



Testimony of the American Immigration Lawyers Association

Submitted to the Subcommittee on Immigration Policy and Enforcement of the Committee on the Judiciary of the U.S. House of Representatives

Hearing on November 30, 2011

"Is Secure Communities Keeping Our Communities Secure?"

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The American Immigration Lawyers Association (AILA) submits the following testimony to the Subcommittee on Immigration Policy and Enforcement regarding the Secure Communities program. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 11,000 attorney and law professor members.

Secure Communities is a Department of Homeland Security (DHS) enforcement program that uses fingerprints collected by local and state law enforcement to identify individuals who may be deportable under immigration law. Although Secure Communities was promoted as targeting only serious criminals and others who pose a threat to our communities, nearly 60 percent of those deported under the program had never been convicted of a serious crime or any crime, at all. As a result, there is growing concern among diverse groups of advocates, elected leaders, and law enforcement representatives that Secure Communities actually undermines public safety by making immigrant communities afraid of any interaction with police.

Since its launch in 2008, Secure Communities has faced significant controversy over the disconnect between its stated goals and actual impact on local communities. State and municipal leadership have balked at the contradictory way that DHS rolled out the program, citing concerns about local autonomy, the lack of transparency, frequently shifting positions of DHS officials, undue cost burdens on local law enforcement, and, most importantly, the *insecurity* the program created in their communities. Over the summer, the governors of New York, Massachusetts and Illinois all withdrew from the program, citing concerns that it was sweeping in large numbers of individuals who posed no threat to their communities while at the same time undermining public safety. Finally, prominent members of Congress have called publicly for an independent investigation of DHS for allegedly misleading the public and local government officials about how Secure Communities functions and whether states and localities have any ability to terminate the program.

Because of the public outcry, the DHS Office of Inspector General (OIG) is currently conducting its own review of the program.

In response to this rising tide of criticism, in June, DHS announced a series of steps it would be taking to reform the program. Over four months later, DHS has largely failed to implement these measures.

One of the most significant steps was the creation of a special task force composed of law enforcement experts, ICE union officials, academics, legal experts and community representatives which was appointed to conduct a review of Secure Communities and submit formal recommendations to the Secretary of DHS. AILA's President-Elect, Laura Lichter, served on the Task Force.

Although DHS adopted the Task Force findings and recommendations in September, to date, DHS has not made any significant change to Secure Communities or announced any intention to implement the task force recommendations.¹ Indeed, ICE and even DHS itself has been largely silent as to the findings and criticisms by this distinguished group of stakeholders.

1. Secure Communities Is Not Targeting People Who Endanger Public Safety

Among AILA's chief concerns is DHS's failure to use Secure Communities in a way that actually targets individuals who pose a threat to public safety. When 6 out of 10 people removed under this program have no criminal offense or only a misdemeanor on record, DHS cannot plausibly represent that the program is primarily apprehending serious or dangerous criminals. The DHS task force urged DHS to ensure that Secure Communities adheres to its stated enforcement objective of prioritizing those who pose a risk to public safety or national security. It specifically recommended that DHS clarify that "civil immigration law violators and individuals who are convicted of or charged with misdemeanors or other minor offenses are not top enforcement priorities unless there are other indicia that they pose a serious risk to public safety or national security."

AILA urges DHS to adopt this recommendation and to find that an individual poses a threat to public safety before taking action under Secure Communities. In particular, DHS should issue clear guidance that the nature and seriousness of any criminal offense, whether misdemeanor or felony, must be weighed against the time elapsed since any conviction, history of rehabilitation, and other equities.

2. Secure Communities Is Making Communities Less Safe and Diverts Federal Resources Away from Enforcement Priorities

AILA is concerned that DHS, through Secure Communities and other enforcement programs, has unwisely invited extensive participation from state and local law enforcement agencies in the enforcement of immigration law. Not only does this impermissibly confuse the federal government's responsibility for enforcing the

¹ Link to task force report: <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf>.

immigration laws, but predictably—and negatively—impacts local law enforcement and the communities they are charged to protect. In August, AILA’s report, “Immigration Enforcement Off Target: Minor Offenses with Major Consequences,” showcased 127 examples of racial profiling and biased policing of individuals who were encountered by local law enforcement for minor offenses and, as a result, were placed in immigration removal proceedings. The report found that in the vast majority of cases, the people placed in removal proceedings had committed minor offenses or no offense at all, presented no public safety or security risk, and had no criminal background.

In lawsuits challenging various state enforcement laws, the Department of Justice has argued that state and local immigration enforcement laws have intruded unconstitutionally into an arena preempted by federal immigration law. The abuses already seen under Alabama’s HB56 or Arizona’s HB1070 and other similar laws provide a clear example of the concerns created by such ill-conceived legislation.

Secure Communities and other DHS programs actively invite local law enforcement participation in a way that also undermines the federal government’s sovereign control. By pursuing enforcement action in such cases, ICE resources are being diverted away from the agency’s priorities. Moreover, by taking action in cases arising under unconstitutional laws like HB56, DHS is tacitly approving the underlying conduct of local law enforcement, no matter how suspect.

3. DHS Has Not Addressed Concerns About Racial Profiling and Other Civil Rights Abuses

Several components of the June announcement were meant to address deep concerns over racial profiling and biased policing when local law enforcement is involved with immigration enforcement. The DHS task force recommended strengthening accountability mechanisms and remedies for the prevention of civil rights and civil liberties violations. In addition DHS announced that it would provide quarterly statistical analysis to identify jurisdictions where racial profiling might be occurring, as well as a series of videos to train local law enforcement. As yet, however, no quarterly statistics have been released and no additional trainings created. Moreover, Secure Communities remains in full force in jurisdictions currently being investigated by the Department of Justice, including Miami, where DOJ announced just last week it would be opening an investigation. In short, DHS has failed to address seriously concerns about racial profiling and biased policing with respect to Secure Communities.

AILA remains concerned about the supervision and oversight of the program which has already been implemented in over 1500 jurisdictions and—if ICE proceeds with current plans, is expected to be activated in every town and every city by 2013. The DHS task force called for DHS to ensure greater transparency about Secure Communities and to clarify the goals of the program.

AILA Recommendations

- Many months after credible concerns have been raised about Secure Communities, AILA remains deeply concerned about this flawed enforcement program and continues to recommend that DHS suspend it until significant reforms are made to ensure it operates the way it was intended.
- DHS must implement systematic mechanisms to ensure that Secure Communities actually targets those who pose a risk to public safety or national security.
- DHS should clarify that immigration law violators and individuals who are convicted of or charged with misdemeanor offenses are not enforcement priorities unless there are other indicia that they pose a serious risk to public safety or national security. Convictions for felony crimes are an indication that the person may pose a risk to public safety, but enforcement personnel should carefully examine the facts in each case to determine whether the individual actually poses such risk.
- Secure Communities is having a negative impact on communities nationwide. Secure Communities makes our communities less secure and less safe because it drives fear into immigrant communities that the police are people they cannot trust.
- Secure Communities and other DHS programs that invite state and local law enforcement collaboration should be suspended in any state or locality where DOJ has initiated an investigation or litigation over concerns about racial profiling or civil rights abuses.

For follow-up, contact Gregory Chen, Director of Advocacy, 202/507-7615, gchen@aila.org.

Sincerely,



Eleanor Pelta
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