



THE SECURE COMMUNITIES PROGRAM:

UNANSWERED QUESTIONS AND CONTINUING CONCERNS

By Michele Waslin, Ph.D.

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ABOUT SPECIAL REPORTS ON IMMIGRATION

The Immigration Policy Center's *Special Reports* are our most in-depth publication, providing detailed analyses of special topics in U.S. immigration policy.

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EXECUTIVE SUMMARY

What is Secure Communities?

[Secure Communities](#) is a Department of Homeland Security (DHS) program designed to identify immigrants in U.S. jails who are deportable under immigration law. Under Secure Communities, participating jails submit arrestees' fingerprints not only to criminal databases, but to immigration databases as well, allowing Immigration and Customs Enforcement (ICE) access to information on individuals held in jails. Unlike other ICE-local partnerships, Secure Communities gives ICE a technological, not physical, presence in prisons and jails. Unlike the 287(g) program, no local law-enforcement agents are deputized to enforce immigration laws through Secure Communities.

As of September 27, 2011, Secure Communities was available in [1,595 jurisdictions in 44 states and territories](#). ICE plans to implement Secure Communities in each of the 3,100 state and local jails across the country by 2013. ICE reported that, as of September 30, 2011, [over 11,000,000 fingerprint submissions](#) have resulted in **692,788** database matches. As a result of Secure Communities, ICE had removed **more than 142,000** persons.

How does Secure Communities work?

When an individual is booked into a jail, his or her fingerprints are regularly sent to the Federal Bureau of Investigation (FBI) to be checked against criminal databases. With Secure Communities, the FBI then sends the fingerprints to ICE, where they are checked against the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT) and the Automated Biometric Identification System (IDENT). This fingerprint check allows state and local law enforcement and ICE automatically and immediately to search the databases for an individual's criminal and immigration history.

If there is a database "hit," meaning that the arrested person is matched to a record indicating a potential immigration violation, ICE and the local law-enforcement authorities are notified. ICE then evaluates each case to determine the individual's immigration status and whether any action is necessary or appropriate based on agency priorities. In most cases, ICE will issue a detainer against the jailed individual. A detainer is a request from ICE to the arresting agency to notify ICE before it releases the noncitizen so that ICE has the opportunity to decide whether the individual should be transferred to federal custody rather than released.

ICE describes Secure Communities as "interoperability" between FBI and DHS databases. However, most people believe that Secure Communities includes the entire process that begins with the arrest of the individual by a local police officer and ends with ICE enforcement actions. Originally, ICE entered into Memoranda of Agreement (MOAs) with State Identification Bureaus, which are responsible for data sharing between the state and the federal government. Most believed that states had the option not to enter into the MOA, or to terminate the MOA if they no longer wanted to participate in the program. However, in August 2011, [ICE rescinded all signed MOAs](#) and announced that no signed agreement was necessary for the data sharing to take place, and that the program is mandatory for all jurisdictions.

What are the concerns about Secure Communities?

Who does the program target? ICE has stated that it “[prioritizes the removal of criminal aliens, those who pose a threat to public safety, repeat immigration violators,](#)” and “[the most dangerous and violent offenders.](#)” However, the program has not focused exclusively on convicted criminals, dangerous and violent offenders, or threats to public safety and national security. According to DHS data, in Fiscal Year (FY) 2011, 26% of all Secure Communities deportations were immigrants with Level 1 convictions; 19% of those deported had Level 2 convictions; and 29% were individuals convicted of Level 3 crimes (minor crimes resulting in sentences of less than one year). Twenty-six percent of those deported had immigration violations and no criminal convictions.¹ ICE statistics show that some jurisdictions’ numbers for Level 3 and non-criminal deportations are well above the national average.

Obstacles to community policing. Unlike the 287(g) program, Secure Communities does not require an MOA between ICE and the local jail, sheriff, or police department, and local police officers are not directly enforcing federal immigration laws. Nonetheless, there are still concerns about local police being seen as immigration agents. If ICE maintains a presence—even a technological presence—in a local jail, the public will likely associate the local law-enforcement agency with immigration enforcement. Since ICE announced that the program is now mandatory for all jurisdictions, local communities will automatically be included in the data sharing. While this decision may be challenged in court or may be subject to other kinds of limitations, such as local communities declining to receive the information, the link between federal and local enforcement is now definitive.

Profiling and pretextual arrests. There is a concern that police officers working in areas that have Secure Communities in their local jails may have an incentive, or at least the ability, to make arrests based on race or ethnicity, or to make pretextual arrests of persons they suspect to be in violation of immigration laws, in order to have them run through immigration databases once they are jailed.

Opting out. Secure Communities raises serious questions about the relationship between federal and local law-enforcement agencies, and about local communities’ ability to weigh in on important decisions that affect them. Since the program’s inception, ICE has provided confusing, and sometimes contradictory, statements about whether localities could decline to participate in the program. Most recently, ICE announced that it had withdrawn all existing MOAs with states, that MOAs were not necessary, and that it would proceed with the program’s expansion unilaterally.

Lack of clear complaint mechanisms. Given the wide range of concerns about Secure Communities, it is essential that there be a complaint or redress procedure for individuals who believe they have been erroneously identified by DHS databases or who believe a DHS detainer has been issued in error. While there is a complaint procedure through the DHS Office of Civil Rights and Civil Liberties (OCRCL), there is continuing concern about immigrants’ lack of access to information about complaint procedures and OCRCL’s capacity to handle the complaints it receives.

Lack of Oversight and Transparency. There has been a marked lack of transparency about the Secure Communities program, and information obtained through a Freedom of Information Act (FOIA) request indicates that ICE has misled the public about various aspects of the program. Reports have found that ICE has an uneven track record in terms of supervising its local partnerships, and there are concerns about the level of oversight and transparency associated with Secure Communities.

Recommendations:

- Secure Communities must become a program that focuses solely on those immigrants who have been convicted of serious criminal offenses, or who have been identified by law-enforcement officials to pose a threat to national security or public safety. It is acknowledged that ICE has a broader immigration enforcement mandate, but those objectives must be pursued outside of Secure Communities. Secure Communities must be focused on public safety, which is the common objective shared between DHS and local law-enforcement agencies.
- The various prosecutorial discretion memos issued by ICE are an important step toward focusing Secure Communities on serious criminal offenders. However, DHS and ICE must take additional steps to ensure that discretion is actually being used. Immigrants and their attorneys must be given clear instructions about the process and how to request the exercise of prosecutorial discretion. DHS must train its law-enforcement officers and others in the proper use of prosecutorial discretion.
- At a minimum, expansion of Secure Communities should be suspended until DHS has reviewed and implemented the recommendations of the Secure Communities Task Force report which has been adopted by the Homeland Security Advisory Committee. DHS must also review upcoming reports from DHS, OIG, and the GAO. Further expansion should not be continued until recommended reforms are completed and there is evidence that the stated goals and objectives of the program will be met. Before expanding Secure Communities to a jurisdiction, DHS should consider the direct and indirect effects that the program could have on public safety and community policing in that jurisdiction.
- ICE must be more transparent and clarify the statutory authority for Secure Communities, the purpose and goals of the Secure Communities program, how the program works, and whether it is mandatory. The public should receive consistent information about the operation of Secure Communities. Public outreach, community meetings, and information-sharing should be a central element of program implementation.
- ICE must make every effort to prevent racial or ethnic profiling. Before expanding the program to a jurisdiction, OCRCL should review any investigations or lawsuits regarding alleged violations of civil rights and civil liberties. All jurisdictions participating in Secure Communities should receive training on civil rights and illegal racial or other profiling. OCRCL must examine data from all activated jurisdictions for possible profiling and aggressive action must be taken against those jurisdictions or officers found to be engaging in profiling or other violations of civil rights, including termination of Secure Communities and/or other ICE ACCESS programs.
- DHS must create and implement a strong complaint and redress mechanism for individuals who believe they have been wrongly arrested, detained, or otherwise mistreated under the Secure Communities program.

Endnotes

¹ Secure Communities Nationwide Interoperability Statistics, "[Monthly Statistics through September 30, 2011](#)," prepared October 14, 2011 (last checked November 16, 2011).