

Prepared Statement of

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On

“Is Secure Communities Keeping Our Communities Secure?”

Before the

Committee on the Judiciary

Subcommittee on Immigration Policy and Enforcement

November 30, 2011

Washington, D.C.

Chairman Gallegly, Ranking Member Lofgren and distinguished members of the subcommittee, thank you for the invitation to review the Immigration and Custom Enforcement (ICE) Secure Communities program.

My name is Arturo Venegas. I am the retired Chief of Police for the City of Sacramento. I now direct the Law Enforcement Engagement Initiative, a national effort to engage law enforcement executives across the country in a sensible dialogue over immigration policies that promote public safety and community cohesion.

This past summer, I served as a member of DHS' Task Force on Secure Communities until the very end of the process, when I concluded that the recommendations of the task force did not go far enough in making specific and enforceable changes to repair the damage the program has had on the relationship between immigrants and local police.

When it was initially introduced, DHS presented the Secure Communities program as one that would only target those with serious criminal convictions. As a result, many of my law enforcement colleagues initially saw it as a positive alternative to the 287(g) program, one that wouldn't allow for racial profiling because all people booked into jail would be screened through a federal database. Many presumed this was how things were proceeding as the program began to take hold. However, in October of 2010, advocates gained access to DHS statistics on who exactly was being deported through the program and this was when things began to change.

At the outset of the Task Force process, the National Latino Peace Officers Association (NLPOA) submitted a letter to the Task Force with their assessment of the problem and the changes needed. A copy of the letter is attached to my written submission. They describe their evolving opposition to the program, saying, "Initially, we were quite supportive of the program. Over the past year, however, we have become increasingly concerned that Secure Communities is operating far beyond its mandate... News reports and investigations by outside groups have revealed that many of the people identified for deportation through Secure Communities have no criminal record whatsoever; some were even the victims of crime, who contacted the police seeking protection and ended up in deportation proceedings. ICE's own data shows that 60% of people deported through the program committed either low level offenses, like traffic violations, or no offense at all."

The numbers of immigrants deported who had either no criminal record or whose convictions involved minor issues like traffic offenses, led not only to more law enforcement leaders registering their opposition, but to governors actually requesting removal of their states from the program. Between May and July, the governors of Illinois, New York and Massachusetts, all requested removal of their states from Secure Communities, citing 1) the deportation of non-criminals and its effect on community policing and 2) the fact that ICE misled them, by leading law enforcement to believe that only serious criminals were being deported.

In Boston, Police Commissioner, Edward Davis, expressed his opposition to the program, after initially supporting it, saying, "they [ICE] specifically told us they would not be removing people with traffic offenses," Mr. Davis said. "They said they wouldn't

and now they have.” Commissioner Davis went on to say, “It is really disconcerting that they are not at all concerned about our precarious situation with immigrant communities.”

Despite the concerns raised by so many in government and law enforcement, DHS continued to roll out Secure Communities, requiring participation and ignoring issues raised about the impact on community policing. Then, in June, as part of a memo announcing new guidelines for using prosecutorial discretion to prioritize the deportation of dangerous criminals, John Morton, Director of Immigration and Customs Enforcement (ICE) announced the creation of the Task Force on Secure Communities to review the program and offer recommendations for reforms.

I joined the Task Force believing and still do believe that Secure Communities is a deeply flawed program. In their letter to us, my colleagues from the NLPOA, made three specific recommendations for changes to Secure Communities:

1. **Tailor the program to focus only on individuals convicted of serious crimes.** Civil immigration enforcement against non-criminals should be the job of federal immigration agents and not state and local police.
2. **Clarify the limits of police authority to enforce civil immigration laws.** The immigrant community needs to know that they can work with state and local police to put criminals behind bars and not risk their own deportation.
3. **Create accountability mechanisms so these changes aren't merely voluntary.** The limits on police roles and authority must be strictly respected and enforced by federal, state, and local law enforcement. This is the only way we can credibly repair the damage done to community policing.

I used these three recommendations as a threshold test throughout the Task Force deliberations, and argued that Secure Communities must be focused narrowly on identifying individuals convicted of serious crimes that are candidates for deportation, rather than facilitating the deportation of individuals who have committed a minor offense or no crime at all.

Unfortunately, the recommendations contained in the Task Force report fell short of these principles and I chose not to sign on. My belief is that if Secure Communities continues in its current form, or even if the scheme recommended by the task force is implemented, individuals simply arrested for minor violations, including traffic violations, will still be put through the system. The federal government will decide whether they are candidates for deportation, based on enforcement priorities that include people whose only “crime” is a prior civil immigration violation. Under this regime, many people with minor infractions, such as driving without a license, will still be put into deportation proceedings.

Immigrants will continue to fear that contact with the police could lead to deportation, crimes will go unreported, and criminals will remain free to prey on others. Civil immigration enforcement will continue to trump crime control in our communities.

What's more, immigrants charged with more serious offenses, but never convicted, will find no protection in the task force recommendations or in the current Secure Communities program. It seems we are agreeing to turn the long-stand principle of "innocent until proven guilty" on its head for certain groups of people. If you are an immigrant, and you are charged with a serious offense, you are "guilty until proven innocent" and you will be referred for deportation. As an immigrant myself, and as an American, I cannot support that differing standard.

The examples of how Secure Communities has operated well beyond its stated mission of targeting serious criminals are numerous. As part of the information gathering process, the Secure Communities Task Force hosted public hearings in Dallas, TX, Los Angeles, CA, Chicago, IL, and Arlington, VA, where we heard from community members impacted by the program. At the Task Force hearing in Los Angeles, I heard testimony from a woman who was arrested for selling popsicles without a license and put into deportation proceedings through the Secure Communities program. She was one of several vendors arrested that day in the cities of South Gate and Vernon. The wave of fear that spread through that largely immigrant city was so great, that the Mayor of South Gate also testified that evening. She worried that public safety in her city was greatly diminished because the fear in the community following the arrests was so great that people were afraid to call the police.

In the city of Lodi, near my home of Sacramento, a woman called the police for assistance in stopping her brother-in-law from assaulting her sister. In defending herself, the woman's sister left visible marks on her attacker, which led to her being arrested in addition to her attacker. Through Secure Communities, both were processed and identified as undocumented. Within days, with no criminal cases filed or prosecuted, they were both deported and their two infant American citizen children were separated from their parents.

These are just two of thousands of incidents that make victims or witnesses of crimes fear the outcome of a call to the police. Should an individual rely on police intervention for serious crimes and public safety and risk their own deportation or the deportation of a loved one or a neighbor? These cases send waves of fear through immigrant communities, making the job of crime fighting in those same communities much more difficult.

In basing his request to have his state removed from the Secure Communities program at the request of Illinois Governor Pat Quinn, General Counsel John Schomberg stated, "In reality, the Secure Communities program has had little to do with those convicted of serious crimes. By ICE's own numbers, through May 2011, less than 22% of those from Illinois who were removed from the country under the Secure Communities program were convicted of a serious crime. In other words, contrary to the 'focus' of the MOA and the original intent of the program, through May 2011, more than 75% of those deported out of Illinois under the program have never been convicted of a serious crime. More than 21% of those deported have not been convicted of any crime at all."

In recent comments supporting the Department of Justice lawsuit against the state of Utah, even Janet Napolitano, Secretary of Homeland Security expressed her concern that laws like Utah's, which force local police to act as immigration agents, divert law enforcement resources from the most serious threats "and undermines the vital trust

between local jurisdictions and the communities they serve." I agree wholeheartedly with Napolitano's assessment, but I think that Secure Communities commits the very same error of employing local police to do the federal government's job, and jeopardizes the trust of the immigrant community in the process.

In the end, I felt that the recommendations of the Task Force were not specific or enforceable enough to elicit the necessary changes to Secure Communities, and I was unable to sign on. However, I did agree with many of the premises laid out by my colleagues in the Task Force report. They elaborated on the need for law enforcement to use their resources most effectively by utilizing the long-standing practice of prosecutorial discretion and expressed their support for DHS' recent announcement of this new policy. Prosecutorial discretion is a fundamental tool of law enforcement agencies around the country. During my tenure in the Sacramento Police Department, both police and prosecutors constantly used their discretion to decide which cases to investigate and prosecute, and which cases could be dismissed. The factors we took into consideration included the seriousness of the criminal violation, the record of previous violations, the availability of investigative and prosecutorial resources, the reliability and strength of the evidence, and the impact of the violations of law on community safety. This is standard law enforcement practice.

In local policing, law enforcement agencies have launched a number of new strategies that helped us work smarter. We learned that when you have money, throwing people at the problem is easy, but not always wise. We discovered that during trying times, especially when you're strapped for resources, you must search for effective alternatives.

The fact that this policy, one that has been in practice in law enforcement for decades, is now being politicized makes no sense. Several of my colleagues from the Task Force signed on to a recent letter outlining the need for discretion, stating, "There is nothing unusual in our recommendation or in DHS's current efforts to improve its use of prosecutorial discretion. Such discretion is a normal and essential part of the everyday activities of law enforcement agencies and prosecutors' offices at the local, state, and federal levels across the nation. Exercising prosecutorial discretion, case by case, in a systematic and professional way, does not amount to administrative amnesty. Instead it helps to make sure that resources are focused in ways that best promote the overall enforcement mission."

Even the U.S. Supreme Court made it abundantly clear that a law enforcement agency has absolute discretion about its prosecutorial decisions. In *Heckler v. Chaney* (470 U.S. 821 (1985)), the Court held that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."

As important as I think prosecutorial discretion is as a law enforcement tool, it won't fix the problems inherent in Secure Communities. Discretion is only triggered once an individual is put into the system, but after the point that someone is arrested for a minor violation and detained because of their immigration status, the message has already been sent to the immigrant community that police are to be feared. Immigrants need to know that local police are there to help them, not deport them. Discretion only helps

people on the back end, but successful community policing requires changes to the front end as well.

In resigning from the Task Force, I concluded that Secure Communities as it currently functions will continue to do great harm to the relationship between local police and immigrants. Until we see a complete overhaul of the program, one that gets it back to its originally stated goal of a focus on serious, convicted criminals, this program will undermine the efforts of police to work with all members of the community to fight crime, place our national security at risk and create insecure communities for us all.

Thank you again for the opportunity to address you on this very important topic.



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**Date:** June 30, 2011

**To:** Secure Communities Advisory Committee

**From:** Edwin Maldonado, National President  
National Latino Peace Officers Association

**Re:** Recommended Reforms to Secure Communities Program

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For more than thirty-five years, the National Latino Peace Officers Association (NLPOA) has been working to achieve a few core objectives. At the top of that list are keeping America safe, bridging the gap between law enforcement and the Latino community, and eliminating prejudice and discrimination in law enforcement. Our belief is that these goals are complementary and can be achieved together.

In its current form, we believe that DHS' Secure Communities undermines our organization's core objectives. That is why we are writing today.

According to the federal government's description of Secure Communities, the program was supposed to focus on identifying and deporting undocumented individuals convicted of crimes. Initially, we were quite supportive of the program. Over the past year, however, we have become increasingly concerned that Secure Communities is operating far beyond its mandate, and hurting the relationship between police and the immigrant community. News reports and investigations by outside groups have revealed that many of the people identified for deportation through Secure Communities have no criminal record whatsoever; some were even the victims of crime, who contacted the police seeking protection and ended up in deportation proceedings. ICE's own data shows that 60% of people deported through the program committed either in low-level offenses, like traffic violations, or no offense at all.

When non-criminal immigrants are deported after having contact with local law enforcement, it sends a message to the community that we are agents of Immigration. This leads immigrant crime victims and witnesses to think twice before coming to us with information about real crimes. Crimes go unreported, justice goes unserved, and the entire community suffers.

As law enforcement professionals who are also Latino, we have an important perspective to offer. We chose this profession because protecting the public from crime is our number one priority. We also understand how to build relationships with members of the Latino community, given our personal experiences and backgrounds. Unfortunately, we've seen firsthand how the relationship between law enforcement and some members of the Latino community has eroded over the last several years, as the federal government and some state legislatures sought to expand police roles in immigration enforcement.

We can and must do better. A first step toward repairing that trust is to bring the scope of Secure Communities back to its original stated purpose. On June 17<sup>th</sup>, ICE Director John Morton announced several changes to the Secure Communities program. Although the changes were a step in the right direction, they are not enough.

Among the changes announced was the creation of an Advisory Committee, to address many of the concerns raised in this letter. We write today to the members of that committee to urge that your recommendations involve real, structural and enforceable changes to the Secure Communities program that bring it in line with its stated mandate and goals.

In order for us to renew our support for the Secure Communities program, it must be reformed to align with its original goals, through the following changes:

1. Tailor the program to focus *only* on individuals convicted of serious crimes. Civil immigration enforcement against non-criminals should be the job of federal immigration agents, not state and local police.
2. Clarify the limits of police authority to enforce civil immigration laws. The immigrant community needs to know that they can work with state and local police to put criminals behind bars and not risk their own deportation.
3. Create accountability mechanisms so these changes aren't merely voluntary. The limits on police roles and authority must be strictly respected and enforced by federal, state, and local law enforcement. This is the only way we can credibly repair the damage done to community policing.

These are the minimum reforms necessary to ensure that Secure Communities can become a viable program and not compromise the critical trust between local law enforcement and the Latino community.

The NLPOA is a law enforcement organization that values greatly our role in keeping America safe. We are also an organization of Latinos who know that positive outcomes are only achieved when we work together. We look forward to working with the Advisory Committee in the coming weeks to achieve reforms to Secure Communities that will restore trust and truly enhance safety in our communities around the country.

Respectfully,



Edwin Maldonado

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