling

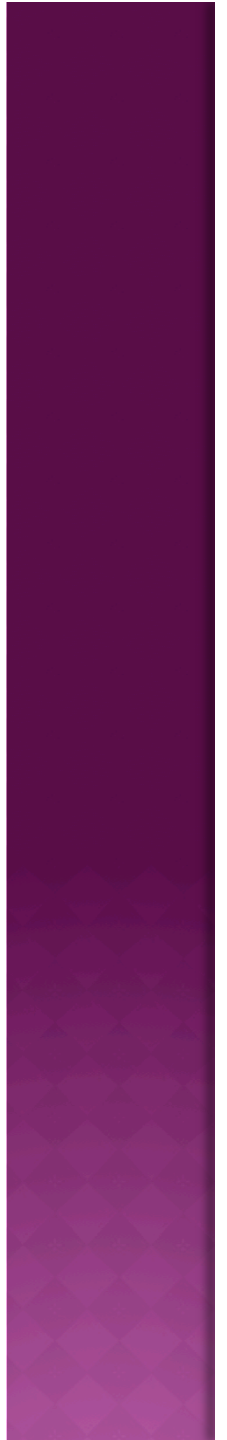
- ◉ Example: Lawsuit against Arizona's racial profiling law, SB 1070 (ongoing, majority of bill enjoined from taking effect)
- ◉ Example: Sonoma County lawsuit against police and ICE for joint enforcement program targeting Latino community (stopped police practice of arresting on basis of detainer alone, litigation continues on a number of remaining issues)
- ◉ Example: Suit against Sheriff Arpaio of Maricopa County based on documented cases of racial profiling

# POLL

- ◉ My biggest obstacle to engaging in litigation to stop police/ICE collaboration is:
  - Lack of available attorneys in my area;
  - Difficulty documenting abuses to provide basis for litigation; OR
  - No obstacles, litigation is already an effectively used tool to stop police/ICE collaboration in my area.

# THE DOWNSIDE OF LITIGATION

- ◉ Cost
- ◉ Time
- ◉ Rigid rules
- ◉ Lawyers





# LITIGATION AND ORGANIZING

- ◉ Litigation doesn't happen in a vacuum
- ◉ Maximizing leverage litigation can provide
- ◉ Example: 48-hour detainer litigation in New Orleans, Louisiana

# POINTS OF CONFLICT BETWEEN LITIGATION AND ORGANIZING

- ◉ Who is the client
- ◉ How decisions about legal strategy are made
- ◉ When to go to the press
- ◉ When to settle or go to trial

# ORGANIZER'S PERSPECTIVE -- LITIGATION AND ORGANIZING: SOME DO'S AND DONT'S

## ◉ Do's:

- Use legal strategy to enhance the overall campaign, not to eclipse it.
  - Think of law as a “tool” in broader organizing effort
- Use key moments in the litigation to mobilize community, educate public, do press work, and engage your target
- Use litigation as a way to give voice to the affected people and community
  - Think about leadership development
- Use individual cases towards a collective community goal
- Make sure clients and lawyers are partners in strategy

# ORGANIZER'S PERSPECTIVE -- LITIGATION AND ORGANIZING: SOME DO'S AND DONT'S

## ⦿ Don't:

- Don't rely solely on a legal strategy to win desired outcome
- Don't limit the campaign demands solely on legal framework
- Don't concede demands around what's morally right just because there's no law about it
- Don't lose momentum in campaign because the legal process is slow. Legal strategy is just one part of it
- Don't define success solely based on whether case "won or lost"
- Don't view the client/attorney relationship as a doctor/patient relationship

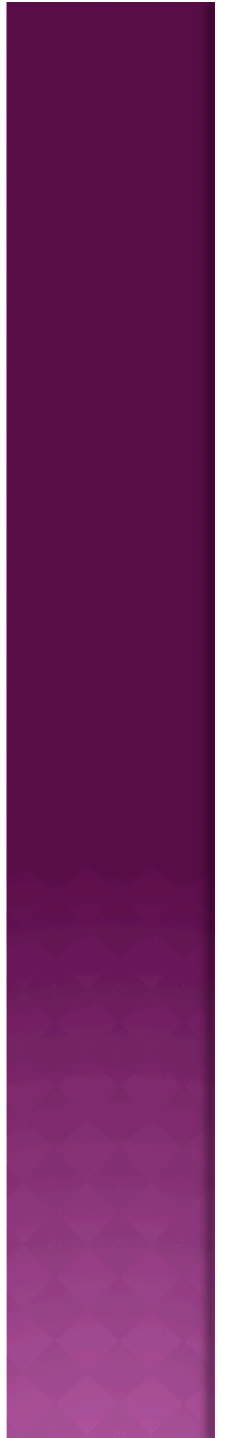
# MESSAGING

# WHY PAY ATTENTION TO MESSAGING

- ⦿ “Packaging” and “what tests well”
- ⦿ Framing - conceptual construct for how to think about the issue
- ⦿ Central to campaign work
  - Needs to be carefully tailored
  - Different audiences, goals
- ⦿ Implications for related issues - e.g., CIR

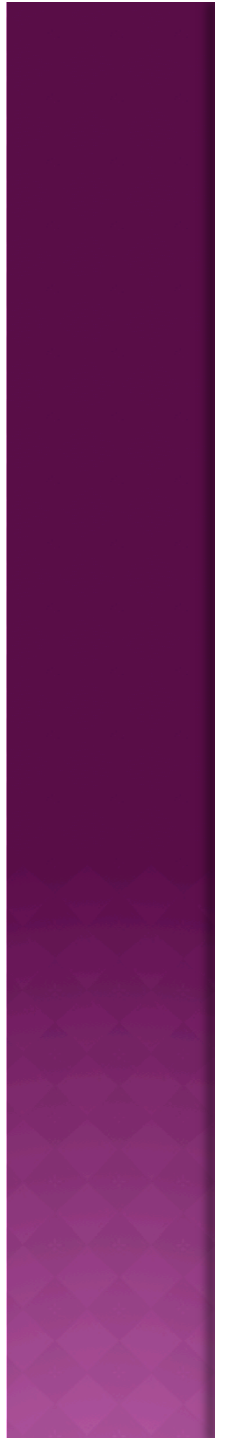
# EXAMPLES OF EFFECTIVE MESSAGING

- ◉ SB 1070
- ◉ New York S-Comm Campaign
- ◉ DC S-Comm Campaign



# BACKGROUND INFO ABOUT NEW YORK S-COMM CAMPAIGN

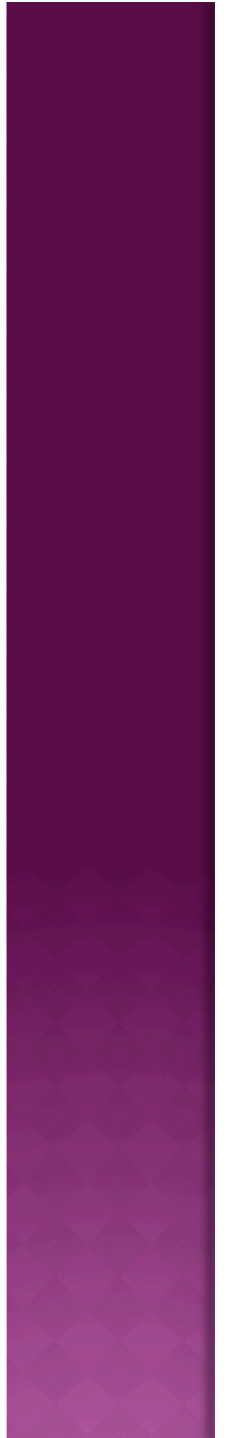
- ⦿ New York Working Group Against Deportation
  - Coalition members
- ⦿ Points of Unity
- ⦿ How Messaging Affected the Campaign





# CURRENT MESSAGING ABOUT ICE ACCESS

- ◉ No unified messaging across board
- ◉ Different advantages and trade-offs with different messaging
- ◉ Recognize we have different approaches



# MESSAGING WE CURRENTLY UNIFY AROUND

- ◉ Public safety
- ◉ Racial profiling
- ◉ Costs
- ◉ Fairness and due process
- ◉ Effects on families and communities
- ◉ ICE as bad agency - no accountability, lack of complaint mechanisms

# POLL

- How unified is the messaging that you and other advocates in your community are using about ICE ACCESS?
  - Highly unified
  - Above average
  - Average
  - Below average
  - Poor
  - Haven't been paying much attention to messaging

# EXAMPLES OF MESSAGING AND THEIR PROS & CONS

- “Low-level offenders and people who are innocent get caught up in these enforcement programs”
- “People in the US are supposed to be presumed innocent until proven guilty”
- “ICE is not focusing on “Level 1” criminals”

Pros	Cons
-Highlights critical problem that seems fundamentally unfair, resonates with public	-Question of distinguishing between “deserving” and “undeserving” (and how we distinguish)

# EXAMPLES OF MESSAGING AND THEIR PROS & CONS

- “People who have been through the criminal justice system don’t deserve deportation as a second punishment”

Pros	Cons
-Highlights unfairness of singling out immigrants for additional punishment, links criminal justice system to deportation system	-Calls attention to immigrants who do have criminal convictions

# EXAMPLES OF MESSAGING AND THEIR PROS & CONS

- “US Citizens and LPRs without deportable offenses get caught up” (potential for error)

Pros	Cons
-Brings attention to groups that are typically thought of as having/deserving more rights, fact that programs aren't working as advertised	-Privileges certain groups of immigrants, suggests that programs wouldn't be as problematic if they did work as advertised

# EXAMPLES OF MESSAGING AND THEIR PROS & CONS

- “ICE ACCESS diverts law enforcement resources from focusing on serious criminals”

Pros	Cons
<ul style="list-style-type: none"><li>-Highlights significant costs and public safety concerns</li><li>-Can get public officials on your side</li></ul>	<ul style="list-style-type: none"><li>-Assumes the criminal justice system works properly when many communities feel like they are already hyper-targeted by police</li><li>-Jeopardizes alliance-building with criminal justice allies</li></ul>

# EXAMPLES OF MESSAGING AND THEIR PROS & CONS

- “ICE ACCESS is costly to communities and drains local resources”

Pros	Cons
-Especially in current economic climate, money matters	-What if ICE ACCESS didn't cost communities money?



# CONTACT US . . .

- ◉ Debbie Smith
  - ◉ Catholic Legal Immigration Network Inc.;  
[dsmith@cliniclegal.org](mailto:dsmith@cliniclegal.org)
- ◉ Melissa Keaney and Joan Friedland,
  - National Immigration Law Center; [keaney@nilc.org](mailto:keaney@nilc.org) and  
[friedland@nilc.org](mailto:friedland@nilc.org)
- ◉ Alisa Wellek,
  - ◉ Immigrant Defense Project;  
[awellek@immigrantdefenseproject.org](mailto:awellek@immigrantdefenseproject.org)

# Q&A

THANK YOU!

