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RESOURCES



# MOVING TEXAS FORWARD

*Local Policies Towards Inclusive Justice*

August 2019

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# EXECUTIVE SUMMARY

**Texas is home to more than 4.8 million immigrants<sup>1</sup>—in fact, one in six residents is foreign born and 15% of native-born U.S. citizens in Texas have at least one foreign-born parent.<sup>2</sup>**

More than a million U.S. citizen children in Texas live with at least one family member who is undocumented.<sup>3</sup> At the same time, Texas jails more people than any other state<sup>4</sup> with approximately 250,000 people currently under some sort of correctional control.<sup>5</sup>

Today, these statistics are linked together through a direct pipeline between the criminal legal system and the immigration system. Between October 2017 and June 2018, 75% of people were arrested by US Immigration and Customs Enforcement (ICE)<sup>6</sup> as a result of contact with local law enforcement. The passage of Texas state law, SB 4, further solidifies the troubling entanglement between local law enforcement and federal immigration enforcement.

1 *Immigrants and the Economy in Texas*, New American Economy, available at <https://www.newamericaneconomy.org/locations/texas/> (last accessed August 2019).

2 *Fact Sheet: Immigrants in Texas*, American Immigration Council (Oct. 4, 2017), available at <https://www.americanimmigrationcouncil.org/research/immigrants-in-texas> (last accessed August 2019).

3 *Id.*

4 *Ending Mass Incarceration*, Texas Civil Rights Project, <https://texascivilrightsproject.org/our-work/criminal-justice-reform/> (last accessed August 2019).

5 Alexi Jones, *Correctional Control 2018: Incarceration and supervision by state*, Prison Policy Initiative (Dec. 2018), <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html>.

6 TRAC, *Tracking Over 2 Million ICE Arrests: A First Look* (Sept. 25, 2018), <http://trac.syr.edu/immigration/reports/529/>.

As a result, it is essential that immigration and criminal justice advocates, organizers and local elected leaders come together to work on solutions to address this dangerous relationship and begin to extricate local law enforcement from deportation work.

The Immigrant Legal Resource Center (ILRC) created *Moving Texas Forward: Local Policies Towards Inclusive Justice* for the many organizations and elected officials in Texas that are struggling to find solutions to disrupt this harmful arrest-to-deportation pipeline. *Moving Texas Forward* clarifies that every single entity within local government has a role to play: each has the power and the responsibility to protect the constitutional rights of its residents, the duty to responsibly administer local resources, and the requirement to be accountable to all residents.

**In February 2018, Alberto was working at a construction site** and listening to music with two co-workers. The police received a noise complaint, and when a police officer arrived at the site, he interrogated all of the workers, asking them to show identification. Alberto showed his Mexican consular ID card demonstrating Mexican citizenship—his only form of valid ID. The officer decided this was enough to believe that Alberto lacked legal documentation to be present in the United States, and the officer called ICE.

Within minutes, federal ICE agents arrived at the construction site and arrested Alberto and his co-workers. Alberto was held at the South Texas Detention Facility for three months and received a bond of \$11,000—an unimaginable sum for him to pay. After a mass mobilization by his community, Alberto was able to pay his bond, but he now has an open deportation case that will take years to resolve.

There are thousands of people like Alberto living in Texas, working to provide for their families and contributing to their communities. But not one of them lives freely. Every day, black people and people of color, including immigrants, are disproportionately impacted by biased policing, discrimination, and hate. These communities feel extreme fear and anxiety when commuting to work, driving their kids to school, going to the hospital, and interacting with law enforcement. Because of their fear of abuse, detention, deportation, and even death, these everyday activities become difficult, if not impossible, tasks for immigrants living and working in the United States.

In Texas, the passage of SB 4 is also an opportunity to transform the current local policy landscape into one that protects all residents, including immigrants. In times of great public agony, leaders are called on to show courage and take action. When federal and state government fail to serve the people, it is up to local elected officials to take concrete, progressive steps to address the needs of their communities, protecting them from abuse and discrimination.

Immigrant communities need to be equally served and protected, not criminalized. More broadly, black people and people of color living in Texas should not live in fear of profiling and abuse by their own local law enforcement. Black people, people of color, and immigrants deserve equal access to justice and services, and a guarantee that their constitutional rights will be respected and ultimately upheld by all public institutions and entities of government.

Through *Moving Texas Forward* we attempt to provide a comprehensive and thorough look at some of the ways advocates, policymakers, and local law enforcement can work together to minimize the arrest-to-deportation pipeline and reduce that fear. We offer policy ideas and solutions that are tailored to the unique Texas landscape, taking into account both local government structure as well as state laws that limit the types of policy solutions available.

***Moving Texas Forward* is broken up into three sections:**

- I. First, the **Background** section provides an overview of the Texas state law (SB 4) that limits types of local immigration related policies, and the challenges presented by entanglement between local law enforcement and immigration enforcement officials in Texas.
- II. Second, **Using *Moving Texas Forward*: Who Has the Power to Make Policy Changes**, provides information on how to approach using *Moving Texas Forward* and mapping the roles that local elected officials can take in your municipality.
- III. Third, the **Policy Recommendations** provides potential policy options that can be implemented by city and county government, local law enforcement, prosecutors, and judges. These include:
  - Putting local resources to local instead of federal use by, for example, ending 287(g) contracts and establishing specific protocols for evaluating when a city or county needs to help ICE or CBP.
  - Policing reforms that can be instituted or expanded to reduce the number of people moving through the criminal legal system, including measures to mitigate racial profiling and decrease arrests.
  - Reforms to the local criminal legal system to decrease the number of people arrested, jailed, and prosecuted.
  - Affirmatively protecting people’s rights by requiring explicit notifications of the right to remain silent and instituting requirements for written consent into law enforcement procedures.
  - Ways that local governments can increase transparency and oversight of law enforcement and the criminal legal system.
  - Models for expanding local support, legal representation, and resources for vulnerable groups.

This is not an exhaustive list of all potential policy ideas. Rather, it is our attempt to gather and share ideas about how to limit the reach the criminal legal system has on civil immigration enforcement. It is meant to serve as a starting point for building your own local platform and to guide Texans and their leaders to take compassionate action and transform injustice into tolerance.

**We believe that all Texas residents deserve to live free of fear.**



**BACKGROUND  
AND CHALLENGES**

# BACKGROUND AND CHALLENGES

**Immigrants are parents and children, sisters and brothers, neighbors, community leaders, co-workers, employees, business owners, and friends who participate in and contribute to our communities.**

When police help ICE carry out its mass deportation campaign, families and the economy in Texas are seriously harmed. Unfortunately, the Trump administration’s aggressive deportation agenda and Texas’ anti-immigrant law—known widely as SB 4—are broadly criminalizing people of color and sowing widespread fear among residents of these communities.

## WHAT IS SB 4?

SB 4 is a Texas state law that orders local officials to be actively involved in immigration enforcement and punishes any locality for failure to assist ICE. While the bill was signed into law in May 2017, multiple cities and counties filed federal lawsuits to prevent many parts of SB 4 from being enforced, arguing that the law is unconstitutional and violates federal law. But in March 2018, the United States Court of Appeals for the Fifth Circuit issued a decision that allowed most of SB 4 to go into effect.

Today, we are left with a law that empowers the Texas Attorney General to impose fines on jurisdictions and even to remove from office elected officials who adopt or enforce policies that appear to “prohibit or materially limit the enforcement of immigration laws.”<sup>7</sup> SB 4 encourages local law enforcement—from city police departments to campus police at

<sup>7</sup> S.B. 4, 85th Leg., 2017-2018 Sess. (Tx. 2017), available at <https://legiscan.com/TX/text/SB4/id/1608435>.



**SB 4 is unprecedented in its conscription of local agencies to help enforce unjust federal immigration laws.**

colleges and universities—to entangle themselves with federal immigration enforcement, authorizes them to inquire into a person’s immigration status, and pressures them to aid ICE. SB 4 encourages and rubber stamps racial profiling and further marginalizes communities of color and immigrants. The law forces sheriffs to comply with ICE holds or immigration detainer requests in order to keep

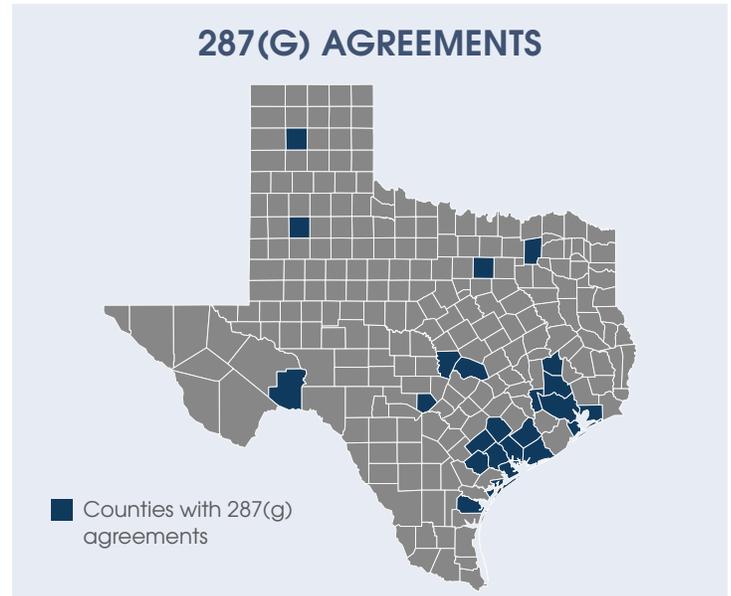
individuals in local jail beyond their release dates so ICE can take custody of them. This blurs the line between two distinct government agencies with their own unique jurisdictions and goals: local police and Sheriffs, who are tasked with serving and protecting their local community, and federal immigration agents, who deport people and rip apart communities. SB 4 is unprecedented in its conscription of local agencies to help enforce unjust federal immigration laws.

For a community advisory about how SB 4 affects individuals, see ILRC’s SB 4 Community Advisory available at <https://www.ilrc.org/sb-4-community-advisory>.

## CO-OPTING LOCAL LAW ENFORCEMENT FOR FEDERAL IMMIGRATION ENFORCEMENT

### BACKGROUND: ICE is co-opting local law enforcement operations for immigration enforcement

For more than a decade, ICE has steadily encroached into local law enforcement operations and the criminal legal system itself. The Department of Homeland Security (DHS), of which ICE is an agency, has accomplished this intrusion through various endeavors. Three key programs are: 287(g) agreements, which deputize local police and sheriffs to act as immigration agents; the Criminal Alien Program (CAP), in which ICE agents work within local jails and state and federal prisons to obtain information from jail officials, access local records, interrogate detainees, and issue detainers; and the Secure Communities program, which allows ICE to immediately detect every person taken into custody throughout the country, and to check them automatically against immigration databases. Each of these programs leads to the issuance of ICE detainers or hold requests.



Texas has been eager to cooperate with this federal intrusion. The state holds a third of all 287(g) agreements with ICE—25 statewide, out of 80 nationally.<sup>8</sup> In addition to these formal agreements, many sheriff's departments across the state are voluntarily using their local resources to do ICE's federal work through informal partnerships.

As a result, ICE requests for assistance and for access to local resources have played a major role in the operations of Texas jails and law enforcement agencies. Texas has helped to deport more people than any other state. In fiscal year 2017, more than 395,000 people were deported from Texas, or 17% of all deportations nationwide.<sup>9</sup> **In 2017, Houston and Dallas had more ICE arrests than any other jurisdiction in the U.S.** Texas' role in the detention and deportation of immigrants has increased under the Trump administration and will continue to increase because of SB 4.<sup>10</sup>

8 *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. Customs and Immigration Enforcement, available at <https://www.ice.gov/287g> (last accessed August 2019).

9 *Latest Data: Immigration and Customs Enforcement Removals ICE Data through October 2017*, TRAC IMMIGRATION PROJECT, available at <http://trac.syr.edu/phptools/immigration/remove/> (last accessed August 2019).

10 *Latest Data: Immigration and Customs Enforcement Detainers ICE Data through April 2018*, TRAC IMMIGRATION PROJECT (April 2018), available at <http://trac.syr.edu/phptools/immigration/detain/> (last accessed August 2019).

## CRIMINALIZING COMMUNITIES OF COLOR AND RACIAL PROFILING

Involvement of local law enforcement in immigration enforcement has a disproportionate impact on communities of color and contributes to biased policing. When local law enforcement assist federal immigration officials, racial profiling is incentivized and local officers are more likely to stop or arrest anyone who appears foreign. Alberto's case, discussed above, is an example of this. In fact, one study from 2009 found that in Irving, Texas, discretionary arrests of Latinos for low-level offenses—particularly traffic offenses—rose dramatically after local law enforcement gave 24-hour jail access to federal immigration authorities.<sup>11</sup> In a 2011 study analyzing 127 cases in which local law enforcement passed individuals to immigration authorities, 61 of those cases showed that the officers may have been motivated by immigration status when initially detaining the individuals.<sup>12</sup> Another, more recent study in Maryland found that after joining the 287(g) program, which deputizes local law enforcement to conduct immigration enforcement activities, the Frederick County Sheriff's office conducted significantly more arrests of Hispanic residents.<sup>13</sup>

## ERODING PUBLIC SAFETY AND COMMUNITY RELATIONS

Collusion with ICE further undermines already fraught relationships between communities of color and local law enforcement. At a time when mass incarceration, racial profiling, and biased policing contribute to fear and mistrust in law enforcement for communities of color, entanglement with ICE makes things significantly worse. Turning local law enforcement agents into ICE agents puts community members at risk. Increasing deportations means that more and more people are snatched out of their communities and exiled, leaving children, families, employers, neighbors, and other community members who depend on them without that support.

**Collusion with ICE further undermines already fraught relationships between communities of color and local law enforcement.**

## WASTING LOCAL TAX DOLLARS AND RESOURCES

Policies that entangle local law enforcement with federal immigration authorities drain local resources and create liability for localities. **The Department of Homeland Security is a giant federal agency with a budget of more than \$45 billion and has more resources than all other federal criminal law enforcement agencies combined, including the FBI, DEA, and**

11 Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, University of California, Berkeley School of Law (Sept. 2009), available at [https://www.law.berkeley.edu/files/policybrief\\_irving\\_0909\\_v9.pdf](https://www.law.berkeley.edu/files/policybrief_irving_0909_v9.pdf).

12 American Immigration Lawyers Association, *Immigration Enforcement Off Target: Minor Offenses With Major Consequences* (Aug. 2011), available at <https://www.aila.org/File/Related/11081609.pdf>.

13 Michael Coon, *Local Immigration Enforcement and Arrests of the Hispanic Population*, JOURNAL ON MIGRATION AND HUMAN SECURITY, Vol. 5 No. 3 (2017), available at <https://bloximages.newyork1.vip.townnews.com/fredericknewspost.com/content/tncms/assets/v3/editorial/b/81/b81a7a66-cf75-50ee-a08a-f647f0dcf27f/59921d63e5c34.pdf>.

**Secret Service.**<sup>14</sup> However, when local law enforcement agencies use their resources, including personnel hours, to assist and comply with requests from immigration officials, local entities are not reimbursed or compensated for their time or expenses. Furthermore, under SB 4, local jails must often hold certain inmates for an additional 48 hours beyond the date in which they would otherwise be released, in order to allow ICE time to take custody of those inmates, eating up even more local resources. ICE wants to seize local money to make immigrants disappear—without a judge or due process, but with big profits for private detention centers like the Houston Contract Detention Facility, Prairieland Detention Facility, and Joe Corley Detention Facility.<sup>15</sup>

Compounding this problem, ICE often makes mistakes and has even targeted US citizens.<sup>16</sup> A recent study estimates that in Texas between 2006 and 2017, ICE wrongfully placed detainers on at least 3,506 U.S. citizens.<sup>17</sup> Another report found that ICE routinely fails to cancel detainers after a person has been identified as a U.S. citizen.<sup>18</sup> These mistakes are costly for localities that can be held liable. We need our local government to minimize their role in the unjust deportation business.

Although the recent Fifth Circuit decision in *El Cenizo v. Texas*<sup>19</sup> allowed most of SB 4 to go into effect, advocates can and should continue to push back against these anti-immigrant policies. There are certain rights, protections, and procedures outlined by federal law and the U.S. Constitution that SB 4 cannot overrule or supersede. The following recommendations identify how localities can protect immigrants while adhering to state and federal laws.

<sup>14</sup> *FY 2019 Budget-in-Brief*, Department of Homeland Security (Feb. 12, 2018), available at <https://www.dhs.gov/news/2018/02/12/department-homeland-security-statement-president-s-fiscal-year-2019-budget>; Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, & Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute (Jan. 2013), available at <https://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

<sup>15</sup> ICE's Detention Facility Locator is available here: <https://www.ice.gov/detention-facilities>. However, sometimes this information is out of date. Freedom for Immigrants tracks the jails and prisons across the U.S. where immigrants are held: <https://www.freedomforimmigrants.org/detention-statistics/>.

<sup>16</sup> See, e.g., *Creedle v. Miami-Dade*, No. 1:17-cv-22477, (S.D.Fl. Nov. 9, 2018); *Plascencia v. United States*, 5:17-cv-02515 (C.D.Ca; Oct. 24, 2018); *Brown v. Ramsay*, No. 4:18-cv-10279 (S.D.Fl. Dec. 3, 2018); *Alcocer v. Mills*, 906 F.3d 944 (11th Cir. 2018); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3rd Cir. 2014); *Morales v. Chadbourne*, 996 F.Supp.2d 19 (D.R.I. Feb. 12, 2014); *Wiltshire v. United States*, Nos. 09 4745, 09 5787 (E.D. Pa. Oct. 16, 2009); *Jimenez v. United States*, No. 11-1582 (S.D. Ind. Nov. 30, 2011).

<sup>17</sup> David Bier, *U.S. Citizens Targeted by ICE: U.S. Citizens Targeted by Immigration and Customs Enforcement in Texas*, Immigration Research and Policy Brief N. 8, The Cato Institute (Aug. 2018), available at <https://www.cato.org/publications/immigration-research-policy-brief/us-citizens-targeted-ice-us-citizens-targeted>.

<sup>18</sup> *Citizens on Hold: A Look at ICE's Flawed Detainer System in Miami-Dade County*, ACLU Florida (Mar. 2019), available at [https://www.aclufl.org/sites/default/files/field\\_documents/aclufl\\_report\\_-\\_citizens\\_on\\_hold\\_-\\_a\\_look\\_at\\_ices\\_flawed\\_detainer\\_system\\_in\\_miami-dade\\_county.pdf](https://www.aclufl.org/sites/default/files/field_documents/aclufl_report_-_citizens_on_hold_-_a_look_at_ices_flawed_detainer_system_in_miami-dade_county.pdf).

<sup>19</sup> *City of El Cenizo v. Texas*, 885 F.3d 332, 347 (5th Cir. 2018).

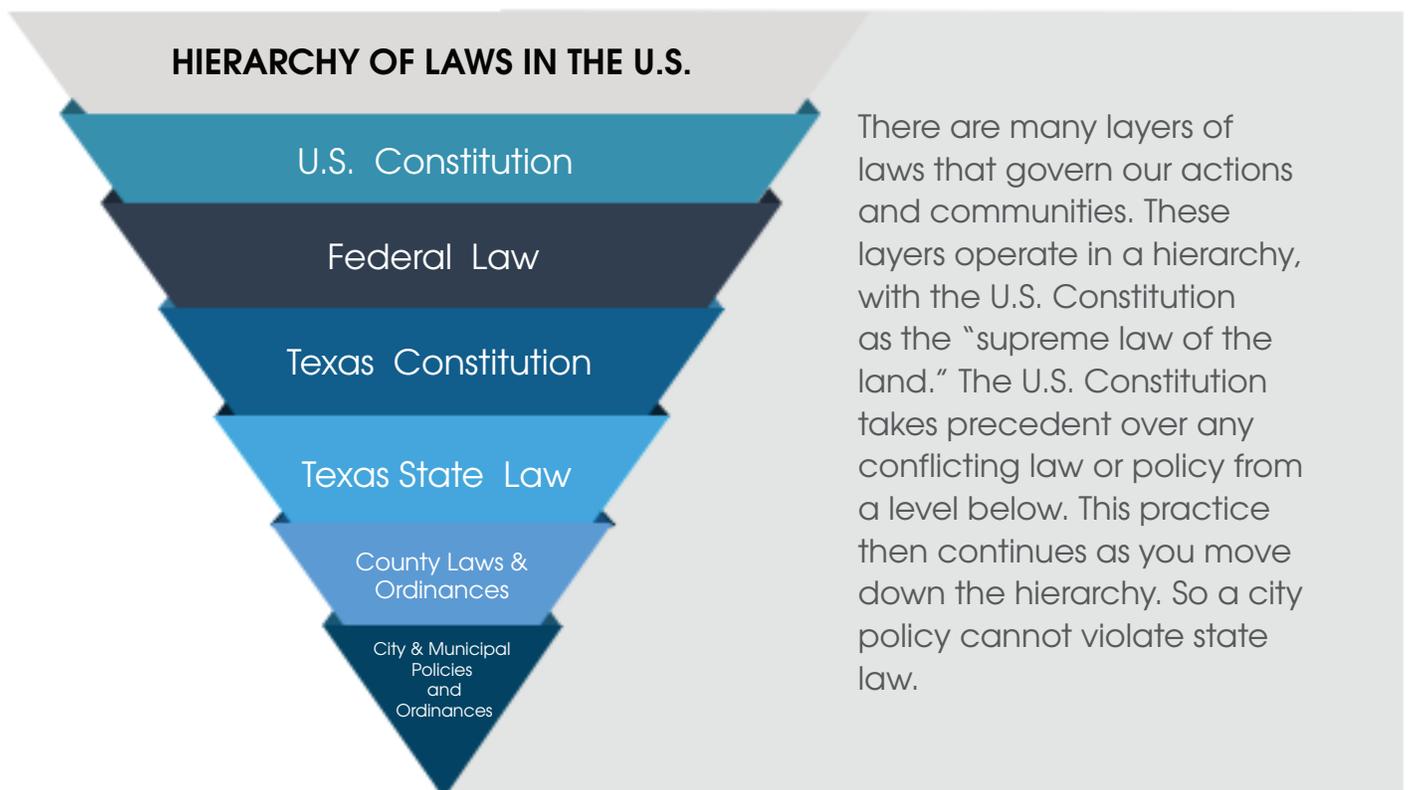
**USING MOVING  
TEXAS FORWARD:  
WHO HAS THE POWER  
TO MAKE POLICY  
CHANGES**



# USING *MOVING TEXAS FORWARD*

## WHO HAS THE POWER TO MAKE POLICY CHANGES

**This guide provides a variety of policy options for a number of different actors in local government.** Before advocates and community members start to push for a policy, it is important they understand the structure of their local government, the authority and jurisdiction of various local officials, and how all of these layers and actors interact with one another as well as with state and federal law.



## MUNICIPALITIES

Municipalities are made up of incorporated areas (cities) and unincorporated areas that are usually served by the county. In Texas, there are two types of cities: home rule and general law. Home rule cities have more local legislative power, while general law cities only regulate exactly what the state has empowered them to regulate.

Whether city government can adopt ordinances, the type of ordinances they can adopt, and their relationship to local law enforcement can vary from city to city. In order to advocate for effective policies, advocates and community members should answer key questions about their city:

- What authority does the local city government have to pass ordinances? What kinds of ordinances?
- What is the structure of the local government? Are the actors elected or appointed?
- Who has authority over the city budget?
- What type of local law enforcement does the city have? What are they responsible for? Who do they answer to?

## COUNTY AUTHORITIES

Across Texas, there are 254 counties that range in size from approximately 100 people (Loving County) up to 4 million people (Harris County).<sup>20</sup> County government is made up of elected and appointed officials that work together to provide a number of essential services. County government, run by the Commissioner's Court and County Judge, is powerful—it levies taxes and administers the county budget, deciding the level of resources law enforcement entities, like the Sheriff's Office and detention facilities, receive. County government also decides how much money will go into important services for individuals facing criminal charges, such as indigent defense, diversion programs, and mental health services. District and County Attorneys also operate at a county level. They decide which type of offense is prosecuted, and determine whether an individual will go to jail, face a judge, or receive a second chance in a criminal case.

Each actor plays an important role in the criminal and immigration landscape. It is crucial they enact comprehensive and effective policies, which requires community and advocate input during policy conversations.

The chart<sup>21</sup> below examines common figures in Texas county-level governance and law enforcement, and will help advocates determine the types of policies they should push in their county.

<sup>20</sup> *Transparency: Texas Counties*, Texas Comptroller, available at <https://comptroller.texas.gov/transparency/local/counties.php> (last accessed August 2019).

<sup>21</sup> 21 Texas County Officials, TEXAS ASSOCIATION OF COUNTIES, available at <https://www.county.org/About-Texas-Counties/About-Texas-County-Officials> (last accessed August 2019).

# TEXAS COUNTY OFFICIALS

## COUNTY JUDGE

ELECTED  
AT-LARGE

- Presiding officer of the Commissioners Court
- Represents the county in many administrative functions
- Budget officer in smaller counties
- Depending on county size, may have judicial duties, such as presiding over misdemeanor criminal and small civil cases
- Head of emergency management

## COMMISSIONERS COURT

ELECTED

- Broad policy-making authority
- Adopts the county's budget and tax rate
- Approves all county budgeted purchases
- Fills vacancies in elective and appointive offices
- Sets all salaries and benefits
- Exclusive authority to authorize contracts
- Provides and maintains all county buildings and facilities

## SHERIFF

ELECTED

- Serves as a licensed peace officer; responsible for enforcing criminal state law
- Executive officer; county and district courts
- Manages and operates county jail and detainees
- Provides security, serves warrants, papers, and other processes of the courts
- Regulates bail bondsmen in counties with no bail bond board
- Seizes property after judgment
- Enforces traffic laws on county roads

## DISTRICT ATTORNEY\*

ELECTED

- Prosecutes felony criminal cases
- Investigates criminal cases with law enforcement
- Presents cases to the grand jury
- Obtains protective orders for victims of violence
- Represents the state in removing children from abusive households

## COUNTY ATTORNEY\*

APPOINTED

- Prosecutes misdemeanor criminal cases
- Investigates criminal cases with law enforcement
- Obtains protective orders for victims of violence
- Provides legal advice to the Commissioners Court and to other elected officials
- Brings civil enforcement actions on behalf of the state or county

\*Some counties have both a County Attorney and a District Attorney, while other counties will only have one that serves both functions. In the office of the District Attorney and/or County Attorney, there are often several other assistant attorneys, also engaged in the prosecution of criminal defendants.

The background image shows a detailed, ornate ceiling. It features a central recessed square panel with a decorative border. The ceiling is adorned with intricate moldings, including a series of repeating circular motifs and a large, sculptural element resembling a floral or leaf design. The overall color palette is a muted, warm brown or sepia tone.

# POLICY RECOMMENDATIONS

# POLICY RECOMMENDATIONS

**The recommendations below focus on what local law enforcement, city and county agencies, prosecutors, and criminal court judges can do to protect the human rights of all residents within the framework of Texas state law.**

The policy recommendations listed below provide a number of options a given locality may be interested in pursuing. Identify which recommendations are a priority for your city and county based on the challenges facing your community, and the political opportunities available. **Keep in mind that there is no “one size fits all” policy, and you will need to determine what is needed in your community before deciding which policy recommendations to pursue.**

More information about additional policies can be found in the following ILRC resources at [www.ilrc.org](http://www.ilrc.org):

***The Promise of Sanctuary Cities and the Need for Criminal Justice Reforms in an Era of Mass Deportation***

***Sanctuary for All: Effective Criminal/Immigration Policy Fixes***

## CRIMINAL LEGAL SYSTEM AND THE ARREST-TO-DEPORTATIONS PIPELINE

Many of the recommendations provided throughout *Moving Texas Forward* address the ways local government can address and minimize the impact of the arrest-to-deportation pipeline. These policies, which are largely unaffected by SB 4, are for audiences such as criminal defenders, district attorneys or prosecutors, and judges, and work to reduce the negative impact that the criminal legal system can have on immigrant communities and in individual immigration cases. **See Part C** for more on the arrest-to-deportation pipeline and the need for partnership between immigrant justice and criminal justice advocates.

### A. PRIORITIZE LOCAL HEALTH AND WELFARE OVER IMMIGRATION ENFORCEMENT

Local jurisdictions have the authority and the duty to promote the health, safety, and welfare of their residents.<sup>22</sup> To protect this right, the Tenth Amendment of the U.S. Constitution prohibits the federal government from requiring state and local governments to enforce federal law.<sup>23</sup> Since addressing crime in communities is the responsibility of local jurisdictions, not the federal government,<sup>24</sup> local jurisdictions should prioritize serving the needs of the community over assisting ICE.

#### 1. Establish a clear protocol for the use of city and county resources when required to assist federal immigration authorities.

**While local government may not limit assistance or cooperation with federal immigration authorities, cities and counties across Texas have a duty and an obligation to serve their residents.** Given the practical reality of a limited budget and a finite amount of resources, cities, counties, and local law enforcement should have a clear protocol in place for responding to requests from federal agencies, in particular immigration agencies. This is important to guarantee the needs of the community are met, first and foremost, especially given that federal immigration authorities do not reimburse local government for services and assistance.<sup>25</sup>

Under SB 4, localities must comply with ICE's requests for assistance if they are 'reasonable or necessary.' But localities still maintain the power to implement policies that limit cooperation with ICE if those policies are 'immigration-neutral.'<sup>26</sup> For example, local entities can limit assistance to ICE when assistance would be against the financial interest of a jurisdiction.<sup>27</sup>

22 U.S. CONST. amend. X; *Sligh v. Kirkwood*, 237 U.S. 52 (1915); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) ("The promotion of safety of persons and property is unquestionably at the core of the State's police power").

23 *Printz v. United States*, 521 U.S. 898 (1997).

24 *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 901 (2010) (quoting *United States v. Morrison*, 529 U.S. 598, 618 (2000)).

25 *Letter to Santa Clara County*, from David Venturella, Assistant Dir., Department of Homeland Security (2010), available at <https://www.clearinghouse.net/chDocs/public/IM-CA-0089-0006.pdf> (page 41).

26 *City of El Cenizo v. Texas*, 885 F.3d 332, 347 Fn. 6 (5th Cir. 2018) (citing Tex. Gov't § 752.053(b)(3)).

27 *Id.* at 347.

Since aiding ICE results in a significant financial burden for local jurisdictions, local entities should implement policies that put their money towards local use, thereby limiting their ability to assist federal immigration authorities.

Moreover, local law enforcement also has an obligation to protect a person's constitutional and legal rights and to prioritize the needs of everyone within the local communities they serve. In meeting these obligations, the local government must ensure that city resources and law enforcement time are appropriately allocated to local use. According to the Texas Commission on Jail Standards, Texas counties spent over \$6.25 million to house individuals with ICE detainees in the month of February 2018.<sup>28</sup>

***Specifically, local government and local law enforcement should:***

- Develop a protocol to respond to requests from federal agencies, including immigration enforcement agencies. This protocol should include a clear procedure for vetting such requests at high levels within the department or agency and informing local leaders of such requests. For example, the city of Austin enacted this type of procedure in Resolution 74: <http://www.austintexas.gov/edims/document.cfm?id=300891>.
- If a federal agency requests city or county resources to conduct an investigation involving victims or witnesses of crime, such as incidences of human trafficking or forced labor, the City or County Manager's Office, City Council, or County Commissioners will work with local law enforcement to provide onsite resources and services for all victims at the scene. This should include, at a minimum, information about the individual's constitutional rights, a list of legal and social service providers, and a list of other resources available to victims of human trafficking and other crimes.

***Local law enforcement should:***

- Establish protocols that instruct officers and deputies to check with the Police Chief, the Sheriff, or the officer or deputy's direct supervisor before responding to federal immigration agents regarding field operations support. This protocol should require requests from federal agencies to be made in writing and should document the local law enforcement agency's response.

***Local government should:***

- Require the City Manager and County Commissioners to produce an audit that details the use of city and county resources for immigration enforcement. Such reports should include a recording of every instance where city or county dollars were spent for federal immigration purposes. These reports should be publicly available and reviewed by local authorities at regular intervals.

<sup>28</sup> *Immigration Detainer Report*, Texas Commission on Jail Standards (Mar. 2018). The Texas Commission on Jail Standards had previously made its Immigration Detainer Reports (ital) publicly available on its website. TCJS has since stopped making the reports available, however there is a copy on file with the authors.

## 2. End immigration detention contracts with ICE.

An Intergovernmental Service Agreement (IGSA) or ICE detention contract, is a contract between a local government and the federal government for services, and it allows ICE to rent bed space from local jails. Under this contract, the county jail also operates as an immigration jail, holding people during their deportation proceedings. With close to 30 immigration jails, Texas ranks as one of the top states detaining immigrants (approximately 15,852 individuals per day) and spending local dollars to fund federal immigration enforcement.<sup>29</sup>

**Local jurisdictions may actually lose money and subsidize ICE when taking into account the actual cost of housing immigrants.**

Many counties claim to make money from immigration detention, however, local jurisdictions may actually lose money and subsidize ICE when taking into account the actual cost of housing immigrants. At the same time, they risk liability for those detainees, while taking on considerable managerial and logistical burdens to deal with ICE and immigration proceedings. Furthermore, when a

local jail has an IGSA, immigrants may get transferred directly to ICE detention without due process. For example, there have been individuals who were in the Dallas County's Sheriff custody who were turned over to ICE because of their IGSA, even though their charges were dismissed, they had extensive community ties, and were eligible for immigration relief. Individuals are often held in immigration detention for months without any guarantee of a lawyer or other basic rights. There is no legal obligation for localities to enter into these types of immigration detention contracts. The existence of these local contracts sends a clear message to the immigrant community that law enforcement is working with ICE to ensure their deportation.

By ending IGSA contracts, localities can avoid potentially expensive and risky contracts with an unaccountable federal agency, stop engaging in the separation of families and communities, and focus efforts and resources on local issues.

### **Local law enforcement should:**

- Terminate existing ICE detention contracts and decline to enter new agreements.

### **Local government should:**

- Direct local funds away from ICE detention contracts.

<sup>29</sup> *Detention by the Numbers*, Freedom for Immigrants, available at <https://www.freedomforimmigrants.org/detention-statistics/> (last accessed August 2019).

- Obtain information from sheriffs or police departments that have such contracts as to their justification, and require the production of all documents related to the contract, including inmate grievances, incident reports, liabilities incurred, and operating costs.
- Require data collection on individuals held in custody under an IGSA.

### 3. End 287(g) contracts with ICE.

287(g) agreements allow ICE to delegate certain immigration enforcement powers and functions to state and local agencies. These are voluntary written agreements that are also known as “287(g) contracts” or “287(g) programs,” and they receive their name from Section 287(g) of the Immigration and Nationality Act (INA).

Under 287(g) agreements, delegated officers are given various powers that are generally reserved for ICE agents, including the ability to: 1) investigate a person’s immigration status and history and access federal immigration databases; 2) issue detainers; and 3) prepare immigration charging documents, called a “Notice to Appear,” to commence deportation proceedings.

The Department of Homeland Security’s Office of Inspector General, numerous courts, and local jurisdictions have discredited 287(g) programs for a number of reasons. For instance, because 287(g) agreements allow local officers to act as ICE agents, research shows that local officers operating under 287(g) agreements are more likely to engage in racial profiling by stopping persons suspected to be undocumented based on biased stereotypes.<sup>30</sup> Moreover, ICE provides inadequate training, supervision, and few financial resources to jurisdictions who enter into 287(g) agreements, which increases the costs that local jurisdictions must pay. In fact, Harris County’s 287(g) program cost taxpayers at least \$675,000 per year. When the county ended its 287(g) agreement with ICE in 2017 under pressure from an organized community campaign, the Sheriff admitted that Harris County had been paying \$1 million in overtime costs every two weeks because of staff shortages in the jail.<sup>31</sup>

**Harris County’s 287(g) program  
cost taxpayers at least \$675,000  
per year.**

<sup>30</sup> Michael Coon, *Local Immigration Enforcement and Arrests of the Hispanic Population*, JOURNAL ON MIGRATION AND HUMAN SECURITY, Vol. 5 No. 3 (2017), available at <https://bloximages.newyork1.vip.townnews.com/fredericknewspost.com/content/tncms/assets/v3/editorial/b/81/b81a7a66-cf75-50ee-a08a-f647f0dcf27f/59921d63e5c34.pdf>.

<sup>31</sup> Marc Schindler & Jeremy Kittredge, *The mounting costs of nationwide immigration enforcement*, The Hill (July 20, 2017, 5:40 PM), available at <https://thehill.com/blogs/pundits-blog/immigration/342993-mounting-nationwide-immigration-enforcement-costs>.

**Local law enforcement should:**

- Terminate existing 287(g) agreements and decline to enter into new agreements.

**Local government should:**

- Pass local legislation against joining the 287(g) program.
- Direct resources towards local priorities instead of doing ICE's enforcement work at the county's expense.
- Audit the costs of existing 287(g) agreements on the county's budget, including liability, staff time, and other resources.
- Require data collection on individuals investigated, stopped, arrested, interrogated, referred to ICE, or put into removal proceedings under the 287(g) program.

**4. Implement procedures to review the legality of ICE detainers.**

**An ICE detainer is a document, sometimes referred to as an “ICE hold,” “immigration detainer,” or “immigration hold,” that an ICE agent files with the local jail named in the detainer and/or prison requesting they: a) notify ICE in advance of releasing the person named in the detainer, and b) hold the person for an additional 48 hours beyond the date they would otherwise be eligible for release so that ICE may take custody.**

Under SB 4, localities must comply with ICE detainers. However, in many cases, ICE detainers have violated federal law and the U.S. Constitution. If an ICE detainer violates the U.S. Constitution, for example by lacking probable cause as required by the Fourth Amendment, then it cannot be enforced, because constitutional and federal law requirements supercede SB 4. A local jail that holds someone on an illegal detainer can be held liable for an illegal arrest. In fact, many courts across the country have found local law enforcement agencies liable when they have complied with ICE detainers.<sup>32</sup>

Local law enforcement should adopt a detainer policy that only allows detention of a person pursuant to an ICE request when doing so is consistent with the Fourth Amendment and federal law, in addition to state law.

<sup>32</sup> See ILRC's *Immigration Detainers Legal Update Key Court Decisions on ICE detainers as of July 2018* available at <https://www.ilrc.org/immigration-detainers-legal-update-july-2018>. For examples of recent litigation and damages liability, see the ACLU's Fact Sheet available at <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018>.

**Local law enforcement should:**

- Require all detainer requests be made in writing and should meet ICE’s own requirements.<sup>33</sup> Detainer requests cannot be issued without probable cause or based only on someone’s alleged foreign birth without supporting records in the immigration databases. ICE detainer requests should also be accompanied by a signed administrative warrant.
- Request supplemental evidence demonstrating how ICE arrived at their probable cause finding before agreeing to hold an individual.
- Legal counsel for local law enforcement should develop a protocol to ensure that the department does not comply with detainers placed on anyone with lawful immigration status. SB 4 states that if an individual is able to present evidence of US citizenship or lawful immigration status, a locality is not required to comply with an ICE detainer request.<sup>34</sup> The policy should provide guidelines on the many different forms of acceptable proof of legal status. This policy should be publicly posted on the local law enforcement’s website.
- Always promptly serve a copy of an ICE detainer upon the subject of the detainer and give the person an opportunity to challenge the detainer or provide evidence of lawful status.
- In order to balance the constraints of existing law and practice with SB 4’s mandate to comply with ICE requests, all ICE detainers should be reviewed by the legal department or County Attorney’s office before anyone is held on a detainer, to evaluate whether there is a legal basis to comply.

**Local government should:**

- Require local law enforcement to collect data on who ICE issues detainers for, including the race, ethnicity, and gender, as well as the basis for the detention, the location of arrest, case resolution or outcome, dates or length of detention, whether bail was posted, bail amount, and arresting officer. Local government oversight committees should compile this data and make it publicly available in order to increase transparency and make it easier to hold ICE accountable for their practices. **See Policy Recommendation B.3 for more information.**
- Prohibit trial court judges from raising or denying bail solely because of an ICE detainer or based on the immigration status of the defendant.

33 See ICE’s detainer policy here: <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

34 S.B. 4, 85th Leg., 2017-2018 Sess. (Tx. 2017), available at <https://legiscan.com/TX/text/SB4/id/1608435>.

- Require that bonds posted by individuals are not automatically forfeited due to a person being turned over to ICE on an ICE detainer and being taken into federal custody, as allowed under the Texas Code of Criminal Procedure.<sup>35</sup>

## B. PREVENT DISCRIMINATION AND ENSURE THAT LAW ENFORCEMENT ARE NOT VIOLATING FEDERAL LAWS

**While SB 4 requires local law enforcement to work with and assist ICE, local law enforcement is still subject to the obligations and limits of the U.S. Constitution.**

No federal, state, or local law can violate the U.S. Constitution. Furthermore, the U.S. Supreme Court recognized that the Due Process Clause of the Fourteenth Amendment applies to all persons within the United States regardless of their immigration status.<sup>36</sup> This means that while SB 4 requires local law enforcement to work with and assist ICE, local law enforcement is still subject to

the obligations and limits of the U.S. Constitution.

In order to guarantee compliance with the law, local law enforcement should adopt policies and protocols that clearly lay out the limits of the U.S. Constitution, federal law, and state law, while taking into account community concerns and input. It is essential that officers know the bounds of their authority to ensure laws are enforced within their constitutional limits, the rights of residents are protected, liability of the locality is limited, and the safety and well-being of the entire community is promoted.

### 1. Adopt a policy prohibiting unilateral immigration enforcement.

While SB 4 requires entanglement with ICE, local law enforcement cannot act unilaterally in enforcing immigration.<sup>37</sup> Absent a direct request from ICE, jurisdictions cannot voluntarily detain or engage in immigration enforcement actions on their own.

#### **Local law enforcement should:**

- Provide clear training to officers on what actions are prohibited under state and federal law, particularly around immigration stops, arrests, and interrogations. SB 4 does not authorize Texas law enforcement agencies to enforce immigration laws of their own prerogative.

<sup>35</sup> Tex. Crim. Proc. Code Ann. § 22.13. See also Stephen Paulsen, *A Catch-22 in the Criminal Immigration System in Harris County*, Texas Observer (May 8, 2018), available at <https://www.texasobserver.org/a-catch-22-in-the-crimmigration-system-in-harris-county/>.

<sup>36</sup> *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

<sup>37</sup> *City of El Cenizo v. Texas*, 885 F.3d 332, 347 (5th Cir. 2018).

- Prohibit officers from making stops or arrest based on suspected immigration status, without clear direction from federal agents. Clarify that prolonging a stop or arrest to investigate immigration status is unconstitutional. Discipline officers who engage in racial profiling and illegal searches and seizures, and eliminate job performance requirements that incentivize low-level arrests and discrimination.
- In compliance with state law, local law enforcement should not inquire into the immigration status of victims or witnesses during a criminal investigation. Information about victims' services and other resources, including information on immigration benefits for victims of crime, should be made available to all victims regardless of actual or perceived immigration status. When an officer believes the victim or witness has engaged in separate criminal conduct, that evidence should be communicated with the officer's supervisor and, if necessary, referred to a different officer who was not involved in the original investigation to which that person was a witness or victim.

## 2. Adopt clear rules for when and how local officers can inquire into immigration status.

Under Texas state law, local jurisdictions cannot prohibit local law enforcement officers from inquiring into a person's immigration status, except in the case of victims and witnesses of crime. However, SB 4 does not require officers to ask about immigration status either. Rather, the discretion to assess a person's immigration status belongs to the individual officer.

Nevertheless, the Fifth Circuit, citing *Arizona v. United States*, acknowledged that if an officer chooses to assess a person's immigration status, the inquiry must be done within a lawful stop or arrest.<sup>38</sup> In other words, officers are prohibited from stopping someone or prolonging an encounter solely to inquire about the person's immigration status.

Furthermore, under the U.S. Constitution, every person has the right to remain silent.<sup>39</sup> Courts have long recognized that a "coerced confession . . . violates the Due Process Clause of the Fourteenth Amendment."<sup>40</sup> These rights extend to all individuals, including immigrants, regardless of their legal status.<sup>41</sup> For these reasons, officers are required to respect a person's constitutional right

**Under the U.S. Constitution,  
every person has the right to  
remain silent.**

38 *City of El Cenizo v. Texas*, 885 F.3d 332, 357 (5th Cir. 2018)(quoting *Whiteley v. Warden*, 401 U.S. 560, 568–69 (1971)).

39 U.S. CONST. amend. V.

40 *See, e.g., Payne v. State of Ark.*, 356 U.S. 560, 568 (1958).

41 *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

to remain silent and to refrain from coercing the person into making any statement regarding their immigration status.

Given the limitations on when and how local law enforcement can inquire into a person's immigration status, local agencies should adopt policies and protocols that provide sufficient guidance to ensure local law enforcement are in compliance with the law and honor all people's rights.

**Local law enforcement should:**

- Provide training to officers and deputies about the illegality of stopping or detaining individuals solely for the purpose of inquiring into immigration status. Officers and deputies are also prohibited from extending a legal detention or stop in order to inquire into a person's immigration status. **See Policy Recommendation B.3** for more details on data collection regarding pretextual stops.
- Require officers and deputies to provide Miranda warnings to all individuals prior to interviewing or questioning them. Included in the Miranda warnings should be a statement that the right to remain silent also applies to inquiries about immigration status. The same Miranda warning should be provided to all individuals, regardless of perceived immigration status.
- Train officers and deputies on what constitutes coercion.
- Prohibit officers and deputies from asking individuals about place of birth at booking at the local or county jail. In Taos, New Mexico, for example, officers are instructed that "(n)o inmate shall be asked about his place of birth or country of origin upon admission" to the local jail.<sup>42</sup> Although the Vienna Convention requires that all detained individuals are given the opportunity to contact the consulate of their country of citizenship, there is no requirement that officers must ask about place of birth at any time during arrest, booking, or detention. Notifying all arrested persons of their right to consular notification complies with the Vienna Convention without asking place of birth or nationality.

### 3. Adopt measures to reduce biased policing.

For generations, Black people and communities of color have been the targets of discriminatory and dehumanizing police practices that have contributed to the current mass incarceration crisis in the United States. When immigrants are targeted by police, there is a greater risk that they will be funnelled into the deportation pipeline. Despite the discriminatory nature of SB 4, it remains a vital duty of Texas law enforcement agencies,

<sup>42</sup> See Taos, New Mexico policy at [https://www.ilrc.org/sites/default/files/resources/20\\_-\\_taos\\_policy.pdf](https://www.ilrc.org/sites/default/files/resources/20_-_taos_policy.pdf).

including police, Sheriff, and campus law enforcement to make affirmative efforts to stop racial profiling, reduce and address hate crimes, and work towards eliminating bias in the legal system.

***Specifically, local law enforcement should:***

- Adopt a policy prohibiting officers from making pretextual stops and provide training on this policy. As an example, Vermont adopted a statewide policy that states: “When conducting any routine or spontaneous investigatory activity, law enforcement shall not rely on race, ethnicity, color, national origin, use of a foreign language, limited English proficiency, gender, gender identity and/or expression, sexual orientation, political affiliation, religion, housing status, physical or mental disability, or serious medical condition as a basis, in whole or in part, for reasonable suspicion or probable cause that a person has committed or is about to commit a crime.”<sup>43</sup>
- Conduct regular anti-bias training for officers that includes training on implicit bias.
- Evaluate law enforcement’s ability to effectively respond to and investigate crimes in immigrant neighborhoods. This is to determine if there are any disparities between the responsiveness and investigative success in immigrant compared to non-immigrant neighborhoods.
- Establish procedures for data collection in order to monitor for racially biased enforcement. Require officers to collect data in order to address biased policing. That data should look at stops and arrests according to record location, race, ethnicity, limited English proficiency, as well as the basis for the stop or questioning, the location, and whether the stop led to an arrest. Officers should also record if they inquire into immigration status and why.
- Establish a community task force made up of communities of color, immigrants, and other important stakeholders that monitor the data collected on a monthly basis.
- Adopt written procedures regarding the use of video and/or audio recording devices such as, but not limited to, dashboard cameras, body cameras, and digital audio recorders. The procedures should include information about public access and other accountability measures.

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<sup>43</sup> See Vermont State policy at [https://www.ilrc.org/sites/default/files/resources/vt\\_state\\_policy.pdf](https://www.ilrc.org/sites/default/files/resources/vt_state_policy.pdf).

***Local government should:***

- Work with local law enforcement on adopting the policies listed above, including the provision of additional funds and support, as well as help facilitating community input and accountability measures.

**4. Provide Know-Your-Rights information to all individuals in jail.**

ICE agents have broad access to jail data and people in custody, and ICE regularly interrogates people who are detained regarding their immigration status or place of birth. While everyone has a right to remain silent, this practice leaves individuals vulnerable to intimidation and other unlawful practices, and it makes it difficult to exercise their rights.

To that end, jurisdictions should ensure that immigrants receive adequate notice of any enforcement action by ICE, and that all detained individuals receive know-your-rights information. While know-your-rights materials may include information specific to immigrants, it is important that all individuals receive this information because it prevents local law enforcement from using it as an excuse to inquire into immigration status.

***Local law enforcement should:***

- Safeguard immigrants' rights by providing know-your-rights materials that explain their right to remain silent, their right to an attorney (at their own expense), and their right to speak with their consulate. Include information on how to secure an immigration attorney with the general information of services provided by the facility.
- Allow legal services or community organizations to provide in-person know-your-rights presentations and information to all individuals currently incarcerated, and in the case of immigration detainees, screening for immigration relief and referral to attorneys. Work with local court judges and magistrates to establish these presentations before magistration, so that all arrestees receive the information in a timely manner.
- Require that each person is provided know-your-rights consent forms before allowing ICE to interview individuals in custody. These forms inform the person of their rights including that ICE interviews are voluntary, the right to remain silent, and the right to request to have an attorney present during any interview. If the person is already in deportation proceedings, but in local custody, they have a right to have their immigration attorney present during any questioning. The form is also a mechanism to ensure a person consents to an interview with ICE and if so, under what specific circumstances, such as with an attorney present. The consent form

should be available in the five most common languages spoken by detainees at the jail or facility. Jurisdictions should also notify a person's attorney or other designee of any ICE detainers, interview requests, or other involvement in the case. Written consent by the individual should be required before ICE is able to speak to that person. For an example of what these consent forms may look like, see California's Truth Act forms available at <http://www.iceoutofca.org/truth-act-ab-2792.html>.

- Post know-your-rights materials on the walls of the detention facilities. Posters should be placed in common areas and other spaces that are accessible to detainees. Posters should be in the five most common languages spoken by detainees at the facility.

### C. ADOPT COMPREHENSIVE POLICIES WITHIN CRIMINAL LEGAL SYSTEM THAT PROTECT PUBLIC SAFETY AND SAVE LOCAL RESOURCES



With both the highest prison population and the highest rate of imprisonment in the world,<sup>44</sup> many Americans have come to recognize that our criminal legal system is excessively harsh and puts too many people in jail for too long. Texas has one of the highest incarceration rates in the country, and the largest prison system in the United States.<sup>45</sup> Although some criminal legal system reforms come at the state level, local governments have important roles to play. Local police and sheriffs are

the initial points of contact that bring individuals into the criminal legal system, and a local prosecutor's charging decision can determine whether an immigrant ends up deported after the criminal sentence is completed. Under SB 4, most interaction with police will automatically lead to contact with ICE. **Immigrant justice advocates must align with criminal legal reform advocates to identify ways to lessen the reach of the criminal legal system.**

<sup>44</sup> *Highest to Lowest*, World Prison Brief, available at [https://prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=All](https://prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All) (last accessed August 2019).

<sup>45</sup> Gaby Galvin, *10 States with Highest Incarceration Rates*, U.S. News and World Report (July 26, 2017), available at <https://www.usnews.com/news/best-states/slideshows/10-states-with-the-highest-incarceration-rates?slide=5>.

Throughout *Moving Texas Forward*, we have made the intentional decision to use the term “criminal legal system” in place of “criminal justice system.” The criminal legal system refers to the broad and expansive legal system, processes, and procedures that are triggered when a person has contact with law enforcement. However, **our current legal system is not “just” but rather a biased, racist, and classist set of institutions that further harms and marginalizes Black people, communities of color, and vulnerable populations.**

Criminal legal reform also makes good economic sense. Over-reliance on incarceration comes with a large price tag. For example, in 2017, San Antonio Police Department conducted 11,389 misdemeanor arrests. For each arrest, the police department spends multiple officer-hours booking an individual into jail. In addition, it costs taxpayer money to operate the City Magistrate’s holding facility, where individuals for misdemeanor arrests wait for court or a transfer to county jail. **Bexar County spends an average of \$100,536 per day to jail the entire pre-trial population of roughly 1,700 individuals.**<sup>46</sup> Avoiding arrest for low-level offenses and instead offering access to rehabilitative services, would significantly reduce these costs.

Instead of relying on an expensive system of punishment that has proven to be ineffective, local law enforcement and local government should use a public health framework that reduces reliance on the formal criminal legal system for addressing public health and human service needs.

A key step toward enacting better local policies on criminal law enforcement and prosecutions is to build real commitment and buy-in on the idea of criminal legal reform from local leaders. This can involve establishing local commissions to set goals and funding levels. It should also seek to bring some law enforcement leaders on board to reduce incarceration and address problems of racial bias. With greater commitment to the overall goal of reducing mass incarceration and improving fairness in the criminal legal system, we can then pursue specific policies to keep people out of jails and out of the deportation pipeline.

### 1. Adopt a policy that clearly states law enforcement officers should not arrest individuals for minor crimes.

Many low level crimes, including traffic violations, public intoxication, urinating in public, and driving without a license are not well addressed by the criminal legal system. Class C misdemeanor offenses, which include traffic violations and are punishable by fine only, often needlessly result in arrest. For example, in 2017, approximately 1 in 6 jail bookings were for Class C misdemeanors in Travis County.<sup>47</sup> In Jefferson County, individuals arrested for Class C

<sup>46</sup> *Adult Criminal Justice Data Sheet*, Texas Criminal Justice Coalition (2016), available at [https://www.texascjc.org/system/files/publications/Adult%20Bexar%20County%20Data%20Sheet%202016\\_0.pdf](https://www.texascjc.org/system/files/publications/Adult%20Bexar%20County%20Data%20Sheet%202016_0.pdf).

<sup>47</sup> Andrew Weber, *Misdemeanor Tickets Often End In Arrests In Texas – Especially Travis County*, KUT (April 3, 2019), available at <https://www.kut.org/post/misdemeanor-tickets-often-end-arrests-texas-especially-travis-county>.

misdemeanor offenses comprised 37% of all jail bookings.<sup>48</sup> For immigrants, arrests for these offenses can directly lead to the deportation pipeline. Increasingly, localities are recognizing that other interventions can better protect public safety and avoid unnecessarily wasting scarce local resources. Advocates should work with local officials to educate them about how resources are currently being allocated.

***Specifically, local law enforcement should:***

- Adopt a policy that clearly states local law enforcement officers and deputies should not arrest individuals for specific low-level crimes, including all Class C misdemeanors and some Class A and B misdemeanors.
- Establish a protocol for officers or deputies to evaluate and accept non-traditional forms of identification, rather than just government-issued IDs, for identification purposes during traffic stops and civil citations. For example, the San Antonio Police Department considers state issued driver's licenses or identification cards and other forms of ID including passports, military IDs, consular ID cards, student IDs, and library cards.

**2. Establish a Law Enforcement Assisted Diversion Program (LEAD) to divert individuals to community-based programs.**

LEAD is a well-established community-based diversion approach which brings together community stakeholders and law enforcement with the goals of improving public safety and saving fiscal resources.<sup>49</sup> In a LEAD program, police officers exercise discretionary authority during the initial point of contact to divert individuals to social service providers and partners, in lieu of arrest. **Instead of channelling people into jails and prisons, sites with LEAD programs seek to channel people into social services that help address the underlying causes of the behavior that brought them to the attention of law enforcement.**

***Specifically, local government should:***

- Establish an Operational Workgroup to establish and implement a LEAD program. This workgroup should consist of all relevant stakeholders (law enforcement, prosecutors, service providers, and community leaders). Once the workgroup comes together, it should reach out to the LEAD Bureau which can provide technical assistance and support to launch a LEAD site.

<sup>48</sup> *An Analysis of Jail Bookings: How Texas Counties Could Save Millions of Dollars by Safely Diverting People from Jail*, Texas Appleseed (April 2019), available at <https://www.texasappleseed.org/sites/default/files/An%20Analysis%20of%20Texas%20Jail%20Bookings%20Apr%202019.pdf>.

<sup>49</sup> For more information about LEAD, including best practices for stakeholders, visit <https://www.leadbureau.org/>.

- Provide funding to relevant stakeholders to ensure adequate training and services are made available to social service agencies to adequately participate in LEAD. In addition, culturally competent and linguistically appropriate outreach and communication is necessary to ensure community and stakeholder buy-in.

***Local law enforcement should:***

- Work with other stakeholders to establish and implement a LEAD program. In order to be effective, LEAD requires buy-in from all stakeholders including supervisors and law enforcement officers who are on patrol. LEAD partnerships and protocols should be established with input from officers tasked with implementing it and their supervisors.
- Utilize well-respected units and officers in rolling out the LEAD program. This ensures LEAD will be seen as “real” police work and garner more widespread buy-in.
- Provide detailed training on barriers individuals who are homeless, experiencing mental health concerns, and/or struggling with addiction face in accessing social services. These trainings help debunk myths, educate officers on effective interventions, and fostering better understanding about the challenges individuals may face in overcoming these types of obstacles.

***Prosecutors should:***

- Dedicate at least one prosecutor to the LEAD program. While it is not necessary, having a dedicated prosecutor to track and monitor LEAD cases increases the efficacy of the program. The LEAD prosecutor should have the ability to independently resolve LEAD participants’ cases.
- Regularly communicate with LEAD partners and stakeholders. This includes obtaining information from officers and case managers on the progress of participants, as well as sharing information about upcoming court dates and decision points.
- Communicate with defense counsel to ensure participants understand the requirements they need to meet in order to receive a beneficial discretionary decision by the prosecutor. Defense counsel may be uncomfortable partnering with prosecutors in this manner, so relationship building is important.

**Diversion programs are programs that try to divert an individual accused of a crime into treatment or care instead of processing them through the traditional legal system. Diversion can take many forms depending on how and when the diversion program is introduced in the criminal legal proceedings. For an overview of these types of programs, see ILRC’s Diversion and Immigration Law handout at <https://www.ilrc.org/diversion-and-immigration-law>.**

### 3. Establish a response team of mental health professionals to respond to people in a mental health crisis.

Often individuals with mental health conditions are not a danger to others, and interaction with law enforcement is unnecessary or potentially counter-productive. A response team that utilizes the expertise of mental health professionals can determine the least restrictive way to address mental health and drug offenses.

#### ***Specifically, local government should:***

- Establish and fund a crisis outreach team of mental health professionals who will respond to individuals experiencing a mental health crisis.

#### ***Local law enforcement should:***

- Assist local government in the establishment of a crisis outreach team to de-escalate situations and respond with medical and social assistance rather than only a law enforcement response.

### 4. Establish or formalize comprehensive cite and release policies.

Police, sheriffs, and other local law enforcement can use their discretion to arrest or not to arrest under state law.<sup>50</sup> Instead of arresting for an offense, law enforcement can “cite and release,” meaning that they issue a citation, notify individuals when and where to appear, and then release them. Increasing cite and release for certain offenses not only reduces the number of arrests and decreases over-incarceration in local jails, but it keeps people out of jail and can mitigate a conviction that makes a non-citizen deportable, ineligible for legal status, and/or a higher priority for deportation. Some areas to exercise discretion and which have tremendous impact on communities of color include possession of marijuana, petty theft, and traffic offenses such as driving without a license.

Because some “cite and release” policies still leave people with convictions on their records, these should be proposed after the interventions listed in **Section C.2** above, all of which would avoid a conviction altogether.

#### ***Specifically, local law enforcement should:***

- Establish a policy that reduces arrests for all low-level offenses (Class A, Class B, and Class C misdemeanors except where prohibited by law) regardless of the person’s immigration status. This policy should instruct officers and deputies to issue a citation in all instances unless there is a threat to public safety. If an officer

<sup>50</sup> Texas Code of Criminal Procedure Article 14.06.

or deputy arrests an individual instead of issuing a citation, the officer or deputy must complete a report detailing why the person was arrested instead of cited. Local law enforcement should provide the local government with a copy of these reports each month.

***Local government should:***

- Adopt city- and county-wide resolutions or policies requiring local law enforcement to adopt the cite and release policy outlined above.

**5. Reform the cash bail system and ensure that municipal court fine collection practices do not prey on indigent persons.**

The movement to end the cash bail system has gained tremendous momentum over the last few years, with many elected officials, including law enforcement officials, supporting an end to the system that keeps poor people in jail because they cannot pay. Harris County Sheriff Ed Gonzalez has criticized the cash bail system, saying that “[w]hen most of the people in my jail are there because they can’t afford to bond out, and when those people are disproportionately (B)lack and Hispanic, that’s not a rational system.”<sup>51</sup> A cash bail system keeps poor people in jails, exposing non-citizens to ICE because of their inability to pay. Cash

**A cash bail system keeps poor people in jails, exposing non-citizens to ICE because of their inability to pay.**

bail systems require defendants to pay a cash surety (or collateral) as a guarantee that they will arrive in court. In most jurisdictions, prosecutors ask the judge to set bail amounts. Many individuals cannot pay the surety amount, and they sit in jail until their case is resolved. This occurs even if the person is charged with a minor offense.

***Specifically, prosecutors should:***

- Adopt a policy of releasing an individual on their own recognizance, and when necessary, seek a bail commensurate with the individual’s offense and ability to pay.

***Local government and judges should:***

- Ensure that bail schedules are not the sole means of determining bail amounts.
- Abolish bail schedules for misdemeanor offenses in order to protect people’s constitutional rights and ensures due process. Recent federal court decisions have

<sup>51</sup> Michael Harder, *In Fight Over Bail’s Fairness, a Sheriff Joins the Critics*, The New York Times (Mar. 9, 2017), available at <https://www.nytimes.com/2017/03/09/us/houston-bail-reform-sheriff-gonzalez.html>.

limited Harris and Dallas Counties' ability to hold in jail individuals who cannot pay bail and have been arrested on misdemeanor charges because it violates their constitutional rights.<sup>52</sup>

- Prohibit the automatic denial of bail or increased cash bail amount for immigrants.
- Identify and adopt alternative systems to help individuals post bail and be released from jail. For example, Travis County created a system for posting 5% or 10% of stated bonds, if the bonds are under a certain amount, ensuring that more individuals can be released from local jail.

## 6. Establish a policy requiring prosecutors to consider immigration and other consequences in charging decisions.

Prosecutors wield extraordinary power over an immigrant's fate by determining whether to charge a case, how to charge a case, and what type of conviction they are willing to accept as the outcome of a criminal case. The vast majority of criminal cases—95%—are resolved through plea negotiations with most individuals agreeing to a plea. By accepting these pleas, immigrants may have criminal convictions on their record that can prevent them from ever acquiring legal status if they are undocumented or result in a loss of legal status, including for lawful permanent residents. In many cases, an immigrant's only chance to avoid removal or deportation is to negotiate a plea in criminal proceedings that offsets the penalties in immigration proceedings. Often, the prosecutor can agree to a resolution that lessens the immigration impact but has the same penalty as other charges. Furthermore, the definition of a conviction differs for state law purposes and immigration purposes. Sometimes, what looks like a "dismissal" in an individual's criminal record is still considered a conviction for immigration purposes. Prosecutors should refuse to prosecute certain offenses, consider immigration consequences in charging, plea, and sentencing decisions, agree to support post-conviction relief motions, and clear out old warrants.

For more information on the best practices for immigration-informed prosecutorial policies, see ILRC's *Prosecutor Policy Recommendations* available at <https://www.ilrc.org/ilrc%E2%80%99s-prosecutor-policy-recommendations>.

### ***Specifically, prosecutors should:***

- Adopt an office-wide policy instructing all prosecutors to consider immigration and other non-criminal consequences for an individual when making filing, plea bargaining, and post-conviction decisions.

<sup>52</sup> Jolie McCullough, *Federal judge rules against Dallas County bail practices*, The Texas Tribune (Sep. 20, 2018), available at <https://www.texastribune.org/2018/09/20/dallas-bail-sytem-judge-order/>.

- Designate an immigration-point person in the office who can be a liaison between the community and the office. Community members can raise concerns with this point person.
- Establish a policy prohibiting inquiries into immigration status or using evidence about immigration status to advocate for higher bonds. Prohibit the use of immigration status against defendants in the negotiation of plea deals or sentencing.
- Work with advocates to create simplified and streamlined post-conviction procedures for people to erase the ongoing consequences of their conviction.

## 7. Create a county public defender's office.

**In Texas, the vast majority of counties do not have a county public defender's office.** Instead, the majority of counties rely on “wheel attorneys,” or court-appointed private counsel who represent criminal defendants and are reimbursed by the state and county. When public defense is centralized in one office, it makes training, holistic defense, community engagement, and the distribution of resources much more streamlined. In addition, centralized public defender offices facilitate ease of access to *Padilla* advisals about the immigration consequences of criminal convictions.<sup>53</sup> Local advocates should work with county governments to build out local public defender's offices as either county agencies or stand alone nonprofits.

### ***Specifically, local government should:***

- Explore funding options for a public defender's office, including whether the county may be able to obtain funds for a public defender's office from the Texas Indigent Defense Commission.
- Appoint a task force to work on a funding proposal for a public defender's office, taking into account the county's and community's needs. The task force should include a diverse group of stakeholders, including but not limited to: current and former public defenders (if any), members of local government, private defense attorneys, community group representatives, directly impacted members of the community, and family members of directly impacted individuals.
- Hold community forums to assess the community's needs and current challenges surrounding the court appointed attorney system.

<sup>53</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010).

***Criminal court judges should:***

- Ensure that all indigent criminal defendants who request a court appointed attorney or public defender receive appointed counsel within 2 days.
- Create a policy that requires court appointed counsel or public defenders to make contact and visit their criminal defendant clients within two days of appointment as counsel.

**8. Allocate funds to be used by criminal defenders to guarantee compliance with the *Padilla* Supreme Court case.**

**In *Padilla v. Kentucky*, the U.S. Supreme Court established that criminal defense counsel has a constitutional duty under the Sixth Amendment to affirmatively and competently advise of the immigration consequences of criminal offenses.**

For an immigrant defendant, the immigration consequences of a conviction can be extremely damaging and often far more severe than the criminal penalties faced. In *Padilla v. Kentucky*,<sup>54</sup> the U.S. Supreme Court established that criminal defense counsel has a constitutional duty under the Sixth Amendment to affirmatively and competently advise of the immigration consequences of criminal offenses. Defense counsel's duty is to not only advise but also defend against adverse immigration consequences. This duty encompasses

both avoiding deportation and preserving eligibility to apply for relief from removal. Because even misdemeanor offenses can have devastating immigration consequences, it is crucial that defenders are armed with the resources necessary to comply with this duty.

***Specifically, local government should:***

- Provide the necessary funding to ensure criminal defenders have the training and resources needed to represent immigrants in criminal proceedings. City and county government can fund full-time or part-time immigration specialists within the public defender's office, such as in Dallas County, who are hired to work with "wheel attorneys" and public defenders, or contract with an outside immigration expert or organization for advice. Some communities have gone further to hire full-time immigration specialists who both advise other defenders and provide deportation defense. For more information on these different models, please visit [http://www.ilrc.org/sites/default/files/resources/protocols\\_for\\_ensuring\\_effective\\_defense\\_of\\_noncitizen\\_defendants\\_in\\_ca\\_oct\\_2015.pdf](http://www.ilrc.org/sites/default/files/resources/protocols_for_ensuring_effective_defense_of_noncitizen_defendants_in_ca_oct_2015.pdf).

<sup>54</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010).

- Create a mechanism for ensuring that all criminal defense attorneys are obtaining immigration advice in a timely fashion and properly communicating that advice to their criminal defendant clients.

***Criminal court judges should:***

- Provide defense attorneys with additional time to interview clients and obtain expert immigration advice and approve requests to consult with immigration experts.
- Notify all defendants early on in their case, regardless of their perceived citizenship status, about a defendant's right to receive immigration advice from their defense attorney.
- Encourage the provision of enhanced technical resources, financial assistance, and support services to defense attorneys.
- Support public defender offices' requests to fund in-house immigration experts or obtain access to outside immigration expertise.

**9. Adopt court procedures and protocols that guarantee access to justice and due process for all without regard for immigration status.**

Judges have the duty to administer justice fairly and impartially. They must ensure that everyone, regardless of their immigration status, has access to the courts. Courts should ensure that court policies and practices do not unfairly prejudice immigrants, but instead afford them due process and equal protection under the law.

***Specifically, the courts and judges should:***

- Institute a policy **against** asking about citizenship or immigration status, foreign birth or alienage, or country of origin on the record. This helps ensure that judges uphold their obligations of impartiality and neutrality and protects the Fifth Amendment right against self-incrimination.
- Work to establish a public defender office in each jurisdiction, which practices holistic and participatory defense strategies, and affords defendants reasonable time to obtain specific, individualized advice about the actual immigration consequences of a plea or conviction.

- Refrain from directly providing information on immigration consequences to immigrants charged with crimes. These notifications may not be tailored to every individual, and therefore, can be misleading and inaccurate.
- Adopt a practice of advising all *pro se* (unrepresented) defendants, regardless of perceived immigration status, foreign birth or alienage, or country of origin, that there may be immigration consequences related to a plea and that defendants should seek immigration counsel if possibly applicable. Judges should provide these individuals with an opportunity to retain or request appointment of counsel.
- Consider immigration consequences in issuing judgments and sentences. When a defendant has volunteered their immigration status, the judge should factor that status into the disposition and sentencing determination to avoid, or at least minimize, the risk of deportation.
- Adopt policies and protocols to limit the ability of federal immigration enforcement officers from interfering with courthouse proceedings and being present inside or directly outside courthouses. Courthouse arrests and enforcement actions are alarming and cause non-citizens to stay away, even when they need help or may serve as witnesses.

## D. SUPPORT THE MOST VULNERABLE MEMBERS OF OUR COMMUNITY

All members of our community have a right to dignity, respect, and access to justice. However, some individuals are more vulnerable to persecution and discrimination and as a result, need unique resources and protections. This includes immigrants, currently and formerly incarcerated individuals, homeless people, LGBTQI, survivors of domestic violence, and other groups. Both immigration-specific and broader policies should be adopted to address the needs of these individuals in order to create an inclusive and supportive society.

### 1. Allocate funds to be used for deportation defense.

In criminal proceedings, every person has the right to a criminal defense attorney.<sup>55</sup> If a person cannot afford an attorney, they will be appointed one at no cost to the individual. However, immigration proceedings are civil, not criminal, and so this basic right does not exist in immigration court. A detained individual can hire an attorney, but they do not have any right to an attorney if they are unable to pay. This remains true even if they are a young child separated from their family, do not speak or read English, are mentally or cognitively impaired, or are severely ill, traumatized, or an individual with a disability.

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55 *Gideon v. Wainwright*, 372 U.S. 335 (1963).

**A 2011 study found that 18% of individuals in immigration detention with representation had successful outcomes, while only 3% of individuals in immigration detention without representation had similar success.**<sup>56</sup> This study shows how significant of a role legal representation can play in immigration proceedings. Establishing a deportation defense fund increases access to legal representation and provides individuals with a meaningful opportunity to engage in their immigration proceedings.<sup>57</sup>

***Specifically, local government should:***

- Create a program that provides counsel to detained indigent immigrants in deportation proceedings. Different models can be funded depending on resources and need. For example, Houston established a partnership with local and federal public defenders' offices to coordinate with immigration attorneys while individuals are in criminal custody.<sup>58</sup> New York City established the nation's first publicly funded universal representation program for detained immigrants in removal proceedings, where immigrant detainees are provided court-appointed attorneys from the Bronx Defenders, Brooklyn Defender Services, and the Legal Aid Society of New York.<sup>59</sup> Advocates in California have secured an annual budget allotment of at least \$45 million a year to go to immigration legal services providers throughout the state.<sup>60</sup>
- Implement new programs that improve and simplify the experience of finding high-quality legal advice and information regarding complex immigration laws and procedures. This may involve the creation of one or more single-point-of-contact tools, such as a hotline, or a standardized screening and referral process to help immigrants navigate the system.<sup>61</sup>

## **2. Adopt a U visa protocol for certifying U visa applications.**

Local and state law enforcement, prosecutors, judges, and certain other agencies should establish policies and protocols for signing U visa certifications. A U visa is a type of immigration relief for victims of certain crimes who have been, or are, likely to be, helpful to

<sup>56</sup> *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, Study Group on Immigrant Representation, 3 (2011), available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf).

<sup>57</sup> To read more about local efforts to expand access to legal representation, see these articles and resources about programs in New York at [https://news.vice.com/en\\_ca/article/434mz9/new-york-will-offer-free-legal-services-to-immigrants-facing-deportation](https://news.vice.com/en_ca/article/434mz9/new-york-will-offer-free-legal-services-to-immigrants-facing-deportation); Chicago at <http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-immigrant-legal-fund-met-1203-20161202-story.html>; Denver at <https://www.denverpost.com/2018/11/15/denver-immigrant-legal-representation-fund/>; San Antonio and Austin at <https://news4sanantonio.com/news/trouble-shooters/sa-to-provide-legal-representation-for-undocumented-immigrants>; and for information about a national network at <https://www.vera.org/projects/universal-representation-for-immigrants-facing-deportation/overview>.

<sup>58</sup> Welcoming Houston Task Force Recommendations (Jan. 20, 2017), Recommendation 11, available at [http://www.houstonimmigration.org/wp-content/uploads/2017/04/WelcomingHouston-Task-Force-Recommendations\\_FINAL\\_01-18-17.pdf](http://www.houstonimmigration.org/wp-content/uploads/2017/04/WelcomingHouston-Task-Force-Recommendations_FINAL_01-18-17.pdf).

<sup>59</sup> For more information about this program, visit <https://www.bronxdefenders.org/programs/new-york-immigrant-family-unity-project/>.

<sup>60</sup> *Immigration Services Funding*, California Department of Social Services, available at <https://www.cdss.ca.gov/inforesources/Immigration/Immigration-Services-Funding> (last accessed August 2019); *One California Immigration Services Funding*, Ready California, available at <https://ready-california.org/resources/one-california-immigration-services-funding/> (last accessed August 2019).

<sup>61</sup> Welcoming Houston Task Force Recommendations (Jan. 20, 2017), Recommendation 16, available at [http://www.houstonimmigration.org/wp-content/uploads/2017/04/WelcomingHouston-Task-Force-Recommendations\\_FINAL\\_01-18-17.pdf](http://www.houstonimmigration.org/wp-content/uploads/2017/04/WelcomingHouston-Task-Force-Recommendations_FINAL_01-18-17.pdf).

law enforcement in the investigation or prosecution of a crime. A required step in applying for a U visa is to obtain certification from a local law enforcement agency or judicial officer that the person has been, is being or is likely to be cooperative with law enforcement in the investigation or prosecution of a crime. An official can sign the certification request if the following elements are met: 1) the individual is a victim of a qualifying crime; and 2) the individual “has been, is being, or is likely to be helpful”<sup>62</sup> in the investigation or prosecution of that crime.

Local law enforcement agencies do not need to determine anyone’s immigration status in order to provide certifications for U visas. Their only responsibility is to attest to whether the individual has been a victim of criminal activity and has been, is being, or is likely to be reasonably helpful in the investigation of the crime or prosecution of the perpetrator(s). The U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction to determine whether to grant or deny the U visa petition. A completed law enforcement certification only allows an individual to apply for the U visa, but in no way guarantees approval. There are additional eligibility requirements that the applicant must fulfill, including a full review of the applicant’s immigration and criminal background. More information on U Visa certifications can be found in the ILRC’s resource *U Visa Basics for Law Enforcement*, available at <https://www.ilrc.org/u-visa-basics-law-enforcement>.

***Specifically, local law enforcement should:***

- Designate a point-person or team for reviewing U visa certification requests and ensuring that they are acted upon in a timely and consistent fashion. Certification requests should be processed within 90 days of the request being made, or 14 days if the individual is detained or in removal proceedings.
- Adopt a policy for completing U visa certifications that creates a rebuttable presumption of helpfulness by the victim, so long as the victim has not refused or failed to provide information and reasonably requested assistance. The presumption can be overcome by articulable examples of the victim’s unwillingness or refusal to cooperate. If the victim has been unwilling to cooperate and has demonstrated that their unwillingness was reasonable under the circumstances (i.e. threats from an abuser, homelessness, etc), law enforcement should determine that the presumption of helpfulness still applies.
- Ensure local law enforcement’s U visa certification policy allows a victim to request and obtain certification even if no charges are filed, if no conviction resulted, or if the investigation is complete.

<sup>62</sup> Form I-918 Supplement B Instructions, U.S. Citizenship and Immigration Services, p. 2, available at <https://www.uscis.gov/i-918>.

- Include in the U visa certification policy a prohibition against requesting additional information from the victim, such as their immigration or criminal history, which are not relevant to the certification process. Under federal immigration law, the Form I-918 Supplement B and law enforcement files are sufficient for completing the U visa certification form.
- Accept U visa certification requests regardless of when the eligible crime was committed. There is no statute of limitations for U visa certification requests. Victims should be able to re-submit requests if the deficiencies related to the original request are addressed, or the denial occurred prior to current policy for U visa certifications.
- Provide a referral list of qualified immigration service providers to all individuals seeking U visa certifications.
- Make public the law enforcement agency's policy on U visa certifications. The policy should be posted on the agency or department's website, along with relevant contact information and the agency's procedure for requesting the certification.

***Prosecutors should:***

- Adopt a U visa certification policy to allow community members to obtain a certification of their helpfulness to investigation or prosecution of a crime regardless of when the crime occurred. There should be a rebuttable presumption of helpfulness, and U visa certifications should be completed regardless of whether charges were brought, a conviction was achieved, or the case has concluded. The prosecutor's office should not require or request additional documents or statements beyond the forms required for the U visa certification. This policy should be posted on the prosecutor's website, along with relevant contact information and the agency's procedure for requesting the certification.
- Work with nonprofit immigration organizations to have U visa training programs or publicize the U visa program as part of the prosecutors' office's outreach projects.
- Provide a referral list of qualified immigration service providers to all individuals seeking U visa certifications.

***Criminal court judges should:***

- Adopt a U visa certification policy to allow community members to obtain a certification of their helpfulness to investigation or prosecution of a crime regardless of when the crime occurred. There should be a rebuttable presumption of helpfulness, and U visa certifications should be completed regardless of whether charges were brought, a conviction was achieved, or the case has concluded. Judges should not require or request additional documents or statements beyond the forms required for the U visa certification. This policy should be posted on the court's website.
- Provide a referral list of qualified immigration service providers to all individuals seeking U visa certifications.

***Civil court judges should:***

- In protective order cases, adopt a U visa policy to allow community members to obtain a certification of their helpfulness to the investigation or prosecution of a crime, regardless of when the crime occurred. There should be a rebuttable presumption of helpfulness, and U visa certifications should be completed regardless of whether charges were brought, a conviction was achieved, or the case has concluded. Judges should not require or request additional documents or statements beyond the forms required for the U visa certification. This policy should be posted on the court's website.
- Provide a referral list of qualified immigration service providers to all individuals seeking U visa certifications.

***Local government should:***

- Adopt policies ensuring that all government agencies who have the legal authority to provide U visa certifications, including but not limited to law enforcement agencies, prosecutors, judges, child protective services, and elder abuse agencies, are required to consider U visa certification requests.
- Allocate funds so that local law enforcement, judicial agencies, and child protective service and elder abuse agencies have the resources to review and process U visa certification requests in a timely manner.
- Provide oversight by requesting data on how many certification requests agencies have received and approved or denied, and on what timeframes they were reviewed.

### 3. Expand city and county benefits and services to all residents, regardless of immigration status.

Equal treatment under the law is a fundamental tenet of the Texas Constitution, which says that all people are to be treated equally under the law regardless of sex, race, color, creed, or national origin.<sup>63</sup> This equal treatment is also required under Federal law. Title IV of the Civil Rights Act of 1964 prohibits agencies that receive federal funds from discriminating against a person because of their race, color, or national origin.

**Equal treatment under the law is a fundamental tenet of the Texas Constitution, which says that all people are to be treated equally under the law regardless of sex, race, color, creed, or national origin.**

This concept of nondiscrimination should be affirmatively extended to the provision of benefits and services to all residents.

#### *Specifically, local government should:*

- Provide services and benefits to all city or county residents, regardless of immigration status, unless specifically limited by law.
- Accept non-traditional forms of identification, such as utility bills, mail, letters from landlords, library cards, student IDs, church membership cards, etc., to establish residency in the city or county and identification.



### 4. Provide language access so that limited-English proficient individuals are able to obtain local services.

In Texas, more than 35% of the population speaks a language other than English at home.<sup>64</sup> Providing language access ensures all individuals in a city or county can access the services they are entitled to and contribute to the overall safety, public

<sup>63</sup> Specifically, Section 3a of the Texas Constitution states: "Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative."

<sup>64</sup> *Quick Facts: Texas*, U.S. Census Bureau (2017), available at <https://www.census.gov/quickfacts/fact/table/tx,US/PST045217>.

health, and welfare of the community. The importance of language access is recognized in federal law and may even be required of local agencies. Under Title IV of the Civil Rights Act of 1964, agencies that receive federal funds are prohibited from discriminating against a person because of their race, color, or national origin. Furthermore, under Presidential Executive Order 13166 (August 11, 2000), federally funded agencies must take reasonable steps to guarantee individuals with limited-English proficiency have access to the agency's programs and services.

For resources on important issues in language access as well as tools and models for improving local services, see the American Bar Association's Language Access resources,<sup>65</sup> or the Migration Policy Institute's Language Access: Translation and Interpretation Policies and Practices project.<sup>66</sup>

***Local law enforcement agencies should:***

- Develop protocols for working with limited-English-proficient community members. Require all agents to be trained on these protocols. Maintain or contract with a language access hotline to connect law enforcement officers in the field, or other city/county officials, with qualified interpreters in a timely manner.
- Ensure agents inform individuals of their rights in a language they understand. Have jail handbooks and other written materials translated into multiple languages and ensure access to written materials is available for those with limited literacy.
- Require agents to use professional interpretation services. Officers who wish to question a limited-English-proficient individual for any reason and are not fluent in a language spoken proficiently by that individual, shall not question that individual until a qualified interpreter is present, except in emergency situations.
- Prohibit law enforcement officers from calling or using Border Patrol or ICE agents to serve as interpreters.

***Local government should:***

- Enact policies requiring all local agencies, including schools, transit agencies, public health centers, employment agencies, shelters, courts and law enforcement agencies, public benefits providers, and all other local offices that

<sup>65</sup> The American Bar Association's Language Access resources are available at [https://www.americanbar.org/groups/domestic\\_violence/resources/resources\\_for\\_attorneys/marginalized\\_communities/language\\_access.html](https://www.americanbar.org/groups/domestic_violence/resources/resources_for_attorneys/marginalized_communities/language_access.html).

<sup>66</sup> The Migration Policy Institute's *Language Access: Translation and Interpretation Policies and Practices* project is available at <https://www.migrationpolicy.org/programs/language-access-translation-and-interpretation-policies-and-practices>.

work with the public to ensure that their services and operations are accessible to limited-English proficient individuals.

#### **5. Establish and fund an office dedicated to civic engagement and immigration affairs.**

A dedicated office for immigrant affairs can work to promote and coordinate inclusive policies for all residents, such as the integration of immigration services (e.g. citizenship outreach), language access, and other programs. Inclusive policies help lead to civic and economic engagement within the community, creating healthier communities that benefit everyone.

To learn more about the efforts of these service offices, visit the City of Dallas at <https://dallascityhall.com/departments/wcia/Pages/default.aspx>; the City of Houston at <http://www.houston.tx.gov/na/index.html>; and The City of San Antonio an examples available at <https://www.sanantonio.gov/humanservices/ImmigrantServices>.



# CONCLUSION

In this guide, we attempt to provide a menu of policy options. For ideas on how to engage local policy makers and push these policies forward, visit the [www.ilrc.org](http://www.ilrc.org). In particular, the following resources guide you through advocating for a local win as well as provide practical tools that can be adapted to use in your local efforts.

***Ending 287(g), A Toolkit for Local Organizers***

***Ending Local Collaboration with ICE: A Toolkit for Immigration Advocates***

As communities, organizations, and elected officials in Texas continue to grapple with finding solutions to dismantle the harmful arrest-to-deportation pipeline in the aftermath of SB 4, we must remember our role in ensuring the constitutional rights of all Texans are respected and each individual in the state can contribute to our thriving communities. We must seize this moment and work together to begin transforming the current policy landscape; it will require hard work, commitment, creativity, collaboration, and a shared vision for Texas as a home for all.

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Recognizing that sometimes advocates will have stronger partnerships or relationships with certain actors, we have created this index to easily reference policy recommendations by actor.

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**D. SUPPORT THE MOST VULNERABLE MEMBERS OF OUR COMMUNITY**

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- 4. Provide language access so that limited-English proficient individuals are able to obtain local services.....47

**PROSECUTORS****C. ADOPT COMPREHENSIVE POLICIES WITHIN CRIMINAL LEGAL SYSTEM THAT PROTECT PUBLIC SAFETY AND SAVE LOCAL RESOURCES**

- 2. Establish a Law Enforcement Assisted Diversion Program (LEAD) to divert individuals to community-based programs.....34
- 5. Reform the cash bail system and ensure that municipal court fine collection practices do not prey on indigent persons.....37
- 6. Establish a policy requiring prosecutors to consider immigration and other consequences in charging decisions .....38

**D. SUPPORT THE MOST VULNERABLE MEMBERS OF OUR COMMUNITY**

- 2. Adopt a U Visa protocol for certifying U Visa applications.....43

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**C. ADOPT COMPREHENSIVE POLICIES WITHIN CRIMINAL LEGAL SYSTEM THAT PROTECT PUBLIC SAFETY AND SAVE LOCAL RESOURCES**

- 5. Reform the cash bail system and ensure that municipal court fine collection practices do not prey on indigent persons.....37
- 7. Create a county public defender's office.....39
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- 9. Adopt Court procedures and protocols that guarantee access to justice and due process for all without regard for immigration status.....41

**D. SUPPORT THE MOST VULNERABLE MEMBERS OF OUR COMMUNITY**

- 2. Adopt a U Visa protocol for certifying U Visa applications.....43