



**SALLY
HERNANDEZ
FOR SHERIFF**

**A working comprehensive draft plan for a safer
and fairer justice system in Travis County**

July 27, 2015

PEP-Comm

"Travis County ranks 3rd nationwide in deportations, averaging 19 a week. 77% of those deported have been accused of misdemeanor crimes such as speeding."¹

"Instead of focusing on detaining persons in Travis County and violating their constitutional rights; we need to be focusing on: preventing violent crimes, getting the worst of the worst who would seek to do harm, and providing mental health resources for people who are in need of rehabilitation and care." – Constable Sally Hernandez

¹ Cold as ICE, THE AUSTIN CHRONICLE, Jul. 4, 2014, <http://www.austinchronicle.com/news/2014-07-04/cold-as-ice/>.

What is PEP-Comm and S-Comm?

PEP-Comm, formally known as Priority Enforcement Program, is the successor program to S-Comm, Secure Communities.

How did S-Comm Work?

S-Comm was a Department of Homeland Security program with the facial purpose of identifying individuals detained in U.S. jails who were deportable under U.S. immigration law. Under S-Comm, jails would submit an individual's fingerprints and send them to immigration databases.² This would give ICE notification and information of individuals held in jail if they received a "hit." A hit meant that the individual had a *potential* immigration violation.³

Once there was a hit, ICE would issue a detainer to the law enforcement agency. ICE has stated they "evaluate each case to determine the individual's immigration status and whether any action is necessary or appropriate based on agency priorities."⁴

However, many civil rights and immigration groups have argued differently. A detainer issued by ICE resulted in a person being held in jail for an extended period of time until ICE would come to pick up the person and begin deportation proceedings.

Why S-Comm Didn't Work

Detainers issued under S-Comm have been ruled to violate the Fourth Amendment of the United States Constitution because detainers did not provide probable cause regarding whether a person was deportable.

How Does Pep-Comm Work?

PEP-Comm essentially works the same way as S-Comm. However, under PEP-Comm, instead of issuing a detainer, ICE will issue a request asking the Sheriff's Office to notify ICE of a pending release. ICE has stated that they will still issue detainers, but only under special circumstances in which the person is subject to a final order of removal or there is sufficient probable cause to find that the person is a removable alien.⁵

² *Secure Communities: A Fact Sheet*, AMERICAN IMMIGRATION COUNCIL, Nov. 11, 2011, <http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet>.

³ *Id.*

⁴ *Id.*

⁵ *Secure Communities*, U.S. DEPARTMENT OF HOMELAND SECURITY, Nov. 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

Why the Sheriff's Office Should be Concerned

In practice, some Sheriff Offices may choose to unconstitutionally delay a person's release from custody in order to transfer the person into ICE custody when ICE issues a request for notification when a person is released.

PEP-Comm does not give sufficient guidance to Sheriff Offices how notification requests and detainers will comply with Fourth Amendment protections and guarantee that a person's constitutional rights are not violated.

The DHS memo on PEP-Comm suggests that the detainer only needs to state that there is sufficient probable cause. This does not satisfy the Fourth Amendment concerns raised by several U.S. Courts of Appeals in litigation involving Secure Communities.

Community Concern

The City of Austin, in 2014, voted unanimously to pass Resolution No. 20140626- 099. This resolution stated that the City of Austin "oppose[d] the use of Travis County resources, including efforts by County staff and taxpayer dollars, for the implementation of ICE's S-Comm program"⁶ and "urge[d] the Travis County Sheriff's Office to stop complying with ICE detainers and holding people in its jail for ICE to assume custody."⁷

Many immigrants and community organizations have raised alarming concerns that immigrants, especially undocumented communities, do not report crimes, due to their fear of ICE's presence in Travis County. This creates roadblocks and creates the perceptions that Travis County Sheriff officers are enforcing immigration law. Instead, these groups argue that Travis County should be implementing policies and creating an environment which allows people to be integral parts of our vibrant and diverse community.

The University of Texas at Austin Student Government has passed a resolution by a vote of 28-4 denouncing S-Comm.⁸

⁶ *Resolution No. 20140626-099*, CITY OF AUSTIN CITY COUNCIL, Jun. 26, 2014, <http://www.austintexas.gov/edims/document.cfm?id=212619>.

⁷ *Id.*

⁸ *Student Government debates Secure Communities policy*, THE DAILY TEXAN, Oct. 29, 2014, <http://www.dailytexanonline.com/2014/10/29/student-government-debates-secure-communities-policy>.

In 2012, The Travis County Democratic Party passed a resolution opposing compliance with ICE detainers.⁹

My Plan to Rebuild Relationships Within Immigrant Communities:

- End the voluntary cooperation with ICE and the Priority Enforcement Program (PEP-Comm), the successor program to Secure Communities (S-Comm).
- Engage with immigrant communities by attending events, listening to concerns, holding informational meetings, and working with community partners.
- Work with Spanish and other language media to help immigrants understand their rights, and encourage participation with law enforcement when they are victims or a witness to a crime or in need of assistance.
- Have an open door policy with immigrant and community organizations.

Certifications for U Visas & T Visas

Texas ranks No. 2 in the U.S. for most victims of human trafficking.¹⁰

"The unfortunate reality is there are thousands of human trafficking victims, and victims escaping persecution from other countries. Not everyone is as blessed as we are to live in a country where human trafficking is illegal and aggressively prosecuted. Not everyone is blessed to live in a country where religious and personal freedoms to expression, speech, assembly and press are guaranteed. I believe it is in our community's best interest to protect victims of human trafficking and victims of other criminal activity." – Constable Sally Hernandez

What is a U and T Visa?

A U and T visa is an immigration tool used to aid Sheriff Offices to investigate and administer justice. These visas also allow victims of crime to eventually adjust their

⁹ TCDP Secure Communities Resolutions, TRAVIS COUNTY DEMOCRATIC PARTY, no date, <https://drive.google.com/folderview?id=0BwhvM51qZiL4UUxYdFBvakxaYjg&usp=sharing>.

¹⁰ Texas ranks high in number of human trafficking victims, CLICK2HOUSTON, Jun. 3, 2014, <http://www.click2houston.com/news/texas-ranks-high-in-number-of-human-trafficking-victims>.

immigration status after meeting certain conditions.¹¹

A U and T visa allows victims of crime to temporarily remain in the U.S. for four years while they help or are willing to help law enforcement. After being continuously present in the U.S for three years, and after other conditions are met, a victim can apply to become a Legal Permanent Resident.¹²

Congress has currently capped the number of U visas available to 10,000 per fiscal year and the number of T visas to 5,000 per fiscal year.¹³

Who is Eligible for a U or T Visa?

To be eligible for a U visa an person must¹⁴:

- (1) be the victim of a qualifying crime that took place in the U.S.; (2) suffer physical or mental abuse as result of the crime;
- (3) have information about the crime;
- (4) be helpful or willing to be helpful; and
- (5) be admissible into the U.S.

To be eligible for a T visa an person must¹⁵:

- (1) be a victim of trafficking;
- (2) have entered into the U.S. due to trafficking;
- (3) be helpful or willing to be helpful; and
- (4) demonstrate that they would suffer extreme hardship if they are deported; and
- (5) be admissible into the U.S.

According to USCIS, “Helpfulness means the victim was, is, or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity

¹¹ *U Visa Law Enforcement Certification Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement*, U.S. DEPARTMENT OF HOMELAND SECURITY, no date, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

¹² *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, Nov. 11, 2011, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>; *Victims of Criminal Activity: T Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, Nov. 03, 2015, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

¹³ *U Visa Law Enforcement Certification Guide; Victims of Criminal Activity: T Nonimmigrant Status*.

¹⁴ *Victims of Criminal Activity: U Nonimmigrant Status*.

¹⁵ *Victims of Criminal Activity: T Nonimmigrant Status*.

of which he or she is a victim. This includes being helpful and providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after reporting a crime will not be eligible for a U or T visa. The duty to remain helpful to law enforcement remains even after a U and T visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted may have the visa revoked by USCIS.”¹⁶

What is the Sheriff’s Office Role?

The Sheriff’s Office may issue a certification form stating that a person is being helpful or is willing to be helpful in the prosecution of a crime. If a person is a victim of a qualifying crime or of trafficking, they must submit United States and Customs and Immigration Services (USCIS) form I-918B for U visas and USCIS form I-914B for a T visa. These forms serve as certifications, issued by the Sheriff’s Office, to confirm that the person is being helpful or is willing to be helpful in the prosecution of a crime and validate the role the victim had, is having, or will have in the prosecution of the case.¹⁷

Without a certification there is no complete U or T visa application and the victim will not be eligible for a U or T visa.

Plan to Protect International Victims of Crime:

- I will continue the Sheriff’s policy to grant U and T Visa certification requests.
- I will find opportunities to reduce turnaround time for certification requests, including but not limited to increasing the number of persons in the Victim Services Unit that handle U or T visa certification requests.
- I will require all Sheriff personnel who come in contact with victims to participate in human trafficking and victim training.

¹⁶ *U Visa Law Enforcement Certification Guide.*

¹⁷ *Id.*