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**Federal Immigration Policy and the State Courts:  
Essential Questions and Answers**

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**Question: What impacts can the actions of state and local courts have on the effectiveness of federal immigration policy?**

Answers:

- √ The effectiveness of Federal policy is to a large extent dependent on local cooperation and the actions of local justice officials. This includes: (1) the ability to identify illegal aliens and lawful immigrants who might be subject to removal; (2) reporting individuals to ICE; (3) pretrial release policies of law enforcement, prosecutors, judges, and the jail; and (4) the sharing of information between local justice officials and ICE.
- √ In some areas of federal immigration law, an individual's immigration rights are specifically based on what happens to the individual in state court. This is especially true with regard to the effects of state court criminal convictions and sentences, as federal immigration rights are determined by state law definitions and the decisions of state court judges as to the nature of the crime, the elements of the crime, and the sentence. Federal law thus makes immigration rights dependent on the exercise of discretion by local law enforcement officers, prosecutors, and judges. In addition, the availability of T and U visas depends on the willingness of local justice officials to certify that the individual is necessary to a criminal prosecution.
- √ State court criminal judges are not as tied to strict sentencing guidelines as are federal criminal judges. State judges have the authority to consider a wide range of factors about an individual defendant in their sentencing decisions, including the threat that the offender poses to public safety, levels of culpability, restorative justice concerns, likelihood of rehabilitation, and impacts on the offender's family.
- √ Even once an individual is caught up in the immigration system, much of what happens to that individual and his or her family is determined by the local justice system. This includes treatment by local probation officials, placement of children, the availability of family assistance, etc.
- √ State court records, particularly records of the details of criminal convictions, may be critical to determining an individual's immigration rights.

**Question: What impacts can federal immigration policy have on the state courts and other local justice agencies?**

Answer:

- √ In the criminal arena, some of the problems that immigration issues can cause for local law enforcement, prosecution, courts, jails, and probation, include difficulties in:



- Identifying individuals who have multiple cases under different names, particularly for flagging multiple offenders;
- Determining when to use citation and release rather than arrest;
- Determining eligibility and conditions for pretrial release;
- Dealing with language issues at all stages of the court process;
- Scheduling preliminary hearings, plea hearings, and trials;
- Determining eligibility for probation;
- Setting probation conditions that can be met by immigrants and illegal aliens;
- Tracking individuals who fail to appear for trial or probation appointments due to immigration holds;
- Finding rehabilitative services for immigrant defendants, especially services for illegal aliens; and
- Obtaining the testimony of witnesses who are reluctant to come forward due to fears of immigration consequences.

√ In the civil and family arenas, some of the problems that immigration issues can cause for courts, social service agencies, and treatment providers include:

- Placing children of immigrants who are deported, both immigrant children and children who are American citizens through being born in the U.S.;
- Providing family counseling and other treatment services for families;
- Providing counseling and treatment services for juveniles;
- Providing financial assistance, food stamps, medical services, mental health services, and other types of family assistance;
- Providing services in different languages; and
- Providing services geared to different cultures.

**Question: Why is it so difficult get accurate information on the immigrant composition of the local court caseload in a jurisdiction?**

Answer:

√ Immigration issues arise in state court cases solely as collateral issues. As a result, there is no official “immigration caseload” for state courts to include in their caseload statistics. In addition, state courts often do not know the immigration status of litigants before them, so they have no way to count even that aspect of their caseloads.

**Question: What is the SJI Initiative doing to help the state courts better carry out their appropriate roles within federal immigration policy?**

√ SJI is using its Strategic Initiatives Grants (SIG) program to expand our knowledge of the impacts of immigration on the state courts and develop appropriate responses to those impacts. Specifically, the SIG program is: (1) examining the impacts of state court actions on legal immigration status; (2) educating the state courts about federal immigration law; and (3) improving information sharing and collaboration between the state courts and federal government. In addition, an important part of the initiative is to develop methods to measure of the impact of immigration on the state courts, so that there will be meaningful data in the future. We are working to develop measures of the impacts of



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immigration on state court caseloads, workloads, case processing times, costs, and the quality of justice.

**Question: What is the role of the pilot projects in the SIG immigration initiative?**

Answers:

- √ The pilot projects provide the opportunity to investigate immigration impacts in detail and develop responses to those impacts in the selected jurisdictions. A planning team will be formed in each jurisdiction, comprised of representatives of all agencies that deal with immigration issues and directly impact the court. In addition, input from a broad range of other stakeholders will be sought. The ultimate goal of the pilot projects is to promote collaboration among the justice system agencies, local, state, and federal, in a jurisdiction.
- √ A critical part of each pilot project will be assessing the needs and interests of a broad range of stakeholders to assist in forming effective responses to immigration issues. A variety of techniques are available for connecting with different stakeholder groups beyond those represented on the planning team. Some of the ways that input on the needs and interests of other stakeholders can be obtained include the following:
  - Surveys of court users;
  - Informal informational sharing meetings;
  - Large or medium sized group meetings;
  - Facilitated small group discussions;
  - Standing local justice committees that include justice system partners and other stakeholders;
  - Advisory committees that include justice system partners, stakeholders, and/or community leaders/members;
  - Working groups of individuals from inside and outside the courts formed to work on specific projects; and
  - Implementation teams comprised of court and external members that work together to implement specific projects or system improvements.

**Question: What will be the outputs of the SIG immigration initiative pilot projects?**

Answers:

- √ At the local level the projects will develop action plans and implementation strategies and begin implementing improvement efforts to address the key immigration impacts in the jurisdiction.
- √ At the national level the projects will facilitate knowledge transfer by producing detailed documentation of the work of the project to assure that: (1) a record is created to inform policy makers what was decided and why; (2) the basis for each decision is clearly set forth; and (3) an adequate history of the work of the team, in terms of both process and substance, is created for other jurisdictions undertaking similar efforts.

