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## EXECUTIVE SUMMARY

**THE ENTANGLEMENT OF LOS ANGELES COUNTY** with federal civil immigration enforcement has created a vicious cycle of harm to Los Angeles' immigrant community. This Report focuses the lens of international human rights on the impact of the County's collaboration, specifically that of the Los Angeles County Sheriff's Department (LASD), with U.S. Immigration and Customs Enforcement (ICE). It traces a twenty-year history of that entanglement based on an interior enforcement policy of federal commandeering of local criminal justice systems, and to varying degrees of local law enforcement, to serve the ends of federal civil immigration enforcement.

This perversion of local institutions of governance is at the root of the human rights violations and concerns uncovered here. It leads to the unfair criminalization of immigrant communities, discrimination and disparate treatment in the jails, and the compromising of the due process rights of those in custody who are subjected to collateral investigation, detention, and deportation for civil immigration violations. It exacerbates endemic problems of bias and discrimination in law enforcement and the criminal justice system. It undermines the goals of rehabilitation and restorative justice, destroys families, and harms children. Ultimately, it undermines the integrity of the County's institutions and the broader goals of public health, safety, and welfare to be achieved by greater integration of our immigrant communities.

The international human rights framework provides a fresh look at the measure in which our society, and in this case Los Angeles County, is evolving into a more just and humane place to live and work and build community. Human rights norms are evolving progressively in ways that go beyond the domestic legal framework. Grass roots movements, activists, public intellectuals, and people of diverse expertise are actively participating in the creation of human rights norms, as the people who bear those rights are demanding their recognition. In particular, the human rights framework is progressing by applying human rights principles to social realities that produce vulnerable groups in our societies. Migrants in general, and in particular immigrants in the United States, are one such vulnerable group.

The human rights framework allows the people to focus public discourse on the core principles from which those human rights emerge: human dignity and social justice. While this report identifies specific human rights violations and concerns arising out of the County's entanglement with ICE, such as discrimination, due process, and the right to asylum; it also takes the discussion into the broader social context of fundamental human dignity: the humane treatment of the person, the right to rehabilitation and restorative justice, the integrity of family and community, public health and safety understood as services that heal and restore the dignity of the person and the community, and the integration of the immigrant community into the County's public life.

Los Angeles County is recognized as a global metropolis, an economic and cultural hub with over 10 million people<sup>1</sup> drawing particular strength and benefits from the integration of immigrant communities. Immigrant contributions to the economy – in terms of labor, investment, and entrepreneurship—sustain an integral part of Los Angeles County’s economic engine and vibrant culture. The overall immigrant population of Los Angeles County is 3.5 million.<sup>2</sup> Of these, an estimated 814,000 are informal immigrants<sup>3</sup>, most living in families of blended immigration status. Immigrant communities shape Los Angeles County’s social fabric, upholding its very structure and sustainability.

This Report seeks accountability from the Sheriff and Board of Supervisors of Los Angeles County for their entanglement with federal civil immigration enforcement. There is widespread agreement that the encroachment of local government into federal civil immigration enforcement is both inappropriate and illegal.<sup>4</sup> But the encroachment of federal civil immigration enforcement into County governance likewise suffers from its own moral and legal infirmity by perverting the ends of County government. As this report finds, it exacerbates bias in policing and the criminal justice system, since the immigrant communities targeted for enforcement are largely communities of color.

*I don't want my son to be deported. After he served his time he changed. He had two jobs and was taking care of his son. Now I've spent all my savings on his defense. My grandson is affected emotionally because of my son's detention, and I've had to go into therapy. I don't know what we'll do if he is deported. The whole family is here, and we've been here since 1983.*

*Asha  
mother of ICE detainee  
transferred from LASD  
custody*

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<sup>1</sup> *Report P-1 (County): State and County Total Population Projections, 2010-2060 (5-year increments)*, CAL. DEP'T OF FIN. DEMOGRAPHIC RESEARCH UNIT (Jan. 31, 2013), <http://explore.regionalchange.ucdavis.edu/ourwork/projects/ccep/california-demographic-data-and-gis-maps/california-population-projections-2010-2060-1/report-p-1-county-state-and-county-total-population-projections-2010-2060-5-year-increments/view>, last accessed 12/30/2016.

<sup>2</sup> University of Southern California, Center for the Study of Immigrant Integration, Fact Sheet, [http://dornsife.usc.edu/assets/sites/731/docs/LOSANGELES\\_web.pdf](http://dornsife.usc.edu/assets/sites/731/docs/LOSANGELES_web.pdf), last accessed 12/30/2016.

<sup>3</sup> *Just the Facts: Undocumented Immigrants*, PUB. POLICY INST. OF CAL., [http://www.ppic.org/main/publication\\_show.asp?i=818](http://www.ppic.org/main/publication_show.asp?i=818), last accessed 12/30/2016. We use the term “informal immigrant” to describe those who have immigrated outside the regulatory framework and in response to both refugee producing conditions in their home countries and labor market demand in the United States. We apply it to the term “undocumented immigrant” used in the fact sheet cited here.

<sup>4</sup> The most recent attempt by the Arizona legislature to unilaterally criminalize immigration violations and empower local law enforcement to go after immigrants on the basis of their status was largely struck down by the Supreme Court in *Arizona v. United States*, 132 S.Ct. 2492 (2012). It is but the latest iteration of attempts by state and local governments to engage directly in immigration enforcement, going back to California’s Proposition 187.

The use of criminal pre-trial custody for collateral investigations and enforcement of federal civil immigration law produces a slippery slope of due process violations, from unlawful custodial interrogations, to warrantless custody transfers, to lack of notice and representation. Use of the criminal justice system to impose new penalties on old crimes undermines the public goals of rehabilitating and restoring individuals who served time for their past mistakes to their families and communities. It cuts off their process of re-integration and attaches *ex post facto* a collateral consequence –deportation— that is harsher than the criminal penalty they paid. Facilitating a deportation pipeline for ICE, the ultimate goal of the federal enforcement strategy, produces a host of harms for families and the community as well.

The Board of Supervisors recently voted to explore strategies to protect immigrant communities.<sup>5</sup> The Board can begin by reviewing and disentangling County institutions from the federal immigration enforcement strategy. The ongoing human rights violations in the 20-year history of entanglement with federal civil immigration enforcement demonstrate that piecemeal safeguard policies are not the appropriate answer. The entanglement is toxic, and it feeds off the toxic rhetoric of xenophobia, nativism, and racism. LA County continues this entanglement by participating in and collaborating with the ongoing federal interior enforcement strategy, facilitating the commandeering of our local criminal justice system and law enforcement. Protecting immigrant communities involves more than just protecting current safeguard policies. A more effective strategy of extraction from the entanglement is needed to protect the integrity and goals of local governance, and to better protect, integrate, and serve the immigrant communities of Los Angeles County.

On average, ICE screens over 500 immigrants per month in Los Angeles County jails.<sup>6</sup> Of these approximately 90% are Latinos. Many have no prior criminal convictions, and have not yet been convicted of a crime. This vast dragnet cast over the County's criminal justice system for the purpose of federal civil immigration enforcement is disturbing. Even though ICE does not currently take into custody all of those screened, and AB4 (the TRUST Act) imposes certain limitations on LASD, nothing prevents ICE from pursuing these individuals upon release and initiating deportation proceedings.

Of those screened, ICE takes into custody on average over 70 individuals per month, including on average 13 legal permanent residents. It is presumed that most of these individuals are deported.<sup>7</sup> As we found in our interviews, each ICE detainee taken from LASD custody and subsequently deported

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<sup>5</sup> Motion by Supervisor Solis available at <http://file.lacounty.gov/SDSInter/bos/supdocs/109792.pdf>: *Los Angeles County officials push back against threats of deportation*, Elizabeth Marcellino, Los Angeles Daily News, Dec. 6, 2016, <http://www.dailynews.com/government-and-politics/20161206/los-angeles-county-officials-push-back-against-threats-of-deportation>.

<sup>6</sup> Data taken from ICE monthly statistical spreadsheets provided to LASD, November 2015 – September 2016.

<sup>7</sup> ICE does not provide this data to LASD.

represents a family and community member. Partners, children, and extended family suffer from the loss a loved one through deportation.

The safeguards that have presumably been put in place to limit this impact cannot hide the fact of the County's participation and collaboration in this deportation pipeline through the County's criminal justice system. This Report found that ICE agents continue to have full access to Los Angeles County jails and databases. LASD provides ICE with a daily list of all inmates who are scheduled for release in the next seven days. ICE agents have free access to the release area and the files of those scheduled for release, and while LASD officials claimed that agents cannot interview inmates who have not been screened for TRUST Act eligibility, we received contradictory information about that practice in the release area. There is no effective monitoring of the TRUST Act review conducted by LASD deputies, and officials admitted that staffing of the AB4 desk had been decreased from 4 individuals to 2, making it virtually impossible for there to be 24/7 monitoring of the release process. ICE's own stats reveal that that over the last year they took into custody over a dozen individuals with no AB4 charge.

In our interviews with LASD officials, there was a formal understanding of the County's immigrant protection policy, but an underlying mindset that viewed ICE as a fellow law enforcement agency, without the nuance of the civil character of immigration enforcement and the hazardous impact on human rights caused by the sharing of data, access, and collaboration with ICE in the jails. There appeared to be no meaningful oversight of the current safeguard policies beyond formal compliance, and certainly no questioning of the appropriateness of ICE presence and access.

*I came when I was 8 years old, and at 18 I plead guilty to a robbery. I didn't know I could be deported for it. I feared for my life in El Salvador so I returned. I got my life together and started a family. I'm 32 now. I have 3 children that I'm supporting. I got picked up after a domestic dispute with my partner who has a substance abuse problem. All charges were dropped, but ICE put a hold on me while in custody. ICE agents interviewed me in the jail. I didn't know I could refuse the interview. I was never told I could have an attorney. I was pressured to sign my deportation, even though I said I was afraid to return to El Salvador. I'm fighting my deportation but it's a real strain on my family. My brother had to pay my bond and we have to pay \$400 a month for the shackle on my ankle.*

*Arnulfo*

By issuing this Report, prepared with the help of the International Human Rights Clinic of UCLA School of Law, the ICE out of LA Coalition hereby calls on the Board of Supervisors and the Los Angeles County Sheriff's Department to cease participation in and collaboration with the interior enforcement strategy of U.S. Immigration and Customs Enforcement, in exercise of their independent jurisdiction and responsibility to the people of Los Angeles County. Specifically, we ask the Board of Supervisors and LASD to:

1. Notify ICE in writing that, in the interest of a) preserving the integrity of its governmental functions and maintaining a clear division of federal and local governmental functions, b) protecting the human rights of all members of the community, and c) integrating immigrant communities into the public life of the County, the County will no longer participate in or collaborate with ICE enforcement programs, and the County criminal justice system and County jails will function independent of the federal immigration enforcement system;
2. Develop written policies to the effect that LASD will a) not respond to ICE detainer requests or requests for notification; b) no detainees will be held for ICE and no notification will be given for prior crimes of a detainee; c) ICE will not be given access to Los Angeles County jails for purposes of carrying out deportation and removal operations; d) LASD will not use financial, material, or personnel resources to investigate or assist in the enforcement of federal immigration; e) LASD will not participate in joint task force operations with ICE or the Department of Homeland Security; LASD will not request information about or otherwise investigate the immigration status of any person;
3. Pass a resolution stating that Los Angeles County and LASD will oppose any registry based on religious identity or national origin; and
4. Increase funding for services, intervention, treatment and rehabilitation programs to promote immigrant integration.

## I. Methodology

The ICE Out of LA Coalition (“the Coalition”) commissioned the UCLA School of Law International Human Rights Clinic (“the IHRC”) to research and draft this Report under the Coalition’s guidance and supervision. This Section describes the methodology the Coalition and the IHRC used to produce this Report.

This Report utilizes a human rights frame to analyze the entanglement of local law enforcement with federal immigration enforcement that results when LASD cooperates with ICE. The choice of the frame was important to the Coalition because the frame allows for a humanized, comprehensive accounting of the devastation that LASD’s entanglement with ICE inflicts on immigrant communities. Further, a human rights frame separates the analysis from much of the counter-productive, divisive political and popular discourse on immigration in the United States, and instead allows this Report to focus on the implications of the LASD/ICE collaboration for the fundamental human dignity of immigrants living in LA County.

In preparing this Report, the Coalition and the IHRC relied heavily on the personal testimonies of individuals who had been impacted by LASD’s collaboration with ICE, either directly through detention or through the detention of a friend, loved one, or community member. In total, the IHRC conducted twenty-one interviews for this Report. Twelve of the interviewees had directly encountered the effects of LASD/ICE entanglement—they were arrested, placed in LASD custody, and variously transferred to ICE custody. The IHRC interviewed four of these individuals in immigration detention at the Adelanto Detention Facility in Adelanto, California. The remaining eight interviewees had been released and were thus interviewed at locations of their choosing. The final nine people interviewed for this Report were friends and family of former and current detainees, and thus members of the communities that suffer the most as a result of the policies canvassed in this Report.

In addition to the interviews, the IHRC collected 46 surveys of individuals affected by the policies that are the subject of this Report. The IHRC distributed these surveys in English and Spanish through the Coalition, at community events, and at various worker centers around Los Angeles. The IHRC used these surveys to identify individuals for the in-depth interviews described above and to further illuminate the issues canvassed in this Report. The IHRC modeled these surveys on a prior survey of Latino perceptions of police involvement in immigration enforcement.<sup>8</sup>

In the preparation of this Report, the research team also relied on monthly statistical reports from ICE to LASD regarding the ICE Priority Enforcement

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<sup>8</sup> See Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, DEP’T OF URBAN PLANNING AND POLICY UNIV. OF ILL. (May 2013), [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

Program (PEP) in LA County jails. The researchers had access to monthly data from November 2015 through September 2016, with the exception of the month of May 2016, which was unavailable. While this data raised further questions and did not provide a complete picture of the collaboration between LASD and ICE, it did, however, provide some insight into the number of people who are identified through PEP, what PEP priority they were identified under, how many PEP interviews the LASD conducted in a particular month, how many detainers were issued, and how many individuals were taken into ICE custody directly from LASD. The data also provides a breakdown of the ethnicity and national origins of individuals who are being targeted by PEP in Los Angeles County. The data does not, however, indicate the ultimate outcome for individuals taken into ICE custody, nor does it capture those who were identified through PEP, and later apprehended by ICE after their release based on information obtained while in LASD custody.

Finally, members of the IHRC met with Commander Jody Sharp and Sergeant Fetterleigh of the LASD Custody Services Division in order to better understand how LASD implements its collaboration with ICE. Tony Peck, Legal Counsel to Sheriff McDonnell was also present to assist with any legal technicalities. Through this interview, the team was able to confirm LASD's current and stated policies, and compare this policy to the first-hand accounts that the team received through community interviews.

## II. Introduction: A Toxic Entanglement

For over a decade ICE has sought to commandeer local law enforcement and criminal justice institutions to serve the purposes of federal civil immigration enforcement.<sup>9</sup> Two major policy initiatives have sought to achieve this: Secure Communities from 2009-2015 and more recently PEP. PEP replaced but did not change the underlying rationale of Secure Communities, and both result in a toxic entanglement of Los Angeles County with immigration enforcement that this Report seeks to analyze.

### *A Secure Communities Snapshot: Arnulfo's Story*

Arnulfo<sup>10</sup> made the journey from El Salvador when he was eight years old to join his mother in the United States. He grew up in Los Angeles, and knows little of his native country, which was emerging from a bloody civil war when he left. El Salvador is now immersed in a state of extreme violence. At 18 Arnulfo was supporting an infant child, and it was this year that he made a mistake he deeply regrets—he was mixed up in circumstances that made him the primary suspect in a low-level robbery. On the advice of a public defender, he pled guilty, believing that the reduced sentence would not affect his immigration status.

Nevertheless, upon completion of his time served, LASD turned him over to ICE custody in 2003 under the early version of ICE's jail-based interior enforcement program, and ICE placed him in removal proceedings. Although LASD coordinated Arnulfo's transfer to ICE, the County's criminal justice system did not relieve him of his requirement to report to a probation officer after leaving LASD custody, a requirement that became impossible for him to fulfill during his ICE detention. During this detention, unbeknownst to Arnulfo, the County issued a warrant for his arrest for violating his probation, notwithstanding the fact that this violation was caused by the LASD transfer.

Even though he had pending a valid application for legal permanent residency under the Nicaraguan Adjustment and Central American Relief Act (NACARA), he could not afford an attorney, and was unrepresented in his immigration proceeding.<sup>11</sup> Without access to counsel, Arnulfo accepted deportation to El Salvador without putting up a defense. But the only life Arnulfo had known was in the United States. This is where all of his immediate family remained even following his deportation. His is a family of blended immigration status. At the time, his mother was a legal permanent resident. He also had a U.S. citizen brother and sister, a U.S. citizen son, and his girlfriend was U.S. citizen.

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<sup>9</sup> See Section III. below for a brief history of this entanglement.

<sup>10</sup> In order to protect their identity, all names used for interviewees in this Report are pseudonyms.

<sup>11</sup> Because he was unrepresented, he was unaware of potential avenues of relief and was not assessed for eligibility. Recent studies show that unrepresented immigrants in detention are more than five times more likely to be deported than those who are represented. See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015).

After deportation to El Salvador, Arnulfo was threatened and coerced by gangs there. He was particularly vulnerable as a deportee with little family support there. For Arnulfo, the only option was to return to the United States, again informally and without a visa.

In 2008, after a routine stop by LAPD, Arnulfo was arrested on the outstanding warrant for his 2003 probation violation. Arnulfo appeared before a judge, had his probation reinstated, and successfully completed it, further demonstrating his commitment to making amends for his earlier mistake. He subsequently had two more children with his partner, and was working to support his young family. In 2014 he was involved in a dispute with the mother of his children over an addiction problem she had, and the resulting impact on their children. She called the police, and based on her accusations at the scene, he was taken into custody. Upon booking, LASD took his biometric information and sent it to ICE as part of the Secure Communities Program, which is described in more detail in the next Section. The information registered a “hit,” and ICE placed a detainer on him.

LASD transported Arnulfo to the courthouse, but all charges against him were dropped before he saw a magistrate. Nonetheless, LASD took custody of Arnulfo for ICE based on the detainer, and two days later he was transferred to ICE custody. Arnulfo received notice of the detainer from LASD, but was never given any advisal of his rights. While in LASD custody, he did not have access to a phone, and was only given one meal a day. ICE subsequently took formal custody of him and interviewed him at the downtown federal building. He did not know at the time he had the right to remain silent and to seek an attorney.<sup>12</sup>

Arnulfo was the primary caretaker of his children before he was taken into ICE custody. Subsequently, his children went into foster care and were placed with the child’s maternal grandmother, Rosa.<sup>13</sup> Rosa is in poor health and must undergo dialysis once a week. Arnulfo is currently in contact with Rosa and his children, and doing his best to support them amidst serious financial challenges many that are a direct result of the LASD/ICE collaboration.

The IHRC also interviewed Arnulfo’s younger brother Carlos, who shared the trauma his family experienced during and after Arnulfo’s detention. Carlos was born in the United States, graduated from UCLA and works as a paralegal. Arnulfo was in ICE custody for a total of 23 months, during which time he could not afford an attorney. Fortunately, Carlos was able to help his brother prepare an application for a U Visa. Carlos himself was the victim of a crime and cooperated with the police in the matter. Based on the prima facie case made

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<sup>12</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966) (the Miranda rights are intended to safeguard an individual’s Fifth Amendment privilege against self-incrimination; the Miranda rights include the right to remain silent and to have an attorney present during a custodial interrogation).

<sup>13</sup> “Rosa” is a pseudonym.

on the application, a judge set a \$15,000 bond for Arnulfo's release—an amount far beyond his means. Carlos was able to raise the 50% deposit required by the bond company that provided the remaining amount to facilitate Arnulfo's release. This company also requires Arnulfo to wear an ankle shackle monitoring device, for which he must pay a monthly fee of \$400. Because much of what income Arnulfo is able to earn is directed to the support of his children, Carlos has been doing his best to meet his brother's monthly ankle shackle payments. Thanks to his release, Arnulfo finally was able to obtain legal representation and is fighting his deportation.

Collateral immigration enforcement leads to this kind of direct harm to LA County families and communities. Arnulfo has no debt with the County's criminal justice system, but the ICE-County entanglement has nonetheless torn his family apart and placed unusual stress and economic hardship on them. There are policies the County can pursue to help keep immigrant families together, such as assisting with legal representation. Instead, the County has assumed a shared responsibility with ICE for federal immigration enforcement and deportation.

Both Carlos and Jorge below may be eligible for post-conviction relief under the U.S. Supreme Court case of *Padilla v. Kentucky*,<sup>14</sup> since it appears they were not properly advised of the immigration consequences of pleading guilty. As is clear from Carlos' case, the County's unnecessary entanglement with immigration enforcement did nothing to further the goals of the criminal justice system, but it did lead to the concrete degradation of the quality of life of Arnulfo's children, mother, and brother, leaving Arnulfo in an even more precarious situation where it is difficult for him to assert his right to rehabilitation and to remain with his family.

#### *A PEP Snapshot: Jorge's Story*

The case of Jorge more directly relates to PEP as a continuation of ICE entanglement. Jorge is the father of two U.S. citizen children, aged 3 and 7. In 2015 he had a physical altercation with his neighbor. The altercation ended without serious injury, but the landlord called the police, and Jorge was arrested and charged with assault, and placed in LASD custody in July of 2015. He saw his public defender only briefly on the day of his trial, and the attorney recommended he plead guilty and serve a probated sentence of 180 days, just after the County transitioned from the Secure Communities to the PEP framework. He was not advised by his attorney of any potential immigration consequences to pleading guilty. In fact, the judge suggested it would not have consequences as long as he successfully completed his probation.

While in LASD custody, Jorge learned from others in the jail that ICE was arresting immigrants as they were being released. He asked a deputy if this

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<sup>14</sup> *Padilla v. Kentucky*, 599 U.C. 356, 360 (2010) (holding that an individual's Sixth Amendment right to counsel is violated when not advised of immigration consequences of a plea).

was true, and was told that ICE was no longer in the jail and only picked people up from the street or in their homes. As his release date approached, he inquired with LASD officials to see if he had an immigration hold, and was told that he did not. On the night of his release, however, after changing into civilian clothes, Jorge was held back by LASD. The others with him were released at 2:00 a.m. By 4:00 a.m. he was still in LASD custody, where he was interviewed by an ICE agent. At no time was Jorge advised of his rights. The agent asked him questions to confirm his identity and whether he had any immigration papers. He was then shown the ICE detainer, which allegedly had been placed when he entered the jail. ICE took him into custody and transported him to the federal building, where he was charged for the civil immigration violation of being in the country without inspection. Thereafter ICE transferred him to the Adelanto facility and charged him with unauthorized presence in the United States. This was in early 2016.

Because he could no longer support them, Jorge's girlfriend has since moved to Las Vegas with their children. Jorge has not been able to speak with them, but is fighting his immigration case to stay close to them. He does not have an immigration attorney because he cannot afford one. His case presents disturbing facts of arbitrary misinformation regarding the entanglement of ICE with LASD and the criminal justice system of the County. This entanglement has led to his prolonged detention, resulted in the breakup of his family, and imposed undue hardship on his U.S. citizen children. Moreover, because of his ICE detention, he has inevitably failed to comply with his probation, which will cause further difficulties with the criminal justice system should he achieve his release from immigration detention.

These are the hidden stories behind the entanglement of the County with federal immigration enforcement, and there are many more like them. They tell stories where the result of the encounter with the criminal justice system leads to disparate treatment of immigrants, compromised due process, and results far more disruptive and inhumane than the penalties for the incidents or actions that brought the individual into contact with the system. In fact, the desired outcomes of the criminal justice system—fair resolution, due process, and, where indicated, rehabilitation and reintegration into the community—are subverted by this entanglement. The County has the choice of facilitating or rejecting the process of entanglement that creates and perpetuates the stories of Arnulfo, Jorge, and their families. However, to date, the County chooses voluntarily to participate, even as other municipalities in California and other parts of the country have chosen to reject entanglement.<sup>15</sup>

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<sup>15</sup> Kate Linthicum & Lee Romney, *L.A. County considers new immigration program for jails in light of S.F. slaying*, LA TIMES (Jul. 19, 2015, 3:45PM), <http://www.latimes.com/local/california/la-me-immigration-jails-20150720-story.html> (noting that Los Angeles is collaborating with ICE on PEP whereas other counties in California have refused). See also Amy Taxin, *Los Angeles County, others let immigration agents in the jails, but rules vary*, LOS ANGELES DAILY NEWS (Sept. 28, 2015, 11:39AM), <http://www.dailynews.com/social-affairs/20150928/los-angeles-county-others-let-immigration-agents-in-the-jails-but-rules-vary> (details LASD's intent to allow ICE into jails run by the agency only to interview for deportation immigrants who pose the most serious threats to public safety).

Consequently, the Sheriff's Department and the Board of Supervisors shoulder responsibility for the negative impact that local collaboration with federal immigration enforcement has on our community.

### III. A Brief History of the Criminalization of Immigrant Communities Through Federal Civil Immigration Enforcement's Commandeering of Local Law Enforcement and the Criminal Justice Process

Informal immigration has filled the gap in the United States between inflexible immigration laws and the demand for flexible labor supply in a globalized and interdependent economic system for decades. Ebbing with the flow of refugees from states plagued by violence and political crisis, informal immigration merges with formal, regulated immigration to produce today's version of the immigrant story: a struggle for human dignity against formidable odds and state-imposed barriers. The United States and Los Angeles in particular, has benefitted tremendously from this immigrant journey, and from the ability of immigrants to integrate from below into our community, even as they are relegated to the shadows and vulnerabilities of their uncertain status.

The failure of Congress to reach a consensus on comprehensive immigration reform has produced schizophrenic policies in response to the overwhelming fact of informal immigration. It has given rise to ugly forms of nativism and xenophobia. The criminalization of immigrant communities occurs in this context, with an underlying subtext of fear mongering by demagogic politicians and the concomitant scapegoating of immigrants for society's ills.

Interior immigration enforcement is primarily the responsibility of U.S. Immigration and Customs Enforcement (ICE). For the last two decades, ICE has implemented a strategy to use local law enforcement and the criminal justice system for the enforcement of federal civil immigration law. This strategy arbitrarily criminalizes civil immigration violations by bringing them into the local criminal justice system and enforcing them through collateral criminal process. As a result, the collaboration of local law enforcement with this strategy brings the whole immigrant community under improper criminal suspicion and process on account of their national origin or immigration status.

#### a. National Context: The Road to PEP

The Constitution of the United States allocates authority over immigration matters to the federal government.<sup>16</sup> However, the federal government has periodically commandeered local law enforcement to participate in immigration enforcement actions, at times on a massive scale. For example, amidst growing anti-Mexican immigration sentiment many state and local agencies participated in massive roundups of Mexican migrants during the 1930's.<sup>17</sup> Immigration agents led raids on ethnic enclaves, with tactics that "...favored intimidation over legal procedure" and repatriated migrants to Mexico, often

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<sup>16</sup> Article I, Section 8, clause 4 gives the legislative branch the power to "establish a uniform rule of Naturalization." U.S. Const. art. I, § 8, cl. 4.

<sup>17</sup> *INS Records for 1930s Mexican Repatriations*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/history-and-genealogy/our-history/historians-mailbox/ins-records-1930s-mexican-repatriations> (March 3, 2014).

forcibly.<sup>18</sup> In June of 1954 the federal government unleashed “Operation Wetback” with the purpose of deporting undocumented Mexican laborers. The name itself is a racial slur and the operation went far beyond only deporting undocumented laborers.<sup>19</sup> Local police officers looked for “‘Mexican-looking’ individuals and asked those individuals for identification of their immigration status” and “focused predominately on Latino neighborhoods in the Southwestern states.”<sup>20</sup> Reports estimate that nearly 3.7 million Mexicans and Mexican Americans were deported during Operation Wetback’s short run.<sup>21</sup>

The legislative regime that currently structures much federal and local collaboration in immigration enforcement, was fueled in important part by national security-related panic in the wake of events such as the 1993 World Trade Center and Oklahoma City bombings.<sup>22</sup> In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which reformed the entire exclusion and deportation systems that the then Immigration and Nationalization Service (INS) used to enforce immigration policy.<sup>23</sup> IIRIRA’s proposed rationale was to increase border security and streamline immigration processes, particularly when removing “criminal aliens.”<sup>24</sup> However, the xenophobic rhetoric that colored the legislative process leading up to IIRIRA’s adoption<sup>25</sup> offers important context for understanding IIRIRA’s actuality.

IIRIRA officially sanctioned the entanglement of local agencies in the enforcement of federal immigration law. Section 133 of the IIRIRA provided for INS and the Department of Justice (now ICE and the Department of Homeland Security (DHS)) to enter into agreements with state, local, and tribal law enforcement agencies. These Memoranda of Agreements (commonly referred to as a Memorandum of Understanding or “MOU”) provided for the deputization of local law enforcement officers with the ability to enforce

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<sup>18</sup> Steve Boisson, IMMIGRATIONS: THE LAST TIME AMERICA SENT HER OWN PACKING, HISTORY.NET, LIBRARY OF CONGRESS, <http://www.historynet.com/immigrants-the-last-time-america-sent-her-own-packing.htm> (July 27, 2016).

<sup>19</sup> Yolanda Vázquez, *Perpetuating the Marginalization of Latinos: A Collateral Consequence of the Incorporation of Immigration Law into the Criminal Justice System*, 54 *How. L.J.* 639, 653 (2011).

<sup>20</sup> *Id.*

<sup>21</sup> Brooks Jackson, *Hoover, Truman & Ike: Mass Deporters?* FACTCHECK.ORG, July 9, 2010 available at <http://www.factcheck.org/2010/07/hoover-truman-ike-mass-deporters/>.

<sup>22</sup> *IV. Deportation Law Based on Criminal Convictions After 1996*, HUMAN RIGHTS WATCH, <https://www.hrw.org/reports/2007/us0707/5.htm>.

<sup>23</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 104<sup>th</sup> Congress, September 30, 1996, 110 Stat. 3009.

<sup>24</sup> The use of the term “criminal alien” is itself prejudiced and unfair. What IIRIRA actually did was expand the number and type of criminal offences that would trigger a ground for removal. To permanently label individuals “criminals” even after they serve their sentence or to impose an additional penalty is an affront to their fundamental dignity as human persons. Rebecca A. Sharpless, “*Immigrants Are Not Criminals*”: *Respectability, Immigration Reform, and Hyperincarceration*, 53 *HOUS. L. REV.* 691, 730-731 (2016).

<sup>25</sup> See *IV. Deportation Law Based on Criminal Convictions After 1996*, HUMAN RIGHTS WATCH, <https://www.hrw.org/reports/2007/us0707/5.htm>; Conference Report 104-108, . <https://www.congress.gov/104/crpt/hrpt828/CRPT-104hrpt828.pdf>.

immigration laws or collaborate with interior enforcement after receiving training from DHS.<sup>26</sup> Initially ICE did not bother going through the process of entering formal MOUs, but rather simply began to implement a model of interior enforcement based on local law enforcement collaboration where it found willing partners. In some communities, police were emboldened to use racial profiling to stop Latinos and collaborate in immigration enforcement, leading to the first lawsuits against state and local law enforcement for this particular entanglement.<sup>27</sup>

This new interior enforcement strategy advanced a novel model that used the criminal justice system and the recruitment of local law enforcement for purposes of interior federal immigration enforcement. Numerous jurisdictions including California, Florida, Arizona, and Virginia adopted MOUs.<sup>28</sup> As of 2014, Los Angeles and Orange County were the only counties left in California still participating in 287(g) which they first implemented in 2005, demonstrating the key support these Southern California counties have given to sustain this model.<sup>29</sup>

The Immigration Policy Center's review of the MOU regime stated that "[i]n the rush to engage state and local law enforcement on federal immigration matters, ICE has created a program that lacks oversight, undermines community relations, and breeds mistrust...a deportation-driven strategy exacts a high toll on individuals and communities with little real impact in stopping illegal immigration."<sup>30</sup> The American Civil Liberties Union stated in a written statement to Congress that "[s]uch race-based immigration enforcement imposes injustices on innocent racial and ethnic minorities, in particular reinforcing the harmful perception that Latinos — U.S. citizens and noncitizens alike — are presumed to be 'illegal immigrants' and therefore not entitled to full and equal citizenship unless and until proven innocent or 'legal.'"<sup>31</sup>

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<sup>26</sup> *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement*, AMERICAN IMMIGRATION COUNCIL (Nov. 29, 2012), <http://www.immigrationpolicy.org/just-facts/287g-program-flawed-and-obsolete-method-immigration-enforcement>.

<sup>27</sup> *Farm Labor Organizing Committee, et al. v. Ohio State Highway Patrol, et al.* 308 F.3d 523 (6<sup>th</sup> Cir. 2002); *Lopez et al. v. City of Rogers, Ark. et al.*, Civil Action No. 01-5061, U.S. District Court, Western District, Arkansas.

<sup>28</sup> Randy Capps, Marc R. Rosenblum, Cristina Rodríguez, and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, MIGRATION POLICY INSTITUTE (Jan. 2011), <http://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

<sup>29</sup> Leslie Berestein Rojas, *County cops seek to renew federal-local immigration enforcement partnership*, SOUTHERN CALIFORNIA PUBLIC RADIO (Sep. 18, 2014), <http://www.scpr.org/blogs/multiamerican/2014/09/18/17317/county-cops-seek-to-renew-federal-local-immigratio/>.

<sup>30</sup> James Nix, *National report offers 'damning critique' of 287(g)*, THE CITY PAPER NASHVILLE'S ONLINE SOURCE FOR DAILY NEWS (Apr. 5, 2010, 1:56AM), <http://nashvillecitypaper.com/content/city-news/national-report-offers-damning-critique-287g>.

<sup>31</sup> Joanne Lin, *End It: 287(g) is Beyond Repair and Harms Local Communities Every Day*, AMERICAN CIVIL LIBERTIES UNION (Apr. 5, 2010, 1:22PM), <https://www.aclu.org/blog/speakeasy/end-it-287g-beyond-repair-and-harms-local-communities-every-day>.

## Secure Communities

Sustained criticism of the harms of the MOU regime led ICE to implement the Secure Communities program from 2008 to 2014. Its alleged purpose was “to more effectively identify and facilitate the removal of criminal aliens in the custody of state and local law enforcement agencies.”<sup>32</sup> Secure Communities maintained the same fallacious and discredited justification that it was “improving community safety by transforming the manner in which the federal government cooperates with state and local law enforcement agencies to identify, detain, and remove aliens convicted of a serious criminal offense.”<sup>33</sup>

In fact, the majority of removals did not involve individuals convicted of serious criminal offenses. As of 2011 ICE removed 142,000 persons through Secure Communities collaborations in 44 states.<sup>34</sup> A 2012 report found that “79 percent of individuals deported through Secure Communities either lacked any criminal record or [had] been convicted of only minor offenses, including traffic violations.”<sup>35</sup> The Migration Policy Institution further found that 25% of the deportations between 2009 – 2012 were of individuals who had never been convicted of a crime.<sup>36</sup> These deportations showcase a fundamental disconnect between Secure Communities’ stated purpose—to “remove aliens convicted of a serious criminal offense”<sup>37</sup>—and the reality of its implementation.

Baltimore offers an important example of how law enforcement entanglement in federal immigration policies incentivizes racial profiling. An investigation conducted by the *Baltimore Sun* found that more than 40% of immigrants deported through this partnership were non-criminals, despite the partnership allegedly being focused and targeted on undocumented immigrants with criminal convictions.<sup>38</sup> More tellingly, the *Sun* found that

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<sup>32</sup> Memorandum from Jeh Charles Johnson, Sec’y, Secure Communities, *Secure Communities*, (Nov. 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

<sup>33</sup> Memorandum of Agreement Between U.S. Dep’t of Homeland Sec. Immigration and Customs Enforcement and [State Identification Bureau] (MOU Template) (on file with U.S. Immigration and Customs Enforcement),

[https://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesmoatemplate.pdf](https://www.ice.gov/doclib/foia/secure_communities/securecommunitiesmoatemplate.pdf).

<sup>34</sup> *Secure Communities: A Fact Sheet*, AMERICAN IMMIGRATION COUNSEL (Nov. 9, 2011), <https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet>.

<sup>35</sup> Edgar Aguilasocho, David Rodwin & Sameer Aschar, *MISPLACED PRIORITIES: The Failure of Secure Communities in Los Angeles County*, UNIV. OF CAL., IRVINE (Jan. 2012), [http://www.law.uci.edu/academics/real-life-learning/clinics/MisplacedPriorities\\_aguilasocho-rodwin-ashar.pdf](http://www.law.uci.edu/academics/real-life-learning/clinics/MisplacedPriorities_aguilasocho-rodwin-ashar.pdf) (on May 5, 2011 the Congressional Hispanic Caucus sent a letter to President Barack Obama requesting a freeze of Secure Communities pending a review of the program; to support the need for an immediate suspension of the program, the letter cited the above quote).

<sup>36</sup> Marc R. Rosenblum, *Oversight of the Administration’s Criminal Alien Removal Policies Before U.S. Senate Committee on the Judiciary*, MIGRATION POLICY INSTITUTE (Dec. 2, 2015), <https://www.judiciary.senate.gov/imo/media/doc/12-02-15%20Rosenblum%20Testimony.pdf>.

<sup>37</sup> Memorandum of Agreement Between U.S. Dep’t of Homeland Sec. Immigration and Customs Enforcement and [State Identification Bureau], *supra* note 33.

<sup>38</sup> John Fritze, *Immigration program aimed at criminals deports many with no record*, THE BALTIMORE SUN, Feb. 8 2014, [http://articles.baltimoresun.com/2014-02-08/news/bs-md-secure-communities-20140208\\_1\\_secure-communities-immigration-program-maryland](http://articles.baltimoresun.com/2014-02-08/news/bs-md-secure-communities-20140208_1_secure-communities-immigration-program-maryland)

these deportations began with a simple traffic stop by local law enforcement, in a context where such stops are arguably the result of racial profiling.<sup>39</sup>

It is thus no surprise that some communities, including in California have strongly resisted participation in Secure Communities and the commandeering of their local law enforcement and criminal justice functions. For example, Santa Clara County passed several resolutions to curb local law enforcement's collaboration with ICE. In September 2008, the Santa Clara Board of Supervisors unanimously voted to completely withdraw, or opt out of Secure Communities citing numerous community concerns in its press release on the matter:

*Contrary to how ICE has described the program, it does not target only violent, criminal aliens. Instead, people with no criminal records are being apprehended and deported for minor offenses like traffic violations...This program makes innocent people afraid of law enforcement. Our County does not want to be at the forefront of new immigration enforcement programs that will make us lose our residents' trust.*<sup>40</sup>

Through a number of county policies,<sup>41</sup> Santa Clara County thus incorporated public policy and legal arguments to justify building clear delineations between their local institutions and ICE, and to opt out of much of Secure Communities.

Secure Communities forced immigrants and their communities to choose between access to local public safety and exposure to federal immigration enforcement. The distrust of local law enforcement it engendered undermined local public safety and the policy around it, like efforts at community policing. Secure Communities also undermined the due process rights of many immigrants, for example by facilitating their unlawful over-detention.<sup>42</sup> Due process concerns sparked massive protest and legal challenges that in some cases successfully pressured ICE to change its policies.<sup>43</sup> Secure Communities

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<sup>39</sup> *Id.*

<sup>40</sup> *County of Santa Clara Denied Opt-Out of Immigration Enforcement Program*, News Release, COUNTY OF SANTA SCCGOV (Nov. 10, 2010), <https://www.sccgov.org/sites/opa/nr/Pages/County-of-Santa-Clara-Denied-Opt-Out-of-Immigration-Enforcement-Program.aspx>. [hereinafter News Release]

<sup>41</sup> *See, e.g.*, Santa Clara County Resolution Adding Board Policy 3.54 relating to Civil Immigration Detainer Requests, <http://www.sccgov.org/keyboard/attachments/BOS%20Agenda/2011/October%2018,%202011/203452112/TMPKeyboard203715832.pdf>.

<sup>42</sup> Theodore, *supra* note 8 at 14. *See also* Michele Waslin Ph.D, *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, AMERICAN IMMIGRATION COUNSEL (Nov. 2011), [https://www.americanimmigrationcouncil.org/sites/default/files/research/Secure\\_Communities\\_112911\\_updated.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/Secure_Communities_112911_updated.pdf) (UC Berkeley School of Law found that only “two percent of immigrants booked into detention through Secure Communities were given bond by ICE.” During detention detainees find it “more difficult for them to exercise their right to go to criminal court and challenge their criminal charges from within custody.” *Id.* “Of those who have immigration hearings, 24 percent were represented by an attorney, compared to 41 percent of all immigration court respondents.” *Id.*)

<sup>43</sup> Theodore, *supra* note 8 at 15.

also undermined the right to seek asylum<sup>44</sup> — a right protected by international<sup>45</sup> and domestic law.

### *Priority Enforcement Program*

Again, in response to resounding criticism from local and national community advocates, ICE repackaged its interior enforcement strategy. In July 2015, the agency implemented the Priority Enforcement Program (PEP), which it initially billed as an improvement on Secure Communities.<sup>46</sup> Yet the program preserves the fundamental logic of immigration enforcement through commandeered local law enforcement, and as a result produces the very same harms that discredited Secure Communities.<sup>47</sup>

PEP is intended to shift enforcement priorities to immigrants who fall under one of three of ICE's priorities for "criminal aliens".<sup>48</sup> These priorities include many broad categories not related to criminal convictions, including noncitizens who, in the judgment of an ICE Field Director, have abused the visa program, entered without inspection, missed an immigration court hearing, or are merely under suspicion for a crime.<sup>49</sup> Although PEP purports to prioritize immigration enforcement and removal of those who are convicted of "serious criminal offenses" the policy leaves many opportunities for persecution of those with no criminal conviction or conviction for minor offenses.

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<sup>44</sup> Christy Carnegie Fujio & Sari Long, *Secure Communities Threatens Asylum Seekers*, PHYSICIANS FOR HUMAN RIGHTS (Jun 29, 2011), <http://physiciansforhumanrights.org/blog/secure-communities-threatens-asylum-seekers.html?referrer=https://www.google.com/>.

<sup>45</sup> Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter Convention]; Protocol relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 [hereinafter Protocol]; 8 U.S.C.A. § 1158 (2009).

<sup>46</sup> *ICE Enforcement and Removal Operations Report Fiscal Year 2015*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Dec. 22, 2015), <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>.

<sup>47</sup> *Priority Enforcement Program: Why 'PEP' Doesn't Fix S-Comm's Failings*, NATIONAL IMMIGRATION LAW CENTER (Jun.2015), <https://www.nilc.org/issues/immigration-enforcement/pepnotafix/>.

<sup>48</sup> Memorandum from Jeh Charles Johnson, Sec'y, U.S. Department of Homeland Sec., *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, (Nov. 20, 2014) (PEP Memorandum)

[https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf). Priority 1 is the highest priority and includes persons suspected of terrorism or espionage, and those convicted of an aggravated felony, a felony, or apprehended entering the United States unlawfully. Priority 2 includes persons convicted of 3 or more misdemeanors, domestic violence, sexual abuse, and noncitizens who arrived unlawfully in the US and cannot prove their continuous physical presence since January 2014. Priority 3 is noncitizens who are not in Priority 1 or 2 and have been issued a final order of removal after January 2014. See also, *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement*, *supra* note 26.

<sup>49</sup> PEP Memorandum, *supra* note 48, at 4. ICE agents are not prohibited from pursuing apprehension, detention, or removal of non-citizens who do not fall under the three priority categories. This includes individuals identified with the help of local jurisdictions' collaboration in the PEP program.

## b. Local Context: A Decade of LASD Entanglement with Federal Immigration Enforcement

The different iterations of the ICE strategy have failed to cure—and cannot cure—the harms and violations that arise from its application. Again, this is because the cornerstone of the strategy is to commandeer local law enforcement and the criminal justice system to serve the ends of federal civil immigration enforcement. In this way the criminal justice system and local law enforcement are used to effect detentions of individuals who, for immigration purposes, are not the objects of criminal investigation. They therefore treat the people caught in those systems differently on account of their national origin and immigration status.

The County and the Sheriff's Department are ultimately responsible for this perversion of the functions of local law enforcement and criminal justice because they have willingly participated in each iteration of the ICE program or strategy. As such they cannot escape responsibility for the other consequential moral and legal harms of that misguided policy decision as detailed below in this Report. These include the compromising of due process principles, the disruption of family life, the community's greater insecurity and lack of trust, and the potential for racial profiling, all of which target and degrade the human dignity of Los Angeles' immigrant community.

On February 1, 2005 Los Angeles County became the first entity in California to sign a 287(g) Memorandum of Understanding (MOU) with U.S. Immigrations and Customs Enforcement (ICE).<sup>50</sup> The MOU provided that the purpose of this new policy was to authorize certain qualified officers from the Los Angeles Sheriff's Department (LASD) to perform the functions of immigration officers within L.A. County jails.<sup>51</sup> Under this MOU, ICE trained and effectively deputized approximately five LASD employees to act as immigration officers.<sup>52</sup> By allowing ICE to deputize LASD officers, the Los Angeles Board of Supervisors diverted limited resources away from traditional policing into civil immigration enforcement.

Neither deputized LASD custody agents nor ICE were required to have probable cause to issue a detainer under the 2005 MOU.<sup>53</sup> The lack of due

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<sup>50</sup> The Meeting Transcript of the Los Angeles Board of Supervisors, LACOUNTY.GOV. 330 (Jan. 25, 2005), [http://file.lacounty.gov/bos/transcripts/01-25-05%20Board%20Meeting%20Transcript%20\(C\).pdf](http://file.lacounty.gov/bos/transcripts/01-25-05%20Board%20Meeting%20Transcript%20(C).pdf).

<sup>51</sup> Memorandum of Understanding between U.S. Dep't of Homeland Sec. and Cnty. of L.A., 1 (July 6, 2004), *available at* [http://file.lacounty.gov/SDSInter/bos/bc/022989\\_BICE\\_MOU\\_DeptofHomelandSecurity\\_LACoBOS01\\_11\\_05.pdf](http://file.lacounty.gov/SDSInter/bos/bc/022989_BICE_MOU_DeptofHomelandSecurity_LACoBOS01_11_05.pdf).

<sup>52</sup> IHCRC Interview with Commander Jody Sharp, Los Angeles Sheriff's Department, in L.A., Cal. (April 27, 2016) (commander Sharp noted that the County paid for three Custody Assistant positions. The fund for the other two positions came from Supervisor Antonovich's office, which had a budget surplus and used discretionary funds for this purpose).

<sup>53</sup> See Memorandum of Understanding, *supra* note 51, at 1 (note that there is no mention of a standard; later, under Secure Communities, agents were required to have "reason to believe" that an inmate was in the country illegally before issuing a detainer). *See also*, Deposition of Brian Demoore, pg. 90 (explaining

process and the opportunity for abuse that this system created was emblematic of the overall entanglement between local law enforcement and civil immigration enforcement. Due process and wrongful incarceration concerns were serious enough to warrant an ongoing class action lawsuit against ICE, initiated by the ACLU of Southern California,<sup>54</sup> on behalf of immigrants in Los Angeles.

Despite these fundamental problems, collaboration between LASD and ICE functioned under the guidelines of the 2005 MOU until August 2009, when the Board voluntarily implemented the Secure Communities program alongside the 2005 MOU. With the implementation of Secure Communities, the County demonstrated yet again its broad willingness to opt-in to the ICE interior enforcement strategy, regardless of the negative consequences to both law enforcement effectiveness and the community.

Although the goal of the 2005 MOU and Secure Communities was to target immigrants deemed to pose a serious threat to local communities,<sup>55</sup> in practice these policies significantly targeted immigrants far beyond this intended scope. A 2009 Report on LASD by the Police Assessment Resource Center, found that “a significant percentage of inmates, about 28 percent, were charged with misdemeanors or infractions which, though minor, resulted in the inmate’s ultimate transfer to ICE for deportation proceedings.”<sup>56</sup> This disproportionate impact on minor offenders countered the stated purposes of the MOU and Secure Communities, and drew attention to the fact that the collaboration between ICE and LASD was not, in practice, targeting resources at individuals posing serious threats to public safety.

Much like the national Secure Communities program, the collaboration between ICE and LASD under both the 287(g) MOUs and the Secure Communities in LA County received widespread criticism from legal scholars, immigration activists, civil and human rights organizations, and the broader community alike. The primary concerns surrounding the LASD and ICE collaboration very much mirrored concerns from communities around the country.

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that the standard under Secure Communities policy was “reason to believe”) (on file with the ACLU of Southern California).

<sup>54</sup> See Complaint at 1, *Gonzales v. ICE*, Case 2:13-cv-04416-BRO-FFM, Document 44, Filed Aug. 18, 2014, available at [https://www.aclusocal.org/wp-content/uploads/2013/08/TAC.DCT\\_Third-Amended-Complaint-081814.44.pdf](https://www.aclusocal.org/wp-content/uploads/2013/08/TAC.DCT_Third-Amended-Complaint-081814.44.pdf) (challenging the practice of holding inmates for multiple days past the end of their sentence as a violation of the fourth amendment).

<sup>55</sup> Merrick J. Bobb, *et al.*, Police Assessment Res. Ctr., *The Los Angeles County Sheriff’s Department 28<sup>th</sup> Semiannual Report*, POLICE ASSESSMENT RES. CTR. 1, 6 (Oct. 2009) available at, <http://www.clearinghouse.net/chDocs/public/PN-CA-0001-0030.pdf>. Under Secure Communities, ICE policy was to categorize immigrant inmates into three levels, based on how much of a threat ICE believed an inmate posed to the community.

<sup>56</sup> *Id.* at 17. (“Examples of these charges included driving without a license (346 inmates), disorderly conduct (26 inmates), public drunkenness or intoxication (133), breaking liquor laws (23 inmates), and displaying a false ID (74 inmates)”).

First, the collaboration eroded the trust between LASD and the community, such that it negatively impacted community safety and LASD efficiency. When the MOU was initially debated in 2005, then-Chief Chuck Jackson made clear that LASD had no intention of the collaboration affecting community relations. To the Board of Supervisors, Chief Jackson reiterated "the sheriff's position on this is to not get involved with immigration enforcement in the community. It is strictly limited to the jail function for people being processed and convicted...we have no intention, at any time ever, to muddy the waters and go out there in the community."<sup>57</sup>

What the Board and Chief Jackson missed was how the jail function is intimately linked to how people both enter and exit the criminal justice system, and the impact that has on the community. The resulting entanglement from the logic and practice of ICE's interior enforcement strategy would contradict Chief Jackson's statement. This regime made immigrants less likely to report being the victim of a crime or witnessing a crime because of the fear that it would lead to the deportation of themselves or a loved one.<sup>58</sup> LASD, like any local law enforcement agency, depends heavily on community involvement in order to investigate and stop crime. In a 2009 article in the Los Angeles Times, then Police Chief William Bratton, in explaining why LAPD did not participate in the 287(g) program, noted that "every day our effectiveness is diminished because immigrants living and working in our communities are afraid to have any contact with the police . . . A person reporting a crime should never fear being deported, but such fears are real and palpable for many of our immigrant neighbors."<sup>59</sup>

In the wake of the 2005 MOU and Secure Communities, activists across California came together to condemn the harmful impact of local entanglement in federal immigration enforcement.<sup>60</sup> In response to this advocacy, and in partial acknowledgment of the toxic local implications of entanglement, the California legislature enacted Assembly Bill 4, known as the California TRUST Act. As its name suggests, the Trust Act was intended to limit the collaboration between local authorities and ICE in order to restore the community's trust in law enforcement. The TRUST Act went into effect on January 1, 2014,<sup>61</sup>

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<sup>57</sup> The Meeting Transcript of the Los Angeles Board of Supervisors, *supra* note 50 at 222.

<sup>58</sup> *Id.*

<sup>59</sup> William Bratton, *The LAPD fights crime, not illegal immigration*, LATIMES.COM (Oct. 27, 2009), <http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27>.

<sup>60</sup> See Adrian Florido, *California TRUST Act Moving Toward Passage*, KPBS.ORG (Aug. 29, 2013), <http://www.kpbs.org/news/2013/aug/29/california-trust-act-moving-toward-passage/>; See also *Sacramento Mother Fighting Deportation Becomes Face of Trust Act*, CBS Sacramento (Jul. 18, 2012), <http://sacramento.cbslocal.com/2012/07/18/sacramento-mother-fighting-deportation-becomes-face-of-trust-act/>; See also Daniel C. Vock, *Backlash Grows Against Federal Immigration Screening at Jails*, THE PEW CHARITABLE TRUSTS (Sep. 25, 2013), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/09/25/backlash-grows-against-federal-immigration-screening-at-jails>.

<sup>61</sup> CALIFORNIA TRUST ACT (2014), <http://www.catrustact.org/>.

pursuant to which LASD then amended its policies surrounding the issuance of detainers in order to account for limitations the TRUST Act imposed.<sup>62</sup>

In 2014 LA County also entered into new MOU with ICE, which again reiterated that “[t]he purpose of the collaboration between ICE and the Department is to enhance the safety and security of communities by focusing resources on identifying and processing criminal aliens who pose a threat to public safety or a danger to the community.”<sup>63</sup> This 2014 MOU did little to address community concerns. In apparent recognition of the harms of local entanglement under to the community, the Board voted to end the MOU in 2015. Unfortunately, the Board simultaneously chose to implement the new, yet fundamentally equivalent program of collaboration between LASD and ICE in PEP, which continues to function on the same misguided and harmful policy of criminalizing the immigrant community.

### *PEP in LA*

On May 12, 2015, the Los Angeles Board of Supervisors voted to abolish the 287(g) MOU, but requested that LASD collaborate with ICE through the new Priority Enforcement Program (PEP). Following this decision, LASD rolled out new policies for how it was going to collaborate with ICE on this new initiative. In September 2015 then Sheriff Jim McDonnell issued a Report Back Regarding the Priority Enforcement Program to the Board. In this report, the Sheriff describes the key practices and principles that govern LASD’s interactions with ICE.

Sheriff McDonnell prefaced the Report by attempting to assure the Board that the new policies “appropriately balance *both* promoting and preserving public safety and fortifying trust within the multiethnic communities that make up Los Angeles County”<sup>64</sup> because “[s]erving the community, reducing crime, and promoting public safety is immeasurably harder if law enforcement fails to maintain relationships with—and the trust of—our community.”<sup>65</sup>

But conclusory assertions do not create corresponding facts. While there is ample evidence that the interior enforcement strategy harms public trust and safety, there is no evidence that the entanglement somehow promotes public safety in ways that cannot be ensured under ordinary, unbiased law enforcement and community policing, and unbiased criminal justice procedures. Despite the assurances from Sheriff McDonnell, LASD policy does not remedy the concerns expressed by the community.

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<sup>62</sup> *Request For Approval Of A Memorandum Of Agreement Between The United States Department Of Homeland Security, Immigration And Customs Enforcement And The County Of Los Angeles*, CNTY. OF L.A. SHERIFF’S DEP’T (Sep. 30, 2014), available at <http://file.lacounty.gov/bos/supdocs/88452.pdf>.

<sup>63</sup> *Id.* at 2.

<sup>64</sup> Jim McDonnell, *The Los Angeles County Sheriff’s Department Report Back Regarding The Priority Enforcement Program*, CNTY. OF L.A. OFFICE OF THE SHERIFF (Sep. 22, 2015), available at [http://file.lacounty.gov/bc/q3\\_2015/cms1\\_233871.pdf](http://file.lacounty.gov/bc/q3_2015/cms1_233871.pdf).

<sup>65</sup> *Id.*

LASD's collaboration with ICE begins at the booking stage. When an individual enters the jail, he or she is fingerprinted and asked a few basic questions, including country of birth, as part of a standard booking form. The inmate's fingerprints are uploaded to a database, to which ICE is given full access. ICE officers, specifically those at the Pacific Enforcement Resource Center (PERC), then run the fingerprints through any number of federal and local databases. If the fingerprints "match" a criminal or immigration record, then ICE lodges a 247D Detainer form, in these instances called a PERC detainer, against that person.<sup>66</sup> Again, these could include individuals with past, minor criminal convictions and civil immigration violations. Thus anyone brought in for booking, regardless of the circumstances and alleged infraction that led to the arrest, regardless of whether charges will be pressed, and regardless of guilt or innocence, will be placed in a stream designed for civil immigration investigation and enforcement based on their alienage.

LASD also provides ICE with a list of inmates who are to be released within seven days.<sup>67</sup> ICE has full access to the County's jails and databases in order to determine which of the inmates on that list they would like to interview. At the Inmate Release Center (IRC), ICE has unfettered access to the release area, including the "basket" with release jackets of those being processed for release. Therefore, ICE is able to interview inmates who are scheduled for release, as well as those who are "spontaneously released," in other words, on bonds, bails, citations, and own recognizance releases.<sup>68</sup> ICE also has the ability to interview inmates who already have PERC detainers against them, though they rarely do as they have already made a determination to take custody of those inmates.<sup>69</sup>

When ICE decides to interview an inmate, it is unclear whether any TRUST Act review occurs. LASD officers in the Inmate Reception Center (IRC) are supposed to screen all inmates for compliance with AB4, the California TRUST Act, before that inmate is subject to interview by ICE. LASD asserts they do this, but also admits that ICE has unfettered access to the release area, where inmates can wait for hours while their release is processed. There are currently only two LASD officers trained to screen for TRUST Act compliance and only one working at any given time.<sup>70</sup> Hence there appears to be incomplete coverage of the AB4 desk, since inmates can be released any day or time. Given this lack of oversight, and the ICE officers' unrestricted access, it is highly likely that ICE is able to interview inmates without being previously screened for TRUST Act protections.<sup>71</sup>

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<sup>66</sup> IHCR Interview with Commander Jody Sharp, *supra* note 52.

<sup>67</sup> Jim McDonnell, *supra* note 64, at 3.

<sup>68</sup> *Id.*

<sup>69</sup> IHCR Interview with Commander Jody Sharp, *supra* note 52.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* Commander Sharp first admitted this in our interview, then was "corrected" by Sergeant Fetterleigh, who nevertheless confirmed the unfettered access by ICE to the release area, and that ICE interviews can

There are no accountability mechanisms in place to ensure that there is meaningful TRUST Act compliance for those taken into ICE custody at the time of release from LASD custody. According to LASD, the only record of the TRUST Act screening is an internal spreadsheet in which the officer inputs the inmate's name and the crime that qualifies him under the TRUST Act.<sup>72</sup> ICE publishes some data, noting the number, nationality, and alleged PEP priority category of those screened and taken into custody. Using this data, ICE out of LA has already encountered a number of people who were either wrongfully transferred or recorded in error.<sup>73</sup> Though LASD is looking into these specific cases, there are still no mechanisms for more consistent accountability in this regard.

One of the primary concerns surrounding the implementation of PEP is the issue of notice, or service, on the inmate against whom a detainer is lodged. LASD's stated policy is that it has in place a system for notifying inmates when an ICE detainer is issued.<sup>74</sup> In addition to the notification, inmates are supposed to be given a document providing them with a list of legal service providers in the area, which LASD refers to as a "courtesy."<sup>75</sup> Advocates argued for a more robust notice of an individual's rights while in custody and during ICE interrogation, but LASD refused to implement this notice, arguing that "it's not [their] job to provide know-your-rights information."<sup>76</sup> Though LASD claims to serve all inmates with notices in the event that a PERC detainer is lodged against them, there is no similar policy of notice for the inmates who are interviewed in the release area. Inmates are not told before release or at any point throughout the release process that they may be subject to an ICE interview.<sup>77</sup>

Notwithstanding the efforts to put in place some protective policies, the logic of ICE's interior enforcement strategy is detrimental to the goals that LASD and the County's criminal justice system should serve. Existing protective measures against harmful consequences are inadequate if the underlying infirmity is not cured. The County's willing and active participation in the strategy prolongs the legacy of contamination of its local law enforcement and criminal justice systems. Each iteration of the strategy infects our local institutions by diverting their functions to extraneous goals, and harms our local community in ways detailed below. The County and Sheriff's Department have the option, however, to establish a humane immigrant policy in line with integration, equal protection, fairness, and human dignity. This commitment would steer our local institutions clear of the

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take place anywhere in the release area (holding cells, hallways, etc.) before inmates "turn the corner" to the door out.

<sup>72</sup> *Id.*

<sup>73</sup> Analysis and identification conducted by ICE Out of LA, subsequently communicated to LASD.

<sup>74</sup> Jim McDonnell, *supra* note 64, at 3

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

detrimental entanglement. Specifically, the County and Sheriff's Department should ensure equal and unbiased law enforcement services and guarantee a fair and just criminal process for individuals brought into the system. The Board and the Sheriff's Department should disentangle our local institutions from federal civil immigration enforcement, and promote instead the health, safety, and welfare of our community through trust-building policies and greater transparency.

## IV. A Human Rights Analysis: The Ongoing Individual and Community Impacts of Immigration Criminalization in Los Angeles County

This Section provides a window into the human impact of the County's pursuit of policies that entangle Los Angeles' criminal law enforcement bodies with federal immigration policies. Specifically, it draws on the international human rights frame to highlight the implications of the County's policies for the dignity and wellbeing of immigrant communities in Los Angeles. In 1948, the United States joined the rest of the world in adopting the Universal Declaration of Human Rights (UDHR)—a bold statement of core human rights principles. The UDHR asserts that justice and freedom in the world stem from "recognition of the inherent dignity and the equal and inalienable rights of all members of the human family."<sup>78</sup> Thus, human dignity serves as the keystone in human rights law. Articles 1 and 2 of the UDHR make clear that human dignity requires freedom and rights without distinction of any kind.<sup>79</sup> A violation of human dignity occurs where a person becomes effectively powerless by way of degradation, diminution, or as is the case here, through a form of criminalization based on identity.<sup>80</sup>

The United States and the rest of the world proclaimed the UDHR "a common standard of achievement for all peoples and all nations" and exhorted "every organ of society, keeping [the UDHR] in mind," to promote human rights, and progressively "to secure their universal and effective recognition and observance[.]" There are violations of specific human rights detailed below, but it is important to see and acknowledge how structurally LASD's entanglement with ICE strikes at the very core of human dignity by manipulating the borders of federal civil immigration enforcement and local criminal justice systems in ways that demean and degrade individuals, their families, and their communities.

The UDHR is applicable to all levels of government and state action. As the steward of the County, the Board of Supervisors bears a moral responsibility to uphold this fundamental commitment to the inherent dignity of all human beings in its policy-making, administration, and oversight of the institutions of county governance. Similarly, the LASD must be accountable to promote and respect fundamental human rights principles, particularly since it wields police power on behalf of the County. Yet as this Section illustrates, the experiences of members of immigrant communities highlight the ways in which current County entanglement with federal civil immigration enforcement undermines these fundamental human rights principles. Drawing on original testimonies, survey responses, and other secondary sources, this Section analyzes the human rights impact of entanglement on immigrant communities with a focus

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<sup>78</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948) (UDHR), Preamble ("Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world).

<sup>79</sup> *Id.* art. 1-2.

<sup>80</sup> *Id.*

on human rights principles relating to discrimination and equality, humane treatment, rehabilitation and public safety, family, due process, asylum, and inhumane conditions of confinement.

#### a. Racial and National Origin Discrimination

The County's entanglement with federal civil immigration enforcement discriminates against individuals in the criminal justice system on account of their alienage and national origin. Moreover, the County's participation in these enforcement programs disproportionately impacts racialized communities, particularly Latinos, and incentivizes discrimination and racial profiling by law enforcement, targeting immigrants and citizens alike.<sup>81</sup> This further exacerbates already fraught relationships between local law enforcement and communities of color in Los Angeles.<sup>82</sup>

The international human rights framework condemns racial discrimination in the strongest terms and it is in this context that the Board of Supervisors should consider the racialized impact and consequences of entanglement. The principle of racial non-discrimination is a *jus cogens* norm,<sup>83</sup> meaning that no state or state institution can derogate from the prohibition against racial discrimination.<sup>84</sup> Marking a formal commitment to equality, the United States has chosen legally to be bound by two of the most robust treaties protecting the principle of non-discrimination: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>85</sup> These treaties are applicable to municipal entities and subdivisions within state parties, such as the County and LASD.

The ICCPR prohibits any "discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>86</sup> ICERD is even more robust in its definition of the type of racial discrimination prohibited, which includes "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of

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<sup>81</sup> Ian Ayers, *Racial profiling in LA: the numbers don't lie*, L.A. TIMES (Oct. 23, 2008), <http://articles.latimes.com/2008/oct/23/opinion/oe-ayres23>.

<sup>82</sup> Abby Sewell, *Los Angeles County's legal costs soared 24% in 2015*, L.A. TIMES (Jan. 14, 2016), <http://www.latimes.com/local/lanow/la-me-ln-county-litigation-20160114-story.html>.

<sup>83</sup> Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belg. V. Spain), Judgment, 1970 I.J.C. 50 (February 5).

<sup>84</sup> REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW 139 (Antonio Cassese eds., 2012)

<sup>85</sup> FAQ: The Covenant on Civil and Political Rights, ACLU (April 2014), <https://www.aclu.org/faq-covenant-civil-political-rights-iccpr>; FAQ: Convention on the Elimination of All Forms of Racial Discrimination, ACLU, [https://www.aclu.org/files/pdfs/humanrights/cerd\\_faqs.pdf](https://www.aclu.org/files/pdfs/humanrights/cerd_faqs.pdf) FIX THIS CITATION TO OFFICIAL RATIFICATION SOURCE.

<sup>86</sup> ICCPR art. 26.

human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”<sup>87</sup>

This prohibition encompasses racial profiling, which is when law enforcement officials target individuals for stops, searches, interrogations and ultimately arrests, based on their race, color, national origin, or ethnicity.<sup>88</sup> International human rights law emphasizes that the protection against discrimination and profiling applies equally to non-citizens of a state. In General Comment 30, the Committee on the Elimination on All Forms of Racial Discrimination acknowledged that non-nationals and refugees are among the main targets of “contemporary racism[,] and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices”.<sup>89</sup> The Committee explained that *any* differential treatment between citizens and non-citizens is unlawful discrimination if, “the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”.<sup>90</sup>

The County’s participation in ICE interior enforcement strategies results in three forms of discrimination. It encourages racial profiling in law enforcement, it treats individuals differently in the criminal justice system based on alienage and immigration status, and it produces a discriminatory effect.

With respect to racial profiling, advocates have found a disproportionate increase in stops of ethnic minorities by the police after local law enforcement entered into agreements with federal immigration authorities.<sup>91</sup> The most revealing evidence of the inherent disproportionate impact that these federal immigration policies have, is that they are almost always encouraged and subsequently implemented in cities with a very high Latino population.<sup>92</sup> Federal authorities are essentially using race and national origin to determine where to focus their local law enforcement efforts.<sup>93</sup> This may explain findings that Latinos, in addition to being disproportionately stopped and/or frisked by

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<sup>87</sup> ICERD art. 1.

<sup>88</sup> Mutuma Ruteere, REP. OF THE SPECIAL RAPPORTEUR ON CONTEMP. FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, Human Rights Council, Twenty-Ninth Session, A/HRC/29/46, at ¶ 16, April 20 2015, <http://www.ohchr.org/Documents/Issues/Racism/A-HRC-29-46.pdf>

<sup>89</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against Non-citizens (U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004))

<sup>90</sup> *Id.* ¶ 4

<sup>91</sup> United States Human Rights Network Joint Submission with Meiklejohn Civil Liberties Institute, United States Compliance with the International Covenant on Civil and Political Rights, Aug. 23 2013, [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/04\\_page\\_41-45\\_racial\\_profiling\\_mcli\\_2.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/04_page_41-45_racial_profiling_mcli_2.pdf)

<sup>92</sup> ACLU GEORGIA, THE PERSISTENCE OF RACIAL PROFILING IN GWINNETT at 7, March 2010 [http://www.acluga.org/files/3813/4203/6031/Gwinnett\\_Racial\\_Profiling\\_Report.pdf](http://www.acluga.org/files/3813/4203/6031/Gwinnett_Racial_Profiling_Report.pdf)

<sup>93</sup> ACLU GEORGIA, THE PERSISTENCE OF RACIAL PROFILING IN GWINNETT at 7, March 2010 [http://www.acluga.org/files/3813/4203/6031/Gwinnett\\_Racial\\_Profiling\\_Report.pdf](http://www.acluga.org/files/3813/4203/6031/Gwinnett_Racial_Profiling_Report.pdf)

LAPD as compared to Whites, were also the most likely out of all racial groups to be arrested following a stop.<sup>94</sup>

In testimony before the US Congress on the entanglement, representatives from the ACLU stated, "Because a person is not visibly identified as undocumented... federal immigration enforcement will improperly rely on race or ethnicity as a proxy for undocumented status... The predictable and inevitable result is that any person who looks or sounds "foreign" is more likely to be stopped by police, and more likely to be arrested (rather than warned or cited or simply let go) when stopped."<sup>95</sup> It is general practice of the Department of Homeland Security and ICE to racially and ethnically profile in immigration enforcement.<sup>96</sup> As federal policies become further embedded in local law enforcement, the risk of racial profiling and discrimination becoming entrenched within and throughout local law enforcement practices increases as well.

LASD's public image is already tainted by racial controversy. Just recently, a top ranking official at the Los Angeles Sheriff's department resigned because he had sent inflammatory and racist emails to his colleagues.<sup>97</sup> This comes at the heels of several accusations and incidents of racial bias by the LASD, among the most problematic being the Department of Justice investigation into the LASD Antelope Valley office, where it found that the LASD had in fact "engaged in a pattern or practice of discriminatory and otherwise unlawful searches and seizures".<sup>98</sup> The Police Assessment Resource Center, a nonprofit that provides support and advice on accountable policing, found that police dogs in the LASD are disproportionately violent towards Latinos and African Americans.<sup>99</sup> Their most recent report on the LASD also found that the LASD

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<sup>94</sup> See note 73.

<sup>95</sup> *Joint Hearing on the Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law & The Subcommittee on the Constitution, Civil Rights, and Civil Liberties U.S.H.R., 111th Cong.* (2009) (written statement of the American Civil Liberties Union (ACLU), available at <http://www.aclu.org/immigrants/gen/39242leg20090401.html>, See also: Aarti Kohli et. al., *Secure Communities by the Numbers*, CHIEF JUSTICE EARL WARREN INSTITUTE ON LAW AND POLICY AT THE UNIVERSITY OF CALIFORNIA, BERKELEY LAW SCHOOL, (OCT. 2011). UC Berkley School of Law found that Latinos comprised 93% of individuals arrested through Secure Communities, though they only comprised 77% of the undocumented population of the United States.

<sup>96</sup> Matt Apuzzo and Michael Schmidt, *U.S. to Continue Racial, Ethnic Profiling in Border Policy*, THE NEW YORK TIMES, Dec. 5 2014, [http://www.nytimes.com/2014/12/06/us/politics/obama-to-impose-racial-profiling-curbs-with-exceptions.html?smid=tw-share&\\_r=2](http://www.nytimes.com/2014/12/06/us/politics/obama-to-impose-racial-profiling-curbs-with-exceptions.html?smid=tw-share&_r=2)

<sup>97</sup> ABC7.com staff, *Tom Angel Resigns After Controversy Over Racist, Anti-Muslim Emails*, ABC 7, May 1 2016, <http://abc7.com/news/tom-angel-resigns-after-controversy-over-racist-anti-muslim-emails/1317612/>

<sup>98</sup> Thomas Perez, Assistant Attorney General, Letter to Los Angeles Sheriff's Department, Investigation of the Los Angeles County Sheriff's Department Stations in Antelope Valley, Jun 28 2013, [https://www.justice.gov/sites/default/files/crt/legacy/2013/06/28/antelope\\_findings\\_6-28-13.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2013/06/28/antelope_findings_6-28-13.pdf)

<sup>99</sup> Alex Greig, *New report shows 'racist' LA police dogs only bite blacks and Latinos*, LEGAL TIP CARDS (Oct. 13 2013) <http://legaltipcards.com/new-report-shows-racist-la-police-dogs-only-bite-blacks-and-latinos/>; and Police Assessment Resource Center, 34<sup>th</sup> Semi-Annual Report of the Special Counsel at 48, Aug. 2014, <http://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54fc75b3e4b03edc59f8fd9b/142583134>

has a persistent habit of dismissing and ignoring complaints of racial bias, racial profiling and discrimination.<sup>100</sup> More importantly, the current entanglement undermines any attempts at police reform and accountability.

The problem with using race and ethnicity as an implicit or explicit basis for furthering the objectives of ICE is that it requires local law enforcement to engage in the practice of criminalizing and targeting a specific group of people based on these characteristics of identity as a proxy for alienage status. Once in the LA County jail and criminal justice system, alienage itself becomes a basis for disparate and discriminatory treatment. Individuals are subjected to separate, collateral investigations and enforcement actions based on their alienage or immigration status. These in turn lead to other human rights violations discussed below in the section on due process. This perversion of ends is an inherently, discriminatory use of the local criminal justice system.

In light of these incidents and priorities, it is important for the LASD to credibly build and restore trust and accountability with the community. Enforcing federal immigration policy, however, only exacerbates the underlying problems and undermines any reform efforts. Researchers have found that, “Police commitments to avoid racial profiling *are put at risk* by active involvement in immigration enforcement” because “immigration enforcement subtly encourages officers to focus on people who “look Mexican” or who are heard to speak a foreign language.”<sup>101</sup>

Finally, while PEP policy may not be facially discriminatory, its implementation tells a different story. On average, ICE screens over 500 immigrants per month in Los Angeles County jails.<sup>102</sup> Of these approximately 90% are Latinos,<sup>103</sup> even though Latinos as a whole only make up about 48% of the population.<sup>104</sup> Many have no prior criminal convictions, and have not yet been convicted of a crime.<sup>105</sup> This vast dragnet cast over the County’s criminal justice system for the purpose of federal civil immigration enforcement is disturbing. Even though ICE does not currently take into custody all of those screened, and AB4 (the TRUST Act) imposes certain limitations on LASD, nothing prevents ICE from pursuing these individuals upon release and initiating deportation proceedings.

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7689/34th+Semiannual+Report.pdf found that the LASD did not adequately deal with the issue of police dogs targeting Black and Latino individuals after the first report.

<sup>100</sup>Police Assessment Resource Center, 31<sup>st</sup> Semi-Annual Report of the Special Counsel at 55, May 2012, <http://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54fc7541e4b0345241604b3a/1425831233322/31st+Semiannual+Report.pdf>

<sup>101</sup> THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES, POLICE FOUNDATION, POLICEFOUNDATION.ORG, [http://www.policefoundation.org/wp-content/uploads/2015/06/Appendix-G\\_0.pdf](http://www.policefoundation.org/wp-content/uploads/2015/06/Appendix-G_0.pdf), Appendix G. [emphasis added]

<sup>102</sup> Data taken from ICE monthly statistical spread sheets provided to LASD, November 2015 – September 2016, (ICE monthly data), on file with the authors.

<sup>103</sup> *Id.*

<sup>104</sup> Data from U.S. Census Bureau for Los Angeles County, 2010, 2015, <http://www.census.gov/quickfacts/table/PST045215/06037>.

<sup>105</sup> ICE monthly data, *supra*, n.102.

The ICE interior enforcement strategies have resulted in large-scale arrests of Latinos, and even deportations of non-criminals. The same model is at work in PEP, thus there is little reason to believe that technical adjustments in the system of collaboration will solve the racial profiling and discrimination issues that plagued the now firmly discredited interior enforcement strategy.

### b. Right to Rehabilitation and Restorative Justice

One of LASD's stated missions is to, "maintain a rehabilitative approach to incarceration."<sup>106</sup> Similarly, the United Nations Standard Minimum Rules for the Treatment of Prisoners ("UNRTP"), which was adopted by the U.N. in 2015, creates guidelines for the rehabilitation of incarcerated people. Under the UNRTP, the treatment of prisoners must emphasize the prisoner's continued role in his or her community and not their exclusion from it.<sup>107</sup> UNRTP provides that, "[f]rom the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation."<sup>108</sup>

Additionally, society's duty to those who serve time for criminal conviction does not end when incarceration or detention does.<sup>109</sup> In fact, the UNRTP establishes that community agencies should be enlisted to aid a former prisoner with efficient re-entry in order to reduce prejudice and assist with social rehabilitation.<sup>110</sup> This means then that the rehabilitation process is intended to be continuous even once a prisoner has been reintegrated into their communities. Individuals are prevented from reentering society because of ICE holds and the initiation of deportation proceedings, rehabilitation—the stated mission of LASD—is cut off and circumvented.

Despite guidelines established in the UNRTP, the entanglement between LASD and ICE denies the right to rehabilitation. This is because the collaboration uproots, with deportation, individuals before the process of rehabilitation is complete. Finally, the collaboration denies formally incarcerated and undocumented people's right to maintain the familial and community agency relationships that might otherwise support successful reintegration. If reentry is an integral part of the rehabilitation process, then

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<sup>106</sup> <http://shq.lasdnews.net/pages/PageDetail.aspx?id=2066>

<sup>107</sup>

[https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf) "The treatment of prisoners should emphasize not their exclusion from the community, but their extended part in it. Thus, agencies should be enlisted with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies." (point 61)

<sup>108</sup> Id. (point 80)

<sup>109</sup> Id. (point 64)

<sup>110</sup> Id (point 64)

a denial to reenter because of deportation thwarts a detainee's right to rehabilitate.

The goal of rehabilitation is also in line with the contemporary concept of restorative justice.<sup>111</sup> In this holistic model of criminal justice reform, the goal is to meet the needs of the community and promote healing. However, when the local criminal justice system is turned to serve the ends of a federal deportation pipeline, these goals are frustrated. The LASD-ICE collaboration denies an opportunity to benefit from restorative justice. Restorative justice is a theory of justice that is commonly implemented in the criminal justice context. Restorative justice recognizes the need to heal the larger community. In practice, restorative justice involves identifying who was harmed, the rights and responsibilities of those affected by the wrongdoing, and coming together to address how the community can heal from the harm. It recognizes both victims and perpetrators as members of the same community.

This is especially true of immigrants caught in the criminal justice system and subjected to PEP. Among those who did receive TRUST Act review and were transferred to ICE for past criminal convictions, the most frequent convictions found were burglary, DUI, possession and sale of controlled substances, assault, and larceny. This aligns with the prior convictions of those interviewed for this Report. All of those interviewed were on the road to successful reintegration in their families and communities. Many had spent years without any further encounter with the criminal justice system. As will be developed further below, use of the County's criminal justice system to collaterally impose a new, even harsher punishment like deportation for a past crime raises serious human rights concerns, and the County is engaging in a kind of retributive justice that is inappropriate in the context of LASD's mission to rehabilitate offenders. Without the restorative justice framework, members of communities that are heavily impacted by the entanglement lose their right to restore the health of their community—not because of any criminal activity on their part—but rather because of the collaboration itself.

Countless individuals are affected by the deportation of one person (e.g. the health and well-being of the person deported, their immediate and extended families, friends, employers, etc.) Retributive justice disqualifies immigrants who are facing deportation as a result of the entanglement, the right to meaningfully participate in the restoration of communities they are a part of. Using deportation as an extension of the criminal justice system disrupts the kind of dialogue that can lead to healing within a community that is affected by the LASD-ICE entanglement. For these reasons, the entanglement violates an opportunity to implement restorative justice as a tool to support the immigrant community in Los Angeles.

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<sup>111</sup> Howard Zehr, *Restorative justice: The concept*, Corrections Today, 01902563, Dec97, Vol. 59, Issue 7

### c. The Right to Public and Personal Safety

Public safety, a term used to address the general welfare of the public, can be compromised by a number of factors. Factors that heavily influence the safety of a community include: how much crime or violence exists in a particular area, levels of poverty, whether or not adequate services exist to address the mental health needs of those in the community and problems like addiction, whether there is affordable housing to prevent evictions, homelessness, or other displacement, and finally a community's relationship with law enforcement can either promote or threaten the safety of the people. Often, low-income communities of color, which have high immigrant populations, experience a combination of the factors listed above. Because of this, efforts to maintain the safety of these neighborhoods and the people in them must include trauma-informed initiatives. Unfortunately, public safety of immigrant communities is threatened because of LASD's ongoing cooperation with ICE, which increases the trauma and insecurity of the community.

The UDHR declares the right of all human beings to safety and security of person,<sup>112</sup> and the International Covenant on Civil and Political Rights (ICCPR) imposes a legal obligation on public authorities in the United States to respect and ensure this right.<sup>113</sup> The ICCPR provides the right to safety and security to all individuals within a nation state's territory regardless of national origin.<sup>114</sup> The United Nations Human Rights Committee has interpreted security in the ICCPR to include freedom from injury to the body and the mind, or bodily and mental integrity.<sup>115</sup> The right to security protects everyone from the intentional infliction of mental injury whether the individual is detained or not.<sup>116</sup> Yet the County's decision to entangle local law enforcement in federal immigration enforcement severely undermines immigrant's rights to safety and security by engendering deep, well-founded distrust in local law enforcement.

Indeed a consequence of local entanglement has been well-documented loss of trust in local law enforcement agents nationally,<sup>117</sup> and here in Los Angeles.<sup>118</sup> LASD's continued cooperation with ICE deteriorates trust in local

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<sup>112</sup> *Supra*, n.78, art. 3.

<sup>113</sup> International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 (hereafter "ICCPR").

<sup>114</sup> *Id.* art. 2.

<sup>115</sup> Human Rights Committee, *General Comment No. 35 on Article 9 (Liberty and security of person)*, U.N. Doc. CCPR/C/GC/35 (Dec. 15, 2014).

<sup>116</sup> *Id.*

<sup>117</sup> For example, a 2014 article stated that collaboration between immigration and local law enforcement agencies prevented a mother from calling the Nashville police despite the assault on her 10-year old daughter, like so many immigrants who are terrified to call the police when they need help. Amy Braunschweiger, *Nashville Immigrants Too Scared to Call the Police*, HUMAN RIGHTS WATCH, HRW.ORG, <https://www.hrw.org/news/2014/05/19/nashville-immigrants-too-scared-call-police> (May 19, 2014).

<sup>118</sup> Jennie Pasquarella, ACLU of Southern California, Letter to Los Angeles Sheriff's Department, July 24, 2015; National Immigration Law Center, Scorecard on Los Angeles County Sheriff's Department New Immigration Enforcement Program; Coalition for Humane Immigrant Rights of Los Angeles, LA County Sheriff's Department PEP Report.

law enforcement in ways that directly undermine immigrants' rights to security of person. The combination of over-policing of communities of color, together with the distrust created by the entanglement of LASD with federal civil immigration enforcement, completely subverts the role of LASD in the public safety scheme in violation of the community's right to security and public safety. Many of the immigrants surveyed for this Report document stated they are not likely to call local law enforcement about crimes because of LASD policy to cooperate with ICE.<sup>119</sup> Carlos, whose brother Arnulfo was transferred by LASD to ICE custody explained: "I thought of the police as an entity you respect but don't want to interact with. A lot of immigrants are fearful of reporting crimes and are scared the police will take into account their status and deport them." Distrust of local law enforcement agents leave immigrants in a vulnerable position—many times without the ability to adequately protect themselves or assert their right to protection.

Rocio, another interviewee from the community, emphasized that the actions of LASD impact everyone in the community. She said, "The people are scared. I don't trust the police. I would like to, and I know they are not bad people, but it's hard to see the difference between ICE and local law enforcement.

Paula, a mother whose son was transferred by LASD into ICE custody under PEP, shared the fear and insecurity she feels even in the simple act of walking around Los Angeles. She recalled her trip to downtown Los Angeles with her son for his hearing. As they walked through Union Station, she experienced anxiety from fear that the LASD deputies there would see her son's ankle bracelet: "You see the police and it's like there is respect but there is fear at the same time...all you feel is despair, and the only thing you think about is that you hope they won't stop you or abuse you." To this day, Paula remains fearful even when someone merely knocks on her door, and this fear is in great part of the very local authorities entrusted with the protection of all communities in Los Angeles County.

A driver of distrust within immigrant communities is LASD's capacious data sharing processes with ICE for purposes of federal civil immigration enforcement. LASD provides access to records that allow for multiple methods for tracking immigrants. As a result of these policies, immigrant communities in LA are justified in the belief that any interface they have with local law enforcement is a direct portal to ICE. One interviewee who has been in detention since April 2014 shared his understanding as follows: "The Sheriff releases people from the County but they give ICE their information, so ICE can go to your house and pick you up. After some inmates I knew were released from the Sheriffs, they were picked up at their house at five a.m. and taken into ICE custody."

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<sup>119</sup> Community Impact Surveys (March to April 2016) (on file with the UCLA School of Law International Human Rights Clinic) (showing that 50% of the 32 participants would not call the police having been a victim of a crime out of fear that the police will ask them about their immigration status).

Another effect of the confusion of law enforcement and immigration enforcement roles is that it allows ICE to exploit the confusion. Daniel plead to a domestic assault in 2009, received probation, completed an anger management course, and had not had any problems with the law since then. In March of 2016, ICE agents came to his home but only identified themselves as “police,” asking to see his identification. He did not allow them into his home. Later, after picking up his daughter from school, police patrol cars arrived with the ICE agents, and he was arrested and taken directly into ICE custody.

#### d. Right to Privacy, Family, and Home

Entanglement with ICE disfigures the County’s role in protecting privacy, family, and home in Los Angeles communities. The right to privacy, family, and home is enshrined in the UDHR.<sup>120</sup> Under this human rights principle, the County has a duty to protect the family, the fundamental unit of society.<sup>121</sup> Article 17 of the ICCPR also prohibits interference of privacy, family and home.<sup>122</sup> By allowing LASD functions to migrate into federal civil immigration enforcement, the County arbitrarily promotes the targeting of the immigrant community for deportation, resulting in the disruption of home life and family separation. The international human rights framework emphasizes the special importance of family integrity for the wellbeing of children. The Convention on the Rights of the Child (CRC) requires public authorities to protect children against arbitrary interference with their family,<sup>123</sup> which includes ensuring that a child is not separated from her parents against their will.<sup>124</sup>

The process through which the criminal justice system funnels immigrants into ICE custody and deportation is unpredictable and arbitrary in so far as it is a product of the discrimination and over-policing described above. Vishal shared that he had bonded out of LA County jail and attended his court appearance in September 2015. He had no further interaction with law enforcement until unidentified ICE agents arrested him during a raid on his home just a few months later in November 2015. The apparent use of LASD data to assist PEP enforcement results in this interference with one’s family and home.

Interviewees reported instances of immigrants scheduled for release from LASD custody, being instead unexpectedly transferred by the LASD to ICE custody on their release dates. Two interviewees, Javier and Vishal, further reported the lack of formal procedures for communicating news of their transfers and continued detention to family members who eagerly anticipated

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<sup>120</sup> *Supra*, note 78.

<sup>121</sup> *Id.* at art. 16, sec. 3.

<sup>122</sup> *Supra*, note 113, at art. 17.

<sup>123</sup> Convention on the Rights of the Child, art. 16, Nov. 20, 1989, 1577 U.N.T.S. 3. Only two counties in the world—the United States and Somalia—have failed to ratify the CRC.

<sup>124</sup> *Id.* at art. 9.

their release. Both only successfully notified their family members by chance, one from an LASD officer and the other from an ICE officer. Immigrants without these connections may have no means of allaying the confusion and anxiety of family members who have no other way of learning that the loved ones whose return they await, are in ICE custody. Paula expressed the anxiety that family members expecting the release of loved ones experience: "When I called the county to ask what had happened to [my son], they told me that they didn't have him, that ICE had taken him . . . it's that game. They say they don't know where he is; he's not here or there, I looked for him from 7:00 p.m. to 2:00 a.m." Family members waiting for those in detention to come home may not know where they are for hours or days. The arbitrary functioning of this system interferes with the integrity of the family life.

Interviewees expressed dismay at the seemingly arbitrary manner in which current detention policies entangling LASD with ICE result in unnecessary, painful, family separations. Sorya was moved around the country to various detention centers while detained by ICE, far from his 5-year old daughter. He felt that nobody wanted to help him. He said: "The Feds put immigrants anywhere in the country because they treat them like they have no home." Elias did not know he could communicate with his family while in detention. Nobody had taken the time to tell him about the procedures for visits. Daniel shared with us that his family feels uncomfortable visiting him because his mother is undocumented.

Putting County functions at the service of ICE separates children from their parents. Reports show that "thousands of US citizen children have been placed in foster care due to their parents' deportations."<sup>125</sup> By declining to participate in PEP, the County could focus on the integration rather than disintegration of families. Interviewee B106 reflected: "What are we achieving by breaking up a family? Look at it from a human point of view. This is affecting everything; wives, children are left with no recourses. They will become future criminals. It will become a cycle." Interviewee 114—a mother of five—also shared her concerns: "When they deport you, my kids stay here. The government prefers to spend money in a ridiculous way, paying for foster care when they can cancel deportations for us so we can take care of the children. The most prejudiced are the children."

Carlos shared the difficulty of taking care of the children of his brother Arnulfo, while his brother was in ICE custody: "The children's mom has drug issues, so they were put in the foster care system. Luckily they were placed with their grandma. She is older and has health issues that require her to do weekly dialysis. My brother had full custody before being detained...but he has to tell them he has to go." Jorge is detained by ICE because of the County's entanglement with PEP. His partner and their two U.S. citizen children had to move to Las Vegas to find employment, and he has not seen them since.

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<sup>125</sup> IMMIGRANT LEGAL RESOURCE CENTER & UNITED WE DREAM, *supra*, 20.

Meanwhile, Javier, who was interviewed while in Mexico and whose wife and 5-year-old U.S. citizen son remain here in Los Angeles, represents the countless families separated because of the deportation pipeline facilitated by the County's entanglement. Javier was transferred to ICE during the PEP program as he was bonding out of LA County jail, and subsequently deported. He is living near the border in the hopes of seeing his son, Jose, in the future, but according to his sister Alicia, little Jose is traumatized by the breakup of the family: "Long term it will continue to have an impact on him. He doesn't want to get too attached to people or places or things because he was ripped away from everything that he's ever known. He is being very cautious about the friendships that he forms."

Entanglement has resulted in unreasonable policies that promote separation that is harmful and disruptive to immigrant families, families that are an integral part of our community here in Los Angeles County. Human rights principles protecting privacy, family and home prohibit these consequences of the County's entanglement policies.

#### e. The Right to Due Process

##### i. *The Arbitrariness of Detention arising out of the Entanglement*

The arbitrary use of County law enforcement and criminal process for extraneous federal civil immigration enforcement purposes violates international standards for due process. Arbitrariness in the arrest and detention of individuals is prohibited by the UDHR and the ICCPR.<sup>126</sup> The American Declaration adds that "no person may be deprived of liberty for non-fulfillment of obligations of a purely civil character."<sup>127</sup>

In essence, the County is using its police power and the criminal justice system to facilitate and effect immigration detentions outside of its jurisdiction. Liberty is a core human right, and the County entities—the Board of Supervisors and LASD—must ensure that the use of its police power and criminal process to arrest and hold an individual be appropriately circumscribed, transparent in its purpose, and non-discriminatory to avoid being arbitrary. To protect individuals against arbitrary detention and enforcement, the ICCPR provides rights to judicial guarantees and protection. Articles 9, 10, and 14 of the ICCPR enshrine a fundamental right that the criminal justice system be applied fairly in a way that protects the multiple rights set forth in those articles regarding the right to liberty and due process, including the rights to a presumption of innocence, to protection against forced confession, the right to fair and public criminal proceedings, and the right to challenge the legality of a detention.<sup>128</sup>

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<sup>126</sup> *Supra* note 78, at art. 9; note 113, at art. 9(1).

<sup>127</sup> American Declaration of the Rights and Duties of Man art. 25, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948)

<sup>128</sup> *Supra*, note 113.

The County's entanglement with federal civil immigration enforcement violates these rights regarding arbitrary detention, judicial guarantee, and judicial protection. The use of the criminal process to target people on the basis of their alienage or citizenship status is both arbitrary and discriminatory. Holding people for purposes extraneous to the reasons for their detention violates their judicial guarantees, and they have no ability to challenge the County's PEP-friendly policy, in violation of their right to judicial protection.

In order to comply with the human rights obligations stated above, the County should disentangle itself from immigration enforcement and detention. The County should ensure fair, non-discriminatory exercise of its police power and criminal justice system within the circumscribed goals and functions of local government. These should apply equally to all County residents, without regard for immigration status.<sup>129</sup> This includes the orderly release of those detained by the County without confusion or interference of collateral, federal civil process. This complies with international human rights norms and is consistent with the County's responsibility to ensure the public welfare at the local level. The County should only use its police power and criminal justice system for furthering the laws they are competent to enforce. With the immigrant community, the County's focus should be on integration and equal treatment that aligns with the common good. The only way to achieve this is by disentangling itself from the confusion and hazards of federal immigration policy and enforcement.

When the County works with ICE to enforce federal immigration law, the County arbitrarily turns its functions away from their intended operation, and abdicates its own obligations in favor of the federal immigration authority. Even though ICE frames the PEP program as "cooperation," when the County bends its own detention authority and criminal justice process to the goals of ICE, it does so at the risk of its own due process obligations and the fulfillment of its duties to promote integrally the welfare of the individual, family, and community. From the County's position, immigration enforcement does not constitute an exceptional circumstance justifying the use of criminal detention for this purpose. Neither the immigrant community nor civil immigration violators pose a specific, individualized threat to the community.<sup>130</sup> Such determination requires an analysis of all the circumstances surrounding an individual, which LASD is not competent to evaluate with respect to individuals alleged to have violated federal civil immigration law.

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<sup>129</sup> In international human rights law, there is a presumption of liberty over detention. See IACHR, Report No. 51/01, Case 9903, Admissibility and Merits, *Rafael Ferrer-Mazorra et al.* (The Mariel Cubans) (United States). April 4, 2001, para. 219.

<sup>130</sup> Human Rights Committee, *A. v. Australia*, *Communication No. 560/1993*, ¶9.2, U.N. Doc. CCPR/C/59/D/560/1993 ("[T]he Committee recalls that the notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence.")

LASD, by embracing PEP, compromises the right to personal liberty by using its custodial power to facilitate and effect immigration detention. Not only is it an arbitrary use of County process and function, it has led to further due process concerns and violations, outlined below, in which the County is complicit by way of its abdication of responsibility in the entanglement.

Arnulfo was brought into LASD custody on charges that were almost immediately dropped. However, because of its access to the jail, ICE used the detention for immigration enforcement. Arnulfo remained in LASD custody for 2 days beyond his scheduled release because of an ICE hold, at which time he was transferred to ICE detention. Arnulfo was held in immigration detention for 23 months before he was released on bond, creating multiple hardships on his family which persist today as he fights his deportation

The conditions of detention, particularly going directly from criminal detention to immigration, place enormous constraints on the ability to obtain legal counsel. Individuals represented by an attorney are over 5 times more likely to win their deportation cases.<sup>131</sup> Arnulfo was only able to obtain legal representation after his release from detention. Many detained through the LASD collaboration with ICE have certainly been deported without ever gaining their conditional release to fight their case, or having an adequate opportunity to exercise their right to bring a claim for relief due to these constraints and the lack of counsel.

Arnulfo's immigration detention for an alleged civil infraction was effected through a criminal process that was promptly abandoned. This demonstrates the arbitrariness of using the County criminal justice system to enforce immigration law violations, and suggests how susceptible the entanglement is to abuse. The criminal justice system is brought to bear on non-citizens and the foreign born in ways that discriminate against them.

Jorge was preparing to go home on his scheduled day of release from county jail. Before the big day of his release, he checked his release date and saw that there was no ICE hold placed on him. He changed into his street clothes and waited to go home. Instead of releasing him on schedule, however, the Sheriff's department held Jorge for two hours beyond his sentence and effectuated an early-morning transfer to ICE around 4:00 AM. Tired and thinking that he would eventually be released, Jorge was interviewed by ICE and pressured into signing papers that he did not understand. Once the papers were signed, Jorge was shipped to the Adelanto facility where he is now waiting to see when, and if, he will be released. Jorge still does not have legal counsel and has been unable to obtain his release. While he has been sitting in immigration detention, Jorge has lost contact with his two American citizen children who have moved to Las Vegas with their mother who refuses to give Jorge her phone number. This case highlights the further degradation

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<sup>131</sup> Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015).

of immigrant rights due to the arbitrary involvement of the County with immigration enforcement. As discussed below, the lack of notice, the failure to inform him of his rights during a custodial detention, the lack of voluntariness under the extreme circumstances, and the constraints placed on his ability to obtain legal counsel are all violations arising from the County's toxic entanglement with ICE.

*ii. Lack of Notice*

The UDHR<sup>132</sup> and the ICCPR,<sup>133</sup> both guarantee the human right to a fair and public hearing in criminal cases. Judicial guarantees and protection encompass an array of rights. Particularly in a criminal process, when the weight of the state and the state's police power is brought to bear on an individual, the public must be assured of a system that is fair and non-discriminatory, with the highest regard for certain minimum guarantees to prevent injustice and violation to human dignity.

Among the most important due process guarantees is that of proper notice.<sup>134</sup> The lack of proper notification has further serious due process implications, such as the right to seek counsel and prepare a proper defense, because the accused will not have the most basic information necessary to exercise those rights. The consequences of deportation are often harsher than a criminal sentence, implicating due process principles of notice and legal counsel when the government seeks to take action against a detained individual

Several interviews conducted for this Report raised the concern that withholding notice from inmates may be a tactic that LASD uses to ensure the effectiveness of their collaboration with ICE against the rights of the individual. While referred to by LASD as ICE "interviews," these are in fact custodial interrogations, which implicate multiple due process concerns.

The individuals interviewed for this report almost universally complained about not receiving the notice that they are guaranteed under human rights law.<sup>135</sup> As a result, most walked into their interviews with ICE while still in custody, totally unprepared to protect themselves against ICE's coercive interviewing tactics. For example, ICE came to the jail to interview Elias one year before he was to be released from an eighteen-year sentence. Instead of explaining the situation, guards simply told him that someone had come to talk to him in the chapel. Even during the interview, the officers did not identify themselves as ICE, adding to the confusion that Elias felt about what was happening to him. Walter and Jorge were both interviewed by ICE at 4:00 AM after they had changed into plain clothes on the days of their scheduled releases. Jorge received no notification about an ICE hold or that ICE wanted

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<sup>132</sup> *Supra* note 78, at art. 10.

<sup>133</sup> *Supra* note 113, at art. 14.

<sup>134</sup> *Supra* note 96, at art. 9.2.

<sup>135</sup> Interviews of Arnulfo, Elias, Jorge, Isaias, Walter and Javier.

to interview him, and he was coerced into signing documents that he did not understand, expecting that he would be released.

Some among those interviewed for this Report said that LASD and ICE did not even offer them the opportunity to contact or seek legal counsel. Walter reported that he had no opportunity to call anyone, and Arnulfo reported that officials gave him no option to decline his interview or to contact an attorney. Other interviewees reported that ICE did not advise them of their rights during these interrogations.<sup>136</sup> Finally, with no knowledge of their rights and no attorney to help them, interviewees reported they had no means of protection from threats that ICE made to them during interviews. Arnulfo reported that ICE officials threatened him with inevitable deportation, and Elias reported that ICE officials threatened with him with isolation. Isaias reported that LASD officials threatened to target his family if he did not cooperate during his interview and sign his 'voluntary' deportation papers. Voluntary deportation papers signed under such circumstances are tainted by due process infirmities that contradict fundamental human rights principles. There is no telling how many individuals accept their deportation under these circumstances, but ICE interviews dozens of people in the LASD custody each month.<sup>137</sup>

### *iii. Ex Post Facto Enforcement*

Human Rights law recognizes the basic legal prohibition on the passage of *ex post facto* laws. One aspect of the prohibition on *ex post facto* laws prevents the passage of laws that impose heavier criminal penalties than what was applicable at the time of the offense. Article 11 of the UDHR states:

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.<sup>138</sup>

In addition to the UDHR, the ICCPR<sup>139</sup> and the American Convention<sup>140</sup> contain articles protecting against the passage of *ex post facto* laws. Such laws are also expressly forbidden by the United States Constitution in Article 1, Section 9<sup>141</sup> and Article 1, Section 10.<sup>142</sup>

The entanglement with immigration enforcement has a toxic *ex post facto* effect. In LA County, immigrants may be arrested and subject to criminal process for alleged conduct in violation of criminal laws. In many cases, they

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<sup>136</sup> Arnulfo, Elias, and Isaias reported that they were not advised of their rights.

<sup>137</sup> ICE monthly statistical spreadsheets, *supra*, note 102.

<sup>138</sup> *Supra* note 78, at art. 11.

<sup>139</sup> *Supra* note 113, at art. 15.1.

<sup>140</sup> American Convention on Human Rights "Pact of San Jose" (B32), at art. 9.

<sup>141</sup> Article 1, Section 9 applies to federal laws

<sup>142</sup> Article 1, Section 10 applies to state laws

are arrested for minor criminal infractions. The County violates the principle against *ex post facto* application when it uses its police power and criminal justice system to impose custodial control and enforcement of civil immigration process in accordance with ICE's interior enforcement strategy. In effect, the County's police power and criminal justice system are used to both criminalize civil immigration violations and impose a penalty beyond that mandated by the alleged criminal behavior that brought the individual into the County's system to begin with. Moreover, collaboration with the interior enforcement strategy allows local law enforcement to effectively impose immigration penalties on individuals with specific categories of criminal records, regardless of when the original crimes were committed, in a criminal process *ex post facto* of the original crime. Through the criminalization of the immigration process, LASD's collaboration with ICE openly blurs the line between local criminal and federal civil immigration enforcement, creating a continuum from arrest to deportation. It is disingenuous to suggest that the formal distinction between local and federal authorities inoculates the process from *ex post facto* critique.

LASD, by collaborating with ICE, thus violates the Human Rights prohibition on *ex post facto* laws in a number of ways. As discussed above, the use of the County's criminal justice system to enforce civil immigration violates the prohibition because it results in the imposition of immigration penalties on individuals for unrelated behavior, it uses the criminal process to impose further penalties related to past crimes which occurred before and independent of the offense for which the individual is charged while in the County's criminal justice system. Many of those interviewed were transferred to ICE custody on the basis of prior criminal convictions unrelated to their detention by LASD. Even when charges are dismissed, individuals receive a heavier sanction than that which could have been imposed in the criminal process, such as Arnulfo, whose story was recounted at the beginning of this report.

Arnulfo's story reproduces that of countless others whose subsequent encounter with the criminal justice system, long after past offenses are satisfied, has served primarily to funnel them into ICE custody. The key variant is that ICE has deported the majority of those individuals without the benefit of legal counsel, resulting in a more permanent, devastating effect on their families. The County's entanglement with immigration enforcement thus leads to disparate treatment of immigrants within the County's criminal justice system, whereby that system is used to impose additional punishments for past crimes whose debt to the system has been paid. Moreover, as previously noted, the principles of rehabilitation and restorative justice, which should be the foundation of the County's criminal justice system, are undermined in favor of further retribution.

## f. The Right to Asylum

The right to seek asylum is recognized in the UDHR and more specifically in the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) and its 1967 Protocol.<sup>143</sup> Immigration enforcement through the LASD and the County’s criminal justice system places serious constraints on the right to seek asylum, and this is a serious concern for LA County.

The Refugee Convention and its Protocol define a refugee as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution.”<sup>144</sup> The Convention protects any person who meets this definition from being returned in any manner whatsoever to countries or territories where their lives or freedom may be threatened because of their race, religion, nationality, membership in a particular social group, or political opinion. This principle, known as non-refoulement, is founded in human rights principles, and is codified in Article 33(1) of the Convention.<sup>145</sup>

When interpreting the Convention on Refugees, the Office of the United Nations High Commissioner for Refugees (hereinafter “UNHCR”) concluded that “[a]s a general principle asylum-seekers should not be detained” and that “[t]here should be presumption against detention.”<sup>146</sup> Moreover, detention is likely to increase and amplify feelings of trauma and depression that asylum seekers might face as a result of their prior persecution.<sup>147</sup>

UNHCR underscores the fact that detention should only be used as an exceptional measure, and therefore authorities may only resort to it once they have determined that this measure is 1) necessary, 2) reasonable, and 3)

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<sup>143</sup> *Supra* note 78, at art. 14; United Nations High Commissioner for Refugees, *An Introduction to International Protection: Protecting Persons of Concern to UNHCR*, Aug. 1, 2005, available at <http://www.unhcr.org/3ae6bd5a0.pdf>.

<sup>144</sup> Convention relating to the Status of Refugees, art. 1(A)(2), 189 U.N.T.S. 137 (July 28, 1951) [hereinafter Convention]; Protocol Relating to the Status of Refugees, art. 1(2), 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (Jan. 31, 1967) [hereinafter Protocol]. The 1951 Convention limits the scope of this definition to only those individuals who qualify “as a result of events occurring before 1 January 1951”, but the 1967 Protocol removed this limitation.

<sup>145</sup> Convention, art. 33(1).

<sup>146</sup> United Nations High Commissioner for Refugees (UNHCR), *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, 3-5, (Feb. 26, 1999), available at <http://www.unhcr.org/3bd036a74.html>.

<sup>147</sup> See Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum-Seekers* (June 2003) at p. 63 (study finding that the severity of anxiety, depression, and post-traumatic stress disorder (PTSD) symptoms was significantly correlated with the length of time in detention and that 70% of those interviewed stated that their overall mental health had worsened substantially while in detention (with 95% of the interviewees having been diagnosed as clinically depressed and 86% as suffering clinically significant anxiety).

proportional.<sup>148</sup> This means that immigration detention must be necessary in each specific case, its use must be reasonable, and it must be proportionate in light of its aims. Where detention is deemed necessary, it may not be based on discriminatory motives and must be limited to the briefest period possible.<sup>149</sup> In those cases in which an asylum seeker's detention is deemed necessary, UNHCR has established that such detention "should not constitute an obstacle to an asylum seekers' possibilities to pursue their asylum application."<sup>150</sup> It has also noted that asylum seekers have the right to receive prompt and full communication of any order of detention, including the reasons for that order and their rights in connection with that order, in a language that they understand. Detained asylum seekers must also be informed of the right to legal counsel.<sup>151</sup>

DHS PEP priority category 2 includes immigrants who entered the country without inspection after January 1, 2014.<sup>152</sup> This raises serious concerns that immigrants among those detained since that time under the Priority 2 category may qualify for asylum. However, without the financial resources or advance notice necessary to hire an attorney, many of these individuals will remain unaware of their right to seek asylum or unable to adequately make their claim. Using the County's criminal justice system to funnel these individuals into immigration detention will both re-traumatize them and severely limit their chances of exercising their right to asylum. The County's entanglement also plays into an ICE strategy to deter future refugee flows by promptly removing individuals who have entered more recently, and through PEP programs in jails effectively criminalizing some of those same individuals notwithstanding their potential refugee status or right to seek asylum.<sup>153</sup> Despite its complicity through PEP, the County has failed to put in place precautions to safeguard against the degradation of the rights of asylum seekers caught in the process.

The story of Walter, a 34 year-old undocumented immigrant from Mexico, is emblematic.<sup>154</sup> Walter and his mother fled Mexico when he was a child to escape domestic violence at the hand of his father. He and his family have lived in the United States ever since, and have lived in Los Angeles for a

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<sup>148</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, (2012), Guidelines 5-6, page 21.

<sup>149</sup> *Id.* Guideline 5, at 25

<sup>150</sup> United Nations High Commissioner for Refugees (UNHCR), *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Guideline 5. (Feb. 26, 1999), available at <http://www.unhcr.org/3bd036a74.html>.

<sup>151</sup> *Id.*

<sup>152</sup> Department of Homeland Security, *Memorandum Re: Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, (Nov. 20, 2014), page 4, available at [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf)

<sup>153</sup> That strategy, as it relates to family detention, was recently revealed and challenged in *R.I.L.-R, et al. v. Jeh Johnson et al.*, Civ. Action No. 15-11 U.S. Dist. Court for District of Columbia.

<sup>154</sup> ICHR Interview with A102, (Mar 15, 2016), in Los Angeles, Cal. All details in this Report attributed to A102 or regarding A102's experiences while incarcerated are taken from this interview. The name "A102" is a pseudonym used to protect the privacy of this interviewee.

number of years. In December 2014, Walter was in his neighborhood when a couple of police officers stopped him and asked him for his ID. When the officers ran his name, they found that he had an outstanding warrant for not having completed his mandated community service hours from a prior misdemeanor conviction. The officers arrested him and booked him in LA County jail. Walter served one month in jail for his offense, but on his release day he was interviewed by ICE officials, transferred by LASD into ICE custody, and was then taken to Adelanto Detention Facility.

Walter spent over six months in Adelanto before he found an attorney, and after much difficulty he was able to obtain his release with an electronic monitoring device. With the help of his attorney, Walter is now filing for asylum, as he arrived in this country as a minor fleeing domestic violence, and also faces other threats from the state of officially sanctioned violence in Mexico. Although Walter may ultimately be granted asylum, his bond to be released from detention cost his family over \$12,000, and the six months that he spent in Adelanto cost him his job. Moreover, he suffered from depression while in detention, and witnessed many other detainees suffering from the psychological impacts as well. The harms associated with detention constitute unnecessary and unacceptable obstacles to asylum seekers like Walter. Unfortunately, Walter's story is not unique, and such obstacles degrade the international right to seek asylum.<sup>155</sup>

In addition to undermining the right to seek asylum, the collaboration between local law enforcement and ICE has negatively impacted individuals who have already been granted refugee status. Sorya arrived in the United States when he was 8 years old as a refugee from Cambodia during the Khmer Rouge era. He was granted asylum, and later became a lawful permanent resident. Unfortunately, Sorya fell into a pattern of drug abuse, partly because of his difficult upbringing, and was later arrested on drug charges. At the end of his sentence, Sorya was transferred to ICE custody and placed in deportation proceedings. He was held in immigration detention for several months, before ultimately being released with an ankle-monitoring device. Sorya's case is still pending, and he may be deported to Cambodia, separated from his young children and entire family, and forced to live in a country from which his family fled years ago. Sorya's story is not unique, as other child refugees from that era have recently been deported for older convictions committed in their youth, even after their rehabilitation and becoming productive members of society.<sup>156</sup>

Again the limits of U.S. immigration law to humanely deal with these cases is not the issue, rather the way in which the County's entanglement with ICE

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<sup>155</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, Guidelines 5-6, page 21,(2012).

<sup>156</sup> See Sophea Phea and Veasna Seng, *Deported to Cambodia, they yearn for Long Beach and fairness: Guest commentary*, Long Beach Press-Telegram, May 27, 2016, available at <http://www.presstelegram.com/opinion/20160527/deported-to-cambodia-they-yearn-for-long-beach-and-fairness-guest-commentary>.

facilitates the disparate treatment of immigrants and their families in ways that run counter to the County's own goals of integration and rehabilitation, and produces inhumane results. Sorya's story illustrates how collaboration between law enforcement and civil immigration enforcement has tragic and unintended consequences even for immigrants who have been granted asylum in this country. Once granted asylum status, refugees should not continue to fear deportation, even if they are swept up in the criminal justice system. The County's criminal justice system should be allowed to work for them in terms of rehabilitation and reintegration. The fear, stress, and anxiety that accompany the uncertainty of immigration detention and deportation proceedings are all the more pronounced in individuals who have experienced past persecution, and are antithetical to the human rights principles underlying the right to asylum. The only way to ensure that asylum seekers and those who have been granted asylum are treated in accordance with all relevant human rights guarantees is to end the entanglement between LASD and ICE completely.

#### g. Conditions of Detention and the Right to Human Dignity

As stated earlier, the UDHR identifies the inherent dignity of each person as the foundation of the international human rights framework.<sup>157</sup> In general, detention conditions call into question our respect for the dignity of the human person. Some of the conditions suffered in LASD detention by those interviewed are cause for deep concern regarding the respect for their human dignity, and the entanglement itself harms this inherent value of the person. As outlined below, the abuses that occur during confinement are a direct result of the collaboration between LASD and ICE.

At a time when the LASD's jail practices are under scrutiny and the prison industrial complex itself serves as a reproach of our criminal justice system, the County should not be inviting collateral opportunities for abuse due to entanglement with federal immigration enforcement; doing so is a violation of human dignity.

Within the confines of jail, collaboration between sheriffs and ICE physically manifests itself through shared data, office space, and access to prisoners. Arnulfo's story discussed above demonstrates the use of intimidation during interrogation. Isaias' story is even more dramatic. Isaias recalls the repeated harassment, intimidation, and threats experienced in Twin Towers after an arrest following a traffic stop. He expressed particular angst about threats by officers to go after his family and their use of intimidating tactics while interrogating him about his immigration status for five days.

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<sup>157</sup>*Supra*, note 78, art. 3, art. 22 (whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world).

*At Twin Towers, ICE intervened when I was in the holding cell area about to be released. ICE officer called my name, and asked about my college education; ICE knew from my files. First, the ICE officer started with small chat trying to be cool with me, then began asking, "Where are you from? Are you an illegal? Where were you born, and how long have you been living here?" I said I won't answer and don't have to answer. The ICE officer said he is ICE and "deports criminals like you." I was put back in the cell; no one told me about my rights or that I didn't have to do it. This started a wave of intimidation and threats.*

*While I was inside the cell, another ICE person came. This officer had guns. The ICE agent called me to an office; began taking my fingerprints. I felt like if I didn't do it, I would be intimidated or my sentence would be enhanced. I was asked again about my parents but did not say anything else. A female officer told me that I was stupid and that ICE would go after my family. I was with them for two hours and then over seven hours of solitary confinement in the next room. I knew it was a long time, because they changed shifts. I told them I was not signing any paperwork and wouldn't do anything without a lawyer. An ICE officer walked in while I was reading the bible and said, "Not even God can save you." After more hours in solitary confinement, they moved me back to the office. New officers, same questions. I refused to answer them again. The officers told me information about myself; they had files on the computer and had a record of me from the July 2011 action in San Bernardino. I didn't say anything. They said, "Oh, so you are a dreamer?" They had info about my address and said they can be down there in fifteen minutes and can have a talk with my father. I didn't say anything. This lasted an hour. They asked about my activism. They said they can deport my father. They asked, "Where were you born? Do you have a record? Where did you go to school?"*

*They took me back to general holding for a couple of days. There were 60 bunk beds; the place was full and also violent with fights and gangs. The sheriffs didn't intervene with fights. We inside had to look away to not get beat up. [While in general holding], I got a visit from a community lawyer, due to support by grassroots organizations working with the undocumented community. Many others did not have legal representation. Undocumented folks signed and were told they would get more charges if they didn't sign. I refused to sign anything, removing me from the fast track list. Those that had help, stayed. Those that didn't were deported or on track to being deported. On the last day, ICE asked again about my status. I refused to answer and was released.*

In total, Isaias was in LASD/ICE custody for five days—two with ICE, two in general holding, and one final day with ICE. During that time the community—

including the Immigrant Youth Coalition and Dream Team LA— got petitions from the Mayor and representatives from city council to support his release. Isaias shared, “[the process] messes with your head, because you don’t know if you’re being released or turned over to ICE. This incident disrupted my life, school, and family time. I took a year off school, after getting kicked out on academic probation after the incident.” When asked about the impact of entanglement between local law enforcement and ICE, Isaias explained, “[it] affects how you think about family, feeling threatened about family, and it stays with you and continues to haunt. That’s why I don’t consider police or ICE as friends.”

Threatening detainees and/or members of their family is an affront to human dignity. The function of a threat followed by punishment is to train a detainee to acquiesce and adhere to the commands of sheriffs and ICE officials. Threatening a detainee into submission (or in this case admission) is an assertion of power on the part of LASD-ICE that reinforces the custodial guardian’s ability to effect immediate and long-term consequences for the lack of cooperation by a detainee.

Arnulfo’s and Isaias’s stories expose detention for what it is: a dehumanizing experience for both the jailor and the detainee. Jailors fall to their baser selves, manifesting xenophobia, racism, and aggression, demeaning their own humanity by denying the humanity of the person detained. The County’s detention system allows ICE to employ dehumanizing techniques on detainees for which they are largely held unaccountable, because the County is in control of the individual’s custody. Even brief periods of solitary confinement or interrogation, which may not rise to the legal definition of torture, when used specifically, as here, to create duress, confusion, and to intimidate individuals to provide information or accept their deportation, violate principles of fundamental human dignity.

## V. Conclusions and Recommendations

This Report has traced a deeply disturbing development of federal commandeering of local law enforcement and local criminal justice systems to serve the ends of civil immigration enforcement. We have called this process one of “toxic entanglement,” because of the way it infects local institutions and distorts their proper goals and objectives, and because of the array of human rights concerns and violations it produces.

Concerned community advocates have been aware of these toxic effects and have pushed back against them from the arena of civil rights and immigrant rights. In response, the federal government has implemented some policy changes to address some of those concerns, but the underlying interior enforcement strategy remains the same. The California legislature has tried to address some of the most egregious impacts of ICE’s interior enforcement strategy through the TRUST Act and TRUTH Act legislation. These efforts can minimize the specific violations and the impact on the community, but ultimately they do not cure the infection of local institutions caused by this toxic entanglement. Each iteration continues to use local law enforcement and local criminal justice systems to facilitate a deportation pipeline that, rather than enhance public safety, destroys families, creates hardship, and undermines the goals of local governance. Meanwhile, the underlying human rights concerns persist due to this fundamental flaw in the policy of entanglement.

This Report analyzed the impact of this policy from a human rights framework, and the overarching conclusion is that the entanglement is structurally flawed and detrimental from a human rights perspective. Collateral enforcement of federal, civil immigration law through entanglement with local institutions of law enforcement and criminal justice creates a moral hazard giving rise to the specific violation of due process rights. Our investigation found that the added layer of immigration enforcement compromises human rights guarantees against arbitrary detention, overreaching interrogations, denial of counsel, and *ex post facto* enforcement. These human rights concerns persist at each iteration of the strategy, precisely because this commandeering of local institutions is fundamentally flawed. Significantly, the imposition of immigration enforcement in the local jails results in the discriminatory treatment of individuals on account of their national origin and alienage status.

Similarly, the entanglement produces a broader array of harms that undermine the goals of local governance. Our investigation analyzed the harmful effects it has in the community. The entanglement detracts from efforts at community policing and exacerbates problems of bias and racial profiling in law enforcement and the criminal justice system. The mixing of immigration with criminal enforcement feeds the unfair rhetoric of criminalizing immigrant communities. More directly, it cuts off the important local goal of rehabilitation of criminal offenders and restorative justice in our communities.

The entanglement stigmatizes past offenders, and imposes additional punishment often harsher than the time they served in the system. The local collaboration with federal immigration enforcement wreaks havoc on and destroys families, separating children and spouses from their loved ones, producing increased levels of poverty, more precarious health situations, and adding to the burdens of the social welfare system. These are all human rights concerns as well.

Because the underlying ICE strategy remains intact, whatever restraints have been placed on the strategy through its various iterations can easily be unleashed through aggressive policies of future administrations. Uncritical acceptance of the policy of entanglement is no longer an option if the goal of Los Angeles County is to welcome and protect its immigrant population.

In the current context, Los Angeles County is poised to take a stand along with other local jurisdictions to preserve the independence of its institutions and pursue goals of local governance with respect to its large, thriving immigrant community.

By issuing this Report, prepared with the help of the International Human Rights Clinic of UCLA School of Law, the ICE out of LA Coalition hereby calls on the Board of Supervisors and the Los Angeles County Sheriff's Department to cease participation in and collaboration with the interior enforcement strategy of U.S. Immigration and Customs Enforcement, in exercise of their independent jurisdiction and responsibility to the people of Los Angeles County. Specifically, we ask the Board of Supervisors and LASD to:

1. Notify ICE in writing that, in the interest of a) preserving the integrity of its governmental functions and maintaining a clear division of federal and local governmental functions, b) protecting the human rights of all members of the community, and c) integrating immigrant communities into the public life of the County, the County will no longer participate in or collaborate with ICE enforcement programs, and the County criminal justice system and County jails will function independent of the federal immigration enforcement system;
2. Develop written policies to the effect that LASD will a) not respond to ICE detainer requests or requests for notification; b) no detainees will be held for ICE and no notification will be given for prior crimes of a detainee; c) ICE will not be given access to Los Angeles County jails for purposes of carrying out deportation and removal operations; d) LASD will not use financial, material, or personnel resources to investigate or assist in the enforcement of federal immigration; e) LASD will not participate in joint task force operations with ICE or the Department of Homeland Security; LASD will not request information about or otherwise investigate the immigration status of any person;

3. Pass a resolution stating that Los Angeles County and LASD will oppose any registry based on religious identity or national origin; and
4. Increase funding for services, intervention, treatment and rehabilitation programs to promote immigrant integration.

ICE Out of LA Coalition, in collaboration with the International Human Rights Clinic of UCLA School of Law

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