

Secure Communities, launched in October 2008, is a Department of Homeland Security (DHS) program for detecting non-citizens who come into custody of law enforcement. Ordinarily, when someone is arrested and taken to a police station or jail, their fingerprints are scanned and sent to the FBI to check against federal criminal databases. Under the Secure Communities program, those prints are also checked against DHS immigration databases, and information about matching prints is sent to the local DHS Immigration and Customs Enforcement (ICE) field office and the originating jail or police station. ICE may initiate deportation proceedings as a result of one's identification through Secure Communities.

Since its launch in just seven counties¹ in late 2008, Secure Communities has expanded rapidly, adding 1,400 jurisdictions by June 2011, but it has also faced increasing criticism. Particular concerns have focused on the failure of the program to perform as advertised, and mistrust arising from ICE's misleading and often contradictory explanations to elected officials, communities, and law enforcement agencies.

I. The Effects of Secure Communities

Many states and localities have expressed confusion, frustration and outrage as DHS's explanations of Secure Communities have shifted, as jurisdictions have been added to the program without public awareness, and as DHS has backtracked on the voluntary nature of the program. But far louder have been the objections that Secure Communities does not perform as it was advertised. Although the program is touted by ICE as focusing on the removal of "dangerous criminal aliens," in fact it has identified and led to removal proceedings for hundreds of thousands of non-citizens, a substantial number of whom have no criminal record at all, or who were simply detained for a traffic violation or minor offense.

As of May 31, 2011, more than 8.4 million fingerprints had been submitted through Secure Communities and checked against immigration databases.² Of those, just over 560,000 matched an immigration record, and more than 260,000 people were subsequently booked into ICE custody as a result.³ As of May, over 100,000 people had been deported after identification in the Secure Communities program, which was operating in 1167 jurisdictions.⁴ June 2011 statistics show Secure Communities is now active in 1417 jurisdictions.

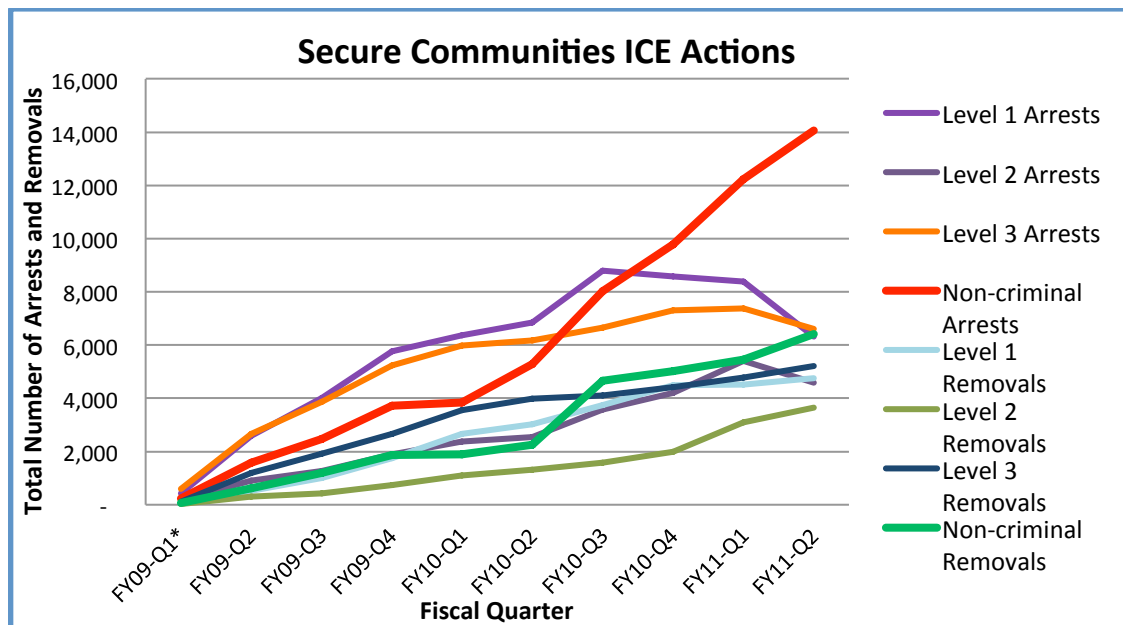
¹ Since 2006, Suffolk County, MA, and Dallas County, TX, participated in the "interim Data Service Model" pilot project that was the precursor to Secure Communities. In 2007 and 2008, five more jurisdictions were added to the pilot: Harris County, TX, Wake County, NC, Henderson County, NC, Buncombe County, NC, and Gaston County, NC. These jurisdictions were also the first participants in the expanded interoperability called the Secure Communities program. See U.S. Immigration and Customs Enforcement, Second Congressional Status Report covering the Fourth Quarter Fiscal Year 2008 for Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens, Nov. 7, 2008.

² ICE Nationwide Interoperability Statistics, June 13, 2011, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf, accessed July 29, 2011.

³ Id.

⁴ Id.

A primary criticism of Secure Communities is that it is being used to identify and remove non-criminal and low-level offenders instead of the dangerous criminals that ICE said the program would target. This is manifestly proven by ICE's own data, but let's take a closer look.



First, ICE breaks down Secure Communities data into three stages. The three stages of the process are: 1) Identification, 2) Arrest or booking into ICE custody, and 3) Removal.

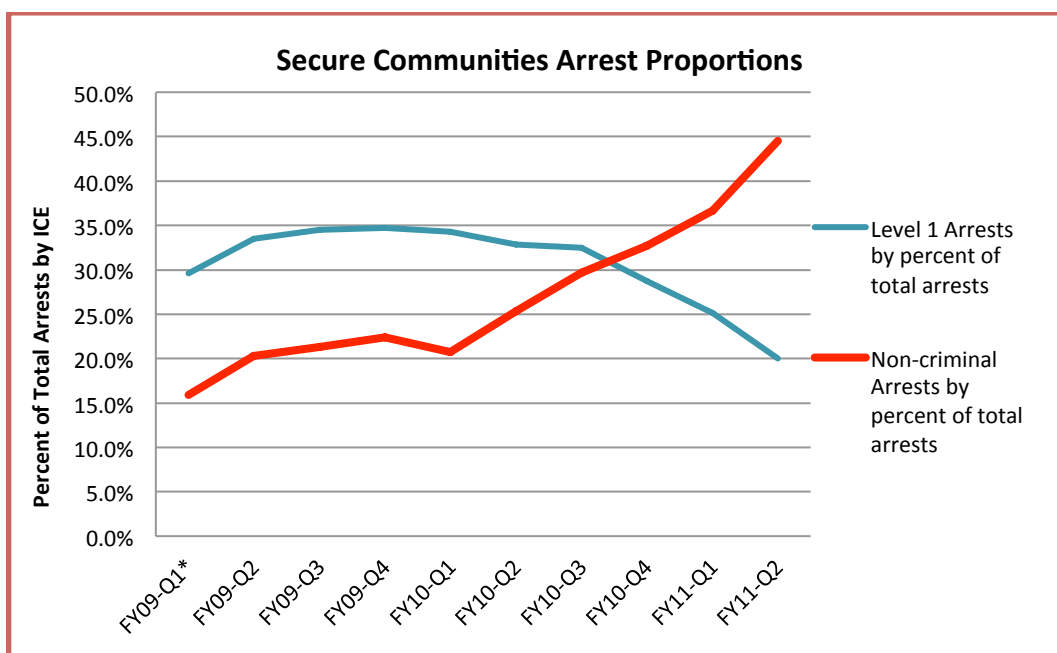
Second, ICE provides data on who is being identified and processed at each juncture. At the identification stage (not included in the chart), fingerprint matches only have two categories: charged with or convicted of Level 1 crimes (serious offenses); and charged with or convicted of anything else. ICE breaks its data down in more detail regarding those who are taken into ICE custody or deported through Secure Communities: Persons convicted of Level 1 offenses; Level 2 offenses (less serious offenses); Level 3 offenses (any other minor conviction); and those with no criminal record.⁵

Reporting on Secure Communities usually focuses on deportations achieved through this program. However, ICE bookings or arrests are a much more relevant metric for how the program is operating. At the time of arrest by ICE, an individual identified by Secure Communities will have ostensibly finished any criminal proceedings they may have faced, and it is entirely ICE's prerogative to apprehend them from local jail custody. Raw deportation number exclude individuals who were identified and arrested but then won relief from deportation in immigration court, and those numbers are not entirely in ICE's control. ICE bookings are the clearest marker of how DHS itself is operating the Secure Communities program.

⁵ The Secure Communities Standard Operating Procedures include an appendix that more clearly designates what crimes fall in which categories, with corresponding NCIC codes. See Secure Communities Standard Operating Procedures, Appendix A, p.9.

From the graph depicting Secure Communities ICE Actions, above, it is obvious that ICE has arrested more individuals with no criminal history than any other category, a total of 61,234 arrests since the program began.⁶ All of the categories increase over time as the program has continually expanded, but individuals with no criminal history make up the largest and fastest growing group targeted by ICE under Secure Communities.⁷

In the graph depicting Secure Communities Arrest Proportions, below, we focus on which groups ICE has arrested in comparison to other categories. As the Secure Communities program has expanded, ICE has failed to focus on arresting higher-lever offenders, but increasingly netted individuals who have no criminal record. This data raises questions about what legitimate public safety interest was served by these arrests. It also supports allegations that some law enforcement agencies engage in biased policing, making arrests that serve primarily to funnel noncitizens to ICE, and that ICE enables these pretextual arrests by subsequently taking custody of large numbers of those individuals.



The figures above represent nation-wide statistics; particular jurisdictions have strayed even further toward mass arrests of non-criminals. In Louisiana, since Secure Communities began there in November of 2009, 69.9% of individuals arrested had no criminal record, and another 15.6% were convicted of only minor offenses.⁸ In the first seven weeks of Secure Communities

⁶ Numbers are collected from ICE Secure Communities IDENT/IAFIS Interoperability Reports: http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2009.pdf; www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2010.pdf; http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf;

⁷ In total, ICE has arrested more than 61,000 individuals with no criminal records who were nonetheless identified by a local jail under Secure Communities. Another 52,000 were convicted of only minor offenses, such as traffic violations. Total Level 1 arrests since the program's inception closely follow this, with 58,000, but represent a decreasing proportion of ICE actions. This decrease indicates that ICE is in fact not improving their targeting of more serious offenders, but instead rounding up broader numbers of low-priority immigrants.

⁸ Secure Communities IDENT/IAFIS Interoperability Statistics through April 30, 2011, prepared May 23, 2011.

operating in New York, 80% of individuals arrested had no criminal history.⁹ The evidence that Secure Communities does not focus on “dangerous criminals” and may undermine public safety has contributed to a growing outcry against the program.

II. *The Underlying Problems of Secure Communities*

Programmatic Design and Implementation Flaws

As the Secure Communities program has expanded and rapidly become a leading method of immigration enforcement, it has exacerbated the problems of mingling immigration and local law enforcement. It has also generated enormous controversy among municipal, county, and state elected officials, members of Congress, and the public.

A particularly intractable problem with the Secure Communities program is its negative impact on community trust in police. Victims of crime, particularly of domestic violence,¹⁰ have called for police protection only to find themselves in removal proceedings as a result of Secure Communities. Legal and illegal immigrants, as well as U.S. Citizens with immigrant family members, are much more hesitant to contact the police to seek assistance or report a crime when it may put them or their family at risk. This makes it more difficult for police to solve crimes and decreases public safety for everyone.

Second, biased or discriminatory police practices shape the composition of individuals who are arrested, booked into jail and then screened through Secure Communities. Anecdotes about racial profiling, combined with the massive numbers of arrests for minor traffic offenses, suggest that ICE’s partnership with local law enforcement agencies has led to widespread discrimination against Latinos and people suspected of being in the U.S. unlawfully. ICE’s willingness to take custody of individuals identified in local jails who have little or no criminal record aggravates this dynamic.

Third, immigration law is federal law, and the rapid expansion of Secure Communities has led to pervasive confusion and misunderstandings as to the roles and responsibilities of local, state, and federal agents. Sheriff Ed Prieto used to believe that illegal immigrants were felons and must be turned over to DHS, until he learned immigration violations are just civil offenses, but would nonetheless be identified under Secure Communities. “Then I started looking into how many of our people are being deported before trial and I became very uncomfortable contacting ICE for nonviolent offenders.”¹¹

Finally, the expansion of Secure Communities has dramatically increased the use of immigration detainers, which greatly impact the criminal justice system. Detainers limit the subject’s rights throughout the entire criminal justice process, effectively creating a second tier of the criminal

⁹ Secure Communities IDENT/IAFIS Interoperability Statistics through February 28, 2011, prepared Mar. 7, 2011.

¹⁰ See Shankar Vedantam, “Call for help leads to possible deportation for Hyattsville mother,” *Washington Post* Nov. 1, 2010; Sunita Patel and Sameera Hafiz, “Secure Communities program doesn’t make domestic violence victims secure,” *La Prensa San Diego* Nov. 5, 2010; see also Marisa Treviño, “Undocumented Victims of Domestic Violence Face Threat from Dept. Homeland Security,” Mar. 1, 2011 (“the attorney of Safe Horizons, the largest assistance agency for victims of domestic violence in New York City...confessed that she nor her colleagues advise their undocumented clients to call the police...”).

¹¹ Esther Cepeda, “Confused on Immigration” *Washington Post Writers Group*, June 9, 2011.

justice system for non-citizens.¹² The increased use of immigration detainers as resulted in widespread violations of legal rights, as well as heavy costs to local budgets that pay for the increased custody of noncitizens who are held for ICE.¹³

The Opt-Out Controversy

Initially, DHS stated—and acted as though—the Secure Communities program was voluntary, and each county or jail could sign up on its own. ICE sought the participation of certain identified jurisdictions, and gradually expanded Secure Communities operations over the course of 2009 and 2010, including obtaining signed memoranda of understanding from a number of state agencies that control fingerprints. As late as August 2010, ICE published documents asserting that removing a jurisdiction from Secure Communities deployment was an option, and was technologically feasible.¹⁴ The Department of Justice, which has a significant role to play in Secure Communities because FBI databases are involved, also confirmed this in September 2010, when Assistant Attorney General Ronald Weich and Secretary Janet Napolitano wrote to Congresswoman Zoe Lofgren saying, “If a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens.”¹⁵

Indeed, during the summer of 2010, pressure from the Washington D.C. city council persuaded Chief of Police Lanier to rescind the agreement with ICE and withdraw the District of Columbia from the program.¹⁶ But when San Francisco, California, and Arlington County, Virginia, also tried to take ICE up on the opt-out option, the agency reversed course.¹⁷ Upon San Francisco’s initial requests to leave the program, ICE stalled and tried to negotiate, then offered a new definition of what opt-out actually meant: that the jurisdiction could choose not to receive the information from LESC, but not that fingerprint data would not be shared with ICE.¹⁸

Since October 2010, DHS’s position has been that they will meet and negotiate the timing of Secure Communities implementation at the local level, but ultimately the program involves information sharing between federal agencies, and localities do not have a choice. Recently released documents demonstrate the FBI Criminal Justice Information Services Advisory Board, which oversees the FBI’s criminal databases, was deeply involved in pushing for Secure Communities to be mandatory.¹⁹ Secure Communities is in some ways the vanguard of the FBI’s

¹² Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy, 2010, *available at* <http://cliniclegal.org/sites/default/files/NGO%20Detainer%20Comments%20Final%2010%2001%202010.pdf>.

¹³ National Immigration Forum, “Immigrants Behind Bars: How, Why, and How Much?” *Mar. 2011*.

¹⁴ ICE, “Setting the Record Straight,” Aug. 17, 2010, *available at* <http://www.scribd.com/doc/38563566/Ice-Setting-the-Record-Straight-Brainwash>

¹⁵ Letters to Zoe Lofgren from Assistant Attorney General Ronald Weich and Secretary of Homeland Security Janet Napolitano, September 2010, *available at* http://uncoverthetruth.org/wp-content/uploads/Z-Lofgren_Response-from-USDOJ-and-DHS.09.08.2010.pdf

¹⁶ Letter from Chief of Police Cathy Lanier to Councilmember Jim Mendelson, Jul. 22, 2010, *available at* http://uncoverthetruth.org/wp-content/uploads/SUBMITTED_Follow-up_Secure-Communities_07-22-10.pdf

¹⁷ Barbara Donnellan, Memo from County Manager to County Board, Arlington, VA, Nov. 5, 2010, *available at* <http://news.arlingtonva.us/pr/ava/arlington-officials-meet-with-191775.aspx>.

¹⁸ Shankar Vedantam, “Federal immigration program is applied inconsistently in region,” *Washington Post*, Feb. 26, 2011.

¹⁹ Elise Foley, “Secure Communities Immigration Program A Gateway for Other FBI Data-Sharing,” *Huffington Post*, Jul. 6, 2011.

Next Generation Initiative, which will link many more local and federal law enforcement databases.

States are not taking no for an answer, however.²⁰ In spite of DHS's revised position that the program is not voluntary, communities have continued to pass resolutions against the program or seek to have their participation terminated.²¹ Colorado sought to impose limitations by customizing their agreement with ICE. In May 2011, a bill creating an opt-out requirement and severely curtailing the program's impacts passed the California state Assembly.²² Likewise, the Illinois House of Representatives passed legislation against Secure Communities, followed by Illinois Governor Pat Quinn formally rescinding the state's participation in the program on May 4.²³ On June 1, Governor Andrew Cuomo of New York followed suit.²⁴ Five days later, Governor Deval Patrick of Massachusetts notified ICE that Massachusetts would not agree to participate.²⁵

One reason cited by jurisdictions for choosing not to participate in Secure Communities has been the program's poor performance on its stated goals. Additionally, elected officials are angry about being lied to, as was revealed through documents produced by FOIA litigation.²⁶ Congresswoman Zoe Lofgren has called for an investigation into the program and the opt-out contradictions.²⁷ Recently, at least in part due to a Congressional request, the DHS Inspector General announced that he would open an investigation into the program.²⁸

In opposition to Secure Communities, local communities are asserting their right to self-govern and are resisting mandated participation. However the practical effects of this are unknown. By 2013, DHS says that the criminal and immigration databases will be fully interoperable nationwide, at which point the capability to erect any barriers between different federal databases may be diminished. Nonetheless, the documents released under the Freedom of Information Act still confirm that as of December, 2010, changes to the timing of operations, such as only sharing data after conviction, was technologically possible.²⁹ In the meantime, the entire question of sharing fingerprints may be headed toward the federal courts.

²⁰ Internal documents revealed significant ambiguity within DHS on whether Secure Communities is mandatory. Since early 2010, several organizations had sought information on the Secure Communities program, about which very little public information was available. In December, 2010, a federal judge ruled against ICE in FOIA litigation, ordering the agency to stop stalling on producing internal documents related to Secure Communities, which had been sought since February 2010. In January and February 2011, following the court order, the litigants received documents related to the possibility of opting-out of the program and its voluntary or non-voluntary nature.

²¹ Cities and counties seeking to opt out of Secure Communities have included Washington, D.C., Arlington, VA, San Francisco, CA, Cook County, IL, Los Angeles, CA, Providence, RI, Santa Clara, CA, Montgomery County, MD, and San Mateo, CA.

²² "TRUST Act Passes California Assembly," *New American Media*, May 26, 2011.

²³ Julia Preston, "Illinois: State Leaves Immigration Program," *New York Times*, May 4, 2011.

²⁴ Kirk Semple, "Cuomo Ends State's Role in Checking Immigrants," *New York Times*, Jun. 1, 2011.

²⁵ Maria Sacchetti and Noah Bierman, "Patrick says he won't sign Secure Communities program," *Boston Globe*, Jun. 6, 2011.

²⁶ See Uncoverthetruth.org

²⁷ Lee Romney, "Congresswoman says federal officials lied about program targeting immigrant inmates," *Los Angeles Times*, Apr. 23, 2011.

²⁸ Lee Romney, "U.S. to investigate Secure Communities Deportation Program," *Los Angeles Times*, May 18, 2011.

²⁹ Elise Foley, "Secure Communities Immigration Program A Gateway for Other FBI Data-Sharing," *Huffington Post*, Jul. 6, 2011.

III. Policy Responses from DHS

In response to mounting resistance against Secure Communities and the Obama administration's record-breaking deportation and enforcement actions,³⁰ on June 17, 2011, DHS announced several "improvements" to both the Secure Communities program and to immigration enforcement practices overall. These included two memos to ICE staff clarifying their authority to exercise prosecutorial discretion and protections for victims and witnesses of crime, a revised detainer form, and expanded information on the DHS Office for Civil Rights and Civil Liberties complaint process.

On Secure Communities specifically, ICE added new materials to its [website](#), outlined a plan for quarterly statistical monitoring of Secure Communities arrest patterns, and announced the creation of an Advisory Committee to make recommendations to ICE Assistant Secretary John Morton about how to improve Secure Communities.³¹

The June 2011 announcement did not address DHS's position that participation in the program is mandatory. Nor does it change ICE's record on enforcement under Secure Communities, which has led to the deportation of thousands of immigrants who clearly don't meet the program's objectives or the agency's goal of prioritizing removal of those convicted of violent crimes. Hopefully, encouragement from ICE management for officers to use their prosecutorial discretion will have some effect on the ICE arrest rates examined above. However, the limited ability of ICE to control or even investigate local policing practices in jurisdictions that participate in Secure Communities undermines the announced policy changes. DHS's refusal to remove any jurisdictions from the program means there are no adequate restraints or consequences for rogue law enforcement agencies or officers who use the program to engage in biased policing. Without actual incentives for ICE agents to be judicious, and without protections against the use of Secure Communities as a conduit for discriminatory or biased policing, these announcements may have little impact.

IV. Recommendations

The National Immigration Forum urges DHS to halt the Secure Communities program until the program's myriad problems are remedied.

- Secure Communities should be an optional program, as DHS originally envisioned. States and localities, which will bear the brunt of public safety impacts when immigrant communities are alienated, should not be forced to participate.
- Community trust in police must not suffer as a result of the Secure Communities program, so DHS must create more robust separation between immigration enforcement and public safety. Legal and undocumented immigrants, as well as U.S. Citizens with immigrant family members, are much more hesitant to contact the police either for protection or to report a crime when doing so may put them or their family at risk of immigration consequences.

³⁰ Shankar Vedantam, "U.S. Deportations Reach Record High," *Washington Post*, Oct. 7, 2010.

³¹ Kate Brumback, "ICE Announces Changes to Immigration Enforcement," *Miami Herald*, Jun. 17, 2011.

- To address concerns that Secure Communities is serving as a conduit for discriminatory arrests, DHS must institute meaningful monitoring to identify and prevent discriminatory practices by its law enforcement partners. If patterns of discrimination are found, there must be tangible consequences for jurisdictions engaged in profiling.
- ICE must reform its inconsistent and sometimes improper practices for issuing immigration detainers. [Detainers](#) have led to widespread violations of legal rights (as well as significant [costs](#) to local jurisdictions for increased custody of noncitizens held for ICE). Detainers should not limit an individual's rights throughout the criminal justice process.
- DHS must ensure that the Secure Communities program is adhering to its stated goals. ICE data illustrates that Secure Communities currently does not focus on the "dangerous criminals" it was designed to target.