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Loyola Public Interest Law Reporter

# RESTORING TRUST AND ADVANCING JUSTICE: ADOPTING THE ILLINOIS TRUST ACT IS THE REAL WAY TO SECURE COMMUNITIES

*by* JOSEPH M. GIETL

Earlier this year, the Republican leadership in the U.S. House of Representatives sounded the death knell for passage of a comprehensive immigration reform bill.<sup>1</sup> While Washington's partisan gridlock continues unabated, the number of persons deported under the Obama Administration has soared to nearly two million,<sup>2</sup> giving rise to the president's newest moniker: "Deporter-in-Chief."<sup>3</sup>

Increased deportations and state and local involvement in federal immigration enforcement greatly impact the 198,000 Illinois family households that contain at least one undocumented member.<sup>4</sup> In addition, the increased enforcement fosters fear in the communities where these families live and work, hindering cooperation with law enforcement agencies (LEAs).<sup>5</sup> Nearly 90 percent of those households are mixed status (i.e., they include another member who is an immigrant with legal status or a U.S. citizen),<sup>6</sup> which leads to difficult family choices often resulting in painful separation.<sup>7</sup>

#### SECURE COMMUNITIES PROGRAM AND ITS BROAD REACH

One of the administration's most controversial tools responsible for increasing the number of deportations is the Secure Communities program, a sweeping federal immigration enforcement initiative carried out by U.S. Immigration and Customs Enforcement (ICE) since 2008.<sup>8</sup> Secure Communities uses an information-sharing collaboration between federal LEAs to determine whether a person arrested and booked by a local LEA for a criminal violation may also be deportable.<sup>9</sup>

Proponents of Secure Communities have cited its efficiency in removing aliens with criminal records<sup>10</sup> and its ability to keep dangerous people "from falling through the cracks."<sup>11</sup> In fact, last year, ICE deported more than 133,000 noncitizens apprehended in the interior of the U.S., claiming that 82 percent of these persons had been convicted of a crime.<sup>12</sup> Despite the numbers, a majority of individuals caught up in ICE custody through the Secure Communities program have never engaged in violent or dangerous activities.<sup>13</sup>

In fact, 69 percent of ICE detainees in Illinois (during the 2012-13 federal fiscal years) were issued to individuals who had not been convicted of any offense, and a further 22 percent of the detainees were issued on persons in Illinois who at most had been convicted of a misdemeanor or petty offense, like traffic violations or an illegal entry.<sup>14</sup> Despite ICE's clearly enunciated enforcement priorities, just 6 percent of all detainees issued in Illinois during this time period were aimed at persons convicted of Level 1 crimes (e.g., serious felonies, like murder, arson, sex crimes, aggravated battery, etc.).<sup>15</sup> These numbers are grossly disproportionate to ICE's stated enforcement priorities of removing serious criminals. Mark Fleming, National Litigation Coordinator at the National Immigrant Justice Center in Chicago, is not surprised.<sup>16</sup> "ICE's data-keeping track record has been spotty," Fleming notes. "But through na-

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tionally-coordinated Freedom of Information Act requests, we are slowly getting a better sense of the damage done by programs like Secured Communities.”<sup>17</sup>

TABLE 1. *Comparison by county of ratio of ICE detainees to foreign-born non-U.S. citizens*

<i>Illinois County</i>	<i>Foreign-born, non-U.S. citizen population<sup>18</sup></i>	<i>Number of ICE detainees issued to county's jail<sup>19</sup></i>	<i>Ratio of ICE detainees to foreign-born, non-U.S. citizens</i>
<b>Cook</b>	599,042	1,848	0.31
<b>DuPage</b>	78,745	1,023	1.30
<b>Lake</b>	69,947	707	1.01
<b>Kane</b>	60,859	551	0.91
<b>Will</b>	40,205	429	1.07
<b>Champaign</b>	16,595	49	0.30
<b>McHenry</b>	15,634	287	1.84
<b>Winnebago</b>	12,741	152	1.19
<b>McLean</b>	6,971	177	2.54
<b>Kendall</b>	4,354	13	0.30

LOCAL GOVERNMENTS WEIGH IN

In response to this disturbing trend, a small but growing number of state and local governments – including the City of Chicago and Cook County – have enacted legislation to sharply curtail their LEA’s participation with Secure Communities in order to rebuild trust between local communities and the LEAs who are duty-bound to protect them.<sup>20</sup> Citing “troubling inconsistencies in ICE policies” which cause many LEAs to believe that the detainer requests are mandatory, the Cook County Board of Commissioners passed an ordinance in September 2011 to decline ICE detainer requests unless ICE presents a criminal warrant against the person they wish to detain and unless the federal government agrees to pay the \$43,000 daily cost incurred by Cook County by housing immigrants otherwise able to leave custody.<sup>21</sup> Similarly, the Sheriff of Champaign County advised ICE in March 2012 that his office would not hold inmates based on a routine detainer, but would require a court order or original warrant instead.<sup>22</sup> As observed in Table 1, such policies have had a dramatic effect on the number of ICE detainees issued among the immigrant population in these areas. Both Champaign and Cook Counties have some of

the lowest ratios of ICE detainers issued to foreign-born, non-U.S. citizens. *See* Table 1.

However, not all places in Illinois are as welcoming. Tensions have been growing<sup>23</sup> in central Illinois' McLean County, an area with a growing Latino and immigrant population.<sup>24</sup> Instead of reducing cooperation with ICE, the policy of McLean County Sheriff, Mike Emery, is to contact ICE any time a foreign-born person is arrested, without regard to the nature of the offense.<sup>25</sup> A local community-based organization alleged that the sheriff books immigrants into the jail on minor traffic offenses and then alerts ICE.<sup>26</sup> Traumatized, these immigrants are forced into federal custody away from their families and away from legal representation.<sup>27</sup> The sheriff, along with other local police chiefs, wrongly believes that contacting ICE is mandatory and defends the policy as non-discriminatory.<sup>28</sup> This is no slight misinterpretation of the law: an immigrant in McLean County is over eight times more likely to have an ICE detainer issued on him or her than in Cook or Champaign Counties. *See* Table 1.

#### CUE THE TRUST ACT

A new piece of legislation, the Illinois TRUST Act, was introduced in the Illinois legislature in Spring 2014, as an amendment to Senate Bill 1011.<sup>29</sup> The intention of the TRUST Act's creators was "to make it as comprehensive as possible to find novel ways by which state and local governments can restore trust to immigrant communities in Illinois."<sup>30</sup> The Illinois TRUST Act would be modeled after other state legislation passed in California and Connecticut and pending in Arizona and Massachusetts.<sup>31</sup> The legislation would bar LEAs throughout the state from complying with ICE detainers once an individual is eligible for release from custody.<sup>32</sup> A bill of this kind would go far to help restore trust between the state's immigrant population and LEAs, who depend on immigrants to report criminal activity and to "act as the eyes and ears of the community."<sup>33</sup>

One unique goal of the legislation is to add safeguards to help immigrants in obtaining U Visa certifications.<sup>34</sup> It includes language affording an individual an opportunity to seek a U Visa certification from a state court if a local LEA delays more than 90 days in responding to such a request.<sup>35</sup> The proposed legislation would also increase trainings to LEAs regarding the U Visa.<sup>36</sup> Fleming hopes that including the U Visa language in the act will facilitate victims' feeling comfortable coming forward to cooperate.<sup>37</sup>

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## CONCLUSION

Passage of the TRUST Act in Illinois would ensure the proper allocation for law enforcement priorities that strengthen immigrant communities' trust in LEAs rather than driving undocumented immigrants further into the shadows.

## NOTES

- 1 Jonathan Weisman, *Boehner Doubts Immigration Bill Will Pass in 2014*, N.Y. TIMES, (Feb. 6, 2014), <http://www.nytimes.com/2014/02/07/us/politics/boehner-doubts-immigration-overhaul-will-pass-this-year.html>.
- 2 Michael D. Shear and Julia Preston, *Deportation Policy Shift Is Signaled by Obama*, N.Y. TIMES, (Mar. 14, 2014), [http://www.nytimes.com/2014/03/15/us/politics/deportation-policy-shift-is-signaled-by-obama.html?\\_r=0](http://www.nytimes.com/2014/03/15/us/politics/deportation-policy-shift-is-signaled-by-obama.html?_r=0).
- 3 Reid J. Epstein, *National Council of La Raza leader calls Barack Obama 'deporter-in-chief'*, POLITICO, (Mar. 4, 2014), <http://www.politico.com/story/2014/03/national-council-of-la-raza-janet-murguia-barack-obama-deporter-in-chief-immigration-104217.html>.
- 4 Fred Tsao, *Illinois' Undocumented Immigrant Population: A Summary of Recent Research by Rob Paral and Associates*, ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, at 7, (2014), <http://icirr.org/sites/default/files/Illinois%20undocumented%20report.pdf>.
- 5 Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, DEP'T OF URBAN PLANNING AND POLICY, UNIV. OF ILL. AT CHI., at 5, (2013), [http://www.uic.edu/cuppa/gci/documents/1213/Insecure\\_Communities\\_Report\\_FINAL.pdf](http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf) (“[A] substantial portion of the Latino populations in Cook . . . Count[y] are reluctant to voluntarily contact the police to report a crime or to provide information about crimes specifically because they fear that police officers will inquire about the immigration status of themselves, their friends, or their family members”).
- 6 Tsao, *supra* note 4.
- 7 Nicole M. Jacobsen, *Nicole's story: A Father Departed, a Family Separated*, REFORM IMMIGRATION FOR AMERICA BLOG, (Mar. 24, 2014, time it was last accessed?), <http://www.reformimmigrationforamerica.org/blog/latest-news/item/1385-nicole-s-story-a-father-deported-a-family-separated.html> (“Deportation of a loved one is a pain I can only imagine is matched by death itself. I seek solace that at least I can talk to him and maybe see him once a year, but there are times when a loved one is needed for support companionship, affection, attention; these things cannot be replaced by the phone. Many nights my daughter cries herself to sleep, telling me she won't be little forever and she wants to sleep in her dad's arms while she's still small. . . . Immigration often claims family unity is important, yet never backs it up with decisions that show empathy and compassion for the families that are being torn apart, for the children who grow up fatherless or motherless or sometimes worse in foster homes while both parents are deported”).
- 8 *Secure Communities*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/) (last visited March 23, 2014).
- 9 *Frequently Asked Questions (FAQs): What is Secure Communities?*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, [http://www.ice.gov/secure\\_communities/faq.htm](http://www.ice.gov/secure_communities/faq.htm) (last visited Mar. 23, 2014). See 8 U.S.C. § 1722(a)(2) (2014). First, fingerprint data captured by a local LEA is

sent to the Federal Bureau of Investigation (FBI), which checks the new data against its nationwide criminal justice database. See Lindsey J. Gill, *Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa*, 54 WM. & MARY L. REV. 2055, 2059 (2013), available at <http://scholarship.law.sm.edu/wmlr/vol54/iss6/7>. Next, through Secure Communities, the FBI automatically shares the fingerprint data with ICE. *Id.* Finally, once a person is identified as potentially deportable, ICE sends a request to the local LEA to continue detaining an alleged unauthorized alien for up to 48 hours—even if he or she would otherwise have been released—so that ICE can transfer the person from the local LEA’s custody to ICE custody. See 8 e-C.F.R. § 287.7(d) (2014). Federal courts continue to reaffirm the voluntary nature of these so-called “ICE holds” or “ICE detainers” on local LEAs. See, e.g., *Galarza v. Szalczyk*, 12-3991, 2014 WL 815127 (3d Cir. 2014) (holding that 8 C.F.R. § 287.7 “merely authorizes the issuance of detainers as requests to local LEAs”). Secure Communities’ instantaneous data sharing with the FBI is now activated in every single county-level jurisdiction in the United States, including all 102 Illinois counties. See *Activated Jurisdictions*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (2014), <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>.

10 *What Others Are Saying. . . About Secure Communities*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (2014), [www.ice.gov/doclib/secure-communities/pdf/what-others-say.pdf](http://www.ice.gov/doclib/secure-communities/pdf/what-others-say.pdf).

11 *Id.*

12 *FY 2013 ICE Immigration Removals*, ERO Annual Report, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (Feb. 9, 2014), [www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf](http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf).

13 *Targeting of ICE Detainers Varies Widely by State and by Facility*, TRANSACTION RECORDS ACCESS CLEARINGHOUSE (TRAC) IMMIGRATION, (Feb. 11, 2014), <http://trac.syr.edu/immigration/reports/343/>. In an effort to more clearly delineate ICE’s enforcement priorities, a series of memos were issued by ICE Director, John Morton, in 2011, laying out a three-tiered system for reviewing who should be detained and transferred to ICE custody. See John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Memorandum, (Mar. 2, 2011), available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>. The memos state that ICE should prioritize removing criminals with aggravated felonies or who have re-entered illegally after previously being deported. *Id.* At the same time, the memos encourage ICE officers to consider granting prosecutorial discretion *not* to pursue deportation for victims of serious crimes, domestic violence survivors, and others who meet a laundry list of 19 different factors. See John Morton, Memorandum, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Memorandum, (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> (“The term ‘prosecutorial discretion’ applies to a broad range of discretionary enforcement decisions, including but not limited to . . . deciding to issue or cancel a notice of detainer [and] . . . deciding whom to stop, question, or arrest for an administrative violation”). This authority is rarely granted at the Chicago Immigration Court, where a mere 5 percent of all closed cases from October 2012 to February 2014 were a result of ICE exercising prosecutorial discretion. See *Immigration Court Cases Closed Based on Prosecutorial Discretion by Immigration Court and Hearing Location*, TRANSACTION RECORDS ACCESS CLEARINGHOUSE (TRAC) IMMIGRATION, (Feb. 28, 2014), [http://trac.syr.edu/immigration/prosdiscretion/compbacklog\\_latest.html](http://trac.syr.edu/immigration/prosdiscretion/compbacklog_latest.html).

14 *Targeting of, supra* note 13.

15 *Id.*

16 In-Person Interview with Mark Fleming, National Litigation Coordinator at the National Immigrant Justice Center in Chicago, Ill. (Mar. 24, 2014).

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17 *Id.*

18 *Selected Characteristics of the Native and Foreign-Born Populations; 2008-2012 American Community Survey 5-Year Estimates*, American FactFinder, U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_S0501](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_S0501) (last visited Mar. 20, 2014) (Foreign-born non-U.S. citizens include both persons who are undocumented and those who are legally authorized to remain in the United States).

19 *ICE Detainers Issued for Facilities by Level of Most Serious Conviction*, TRANSACTION RECORDS ACCESS CLEARINGHOUSE (TRAC) IMMIGRATION, (Mar. 19, 2014), <http://trac.syr.edu/immigration/reports/343/include/table3.html> (From most serious (Level 1) to least serious (Level 3) based on "ICE Criminal Offense Levels Business Rules." Data cover all of FY 2012 and FY 2013 with the exception of three months: February 2013, April 2013, and September 2013).

20 *Challenge unjust immigration detainers*, NATIONAL IMMIGRANT JUSTICE CENTER, <http://www.immigrantjustice.org/detainers#Opposition> (last visited Mar. 20, 2014). For example, Chicago's City Council passed a "Welcoming City Ordinance" in September 2012 that prohibits Chicago Police officers and other city agencies from asking about a person's immigration status, unless a court order has been issued. CHICAGO, IL, MUNICIPAL CODE OF CHICAGO, ch. 2-173, §2-17-020 & §2-173-040 (2012), available at <https://immigrantjustice.org/sites/immigrantjustice.org/files/Chicago%20Welcoming%20Ordinance.pdf>.

21 "Policy for Responding to ICE Detainers," COOK CTY. ORD. 11-O-73, (Feb. 19, 2014), available at <http://www.cookcountyclerk.com/countyboard/DocumentLibrary/2011ordinances.pdf> (The ordinance also found that "ICE detainers encourage racial profiling and harassment").

22 Letter from Dan Walsh, Sheriff of the Champaign Cty. Sheriff's Office, to ICE, (Mar. 8, 2012), available at <http://www.immigrantjustice.org/detainers#Opposition>.

23 Edith Brady-Lunny, *Hispanic group protests criminal justice council, Sheriff Emery*, THE PANTAGRAPH, (July 5, 2012), [http://www.pantagraph.com/news/local/crime-and-courts/hispanic-group-protests-criminal-justice-council-sheriff-emery/article\\_c59e0302-c6f1-11e1-9462-0019bb2963f4.html](http://www.pantagraph.com/news/local/crime-and-courts/hispanic-group-protests-criminal-justice-council-sheriff-emery/article_c59e0302-c6f1-11e1-9462-0019bb2963f4.html).

24 *McLean County, Illinois*, PEWRESEARCH HISPANIC TRENDS PROJECT, available at <http://www.pewhispanic.org/states/county/17113/> (last visited Mar. 24, 2014).

25 Edith Brady-Lunny, *supra* note 23.

26 *Id.*

27 *Id.*

28 *Id.*

29 Fleming, *supra* note 16. See also Amendment 1 to Ill. Senate Bill 1011, (May 27, 2014), available at <http://www.ilga.gov/legislation/98/SB/PDF/09800SB1011sam001.pdf>.

30 *Id.*

31 *Challenge Unjust*, *supra* note 20.

32 *Illinois TRUST Act; The Problem: State and Local Law Enforcement Entanglement in Federal Immigration Enforcement*. Pamphlet, ILL. COALITION FOR IMMIGRANT AND REFUGEE RTS. (ICIRR), (Mar. 3, 2014).

33 Sheriff Mark Curran, Lake County, Ill., *Local Law Enforcement and the Strengthen and Fortify Enforcement (SAFE) Act*, NATIONAL IMMIGRATION LAW CENTER, (June 17, 2013), available at [www.nilc.org/document.html?id=937](http://www.nilc.org/document.html?id=937).

34 The U Visa (8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14 (2012)) encourages undocumented immigrants to work with their local LEAs to report criminal activity and cooperate in criminal investigations or prosecutions without fear of being detained and placed in removal proceedings due solely to their immigration status. See *How Law Enforcement Is Using the U-Visa, Practice Brief*, VERA INSTITUTE OF JUSTICE, CENTER ON IMMIGRATION AND JUSTICE,



(Oct. 2011), <http://www.vera.org/sites/default/files/resources/downloads/U-visa-practice-brief.pdf>. In order to apply for the U Visa, an immigrant crime victim needs an official from an appropriate LEA to certify that he or she was, is, or will be helpful to the investigation or prosecution of the crime. See *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, DEP'T OF HOMELAND SECURITY, at 6, available at [http://www.dhs.gov/xlibrary/assets/dhs\\_u\\_vis\\_a\\_certification\\_guide.pdf](http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf) (last visited Mar. 20, 2014). Thus, the LEA serves as a gatekeeper, and at a time when there simply are no viable immigration options for undocumented immigrants to legalize their status, a U Visa is often the only route available. *Id.* at 3. Due to substantial misinformation about the U Visa or blatant dilatory tactics, many LEAs refuse to sign the certification form when presented with one. See *How Law Enforcement, supra*.

35 Fleming, *supra* note 16.

36 *Illinois TRUST Act*, Pamphlet, *supra* note 32.

37 Fleming, *supra* note 16.