



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

REGARDING A HEARING ON

“SECURE COMMUNITIES OVERSIGHT”

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY**

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

Wednesday, November 30, 2011, 1:30 p.m.

INTRODUCTION

Chairman Gallegly, Ranking Member Lofgren, and distinguished Members of the Subcommittee:

On behalf of Secretary Napolitano and Director Morton, I would like to thank you for the opportunity to discuss Secure Communities. U.S. Immigration and Customs Enforcement (ICE) is committed to enforcing the immigration law in a manner that best improves national security, public safety, border security, and the integrity of the immigration system. Simply put, this translates into ICE's seeking to remove convicted criminals and others who threaten our communities, recent illegal border crossers, and egregious immigration violators like fugitives and illegal reentrants.

The reality of limited resources requires law enforcement – at all levels – to use resources strategically and wisely to accomplish their mission. Given estimates that more than ten million people living in the United States are subject to removal, Secure Communities is a critical tool that assists ICE in better focusing its resources on apprehending and removing high priority aliens, including convicted criminals and egregious immigration law violators. Secure Communities is responsible for identifying nearly 58,000 of the more than 216,000 criminal aliens removed in Fiscal Year 2011.

While the fundamentals of Secure Communities remain sound, ICE is mindful of the concerns raised by some, including state and local law enforcement officials, and is committed to continuing to make operational adjustments to ensure that Secure Communities better aligns with our operational priorities. We look forward to working with the Committee to ensure the continued success of the Secure Communities.

Secure Communities Overview

ICE is the principal investigative arm of the U.S. Department of Homeland Security, and with more than 20,000 employees in 50 states and 47 countries, is the second largest investigative agency in the federal government. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. ICE's primary priorities are to: prevent terrorism and enhance security; protect the borders against illicit trade, travel and finance; and protect the borders through smart and tough interior immigration enforcement.

Secure Communities is one part of ICE's smart, effective immigration enforcement strategy. Secure Communities uses technology to provide nearly real time leads to ICE's Criminal Alien Program (CAP), which identifies, processes, and removes criminal aliens from prisons across the United States. These leads greatly minimize the possibility that dangerous criminal aliens will be released into our communities before CAP officers can place detainers or take these aliens into custody. Prior to Secure Communities, CAP officers had to rely almost exclusively on manual access to biographic booking records maintained by each local jail and prison system in order to determine the presence of removable criminal aliens in those facilities. While CAP helped significantly increase the number of criminal alien removals from 102,024 in 2007 to 114,415 in 2008, Congress recognized that there were gaps in CAP coverage. Criminal aliens were still being released into communities across the country because ICE was unable to maintain a physical presence in the thousands of jails and prisons across the country around the clock.

Accordingly, the FY 2008 DHS appropriations act included a directive that ICE submit a plan on how ICE would identify all criminal aliens in state and local custody. At the time of the

directive, there were DHS and FBI pilot projects in Boston and North Carolina testing the interoperability or data sharing capabilities between Federal agencies. The pilot projects were comparing state and local fingerprints contained in the FBI IAFIS system with those contained in DHS IDENT system. The system takes advantage of the decades-old process in which local jails share fingerprint data with the FBI to run against FBI criminal databases. The FBI then shares this information with DHS to run against its immigration databases. This fulfills a 2002 Congressional mandate to establish an interoperable electronic data system that provides current and immediate access to information in databases of federal law enforcement agencies and the intelligence community that is relevant to determine the admissibility or deportability of an alien 8 U.S.C. § 1722. Simply put, Secure Communities helps ICE identify those who have been arrested by state and local law enforcement for non-immigration state or local crimes, who are also in the country unlawfully. It bestows no additional authorities onto local law enforcement and only identifies those who have their fingerprints submitted for criminal justice purposes.

Since 2008, ICE has expanded its use of this technological capability through Secure Communities from 14 jurisdictions to more than 1,729 today, including every jurisdiction along the Southwest border. Secure Communities has helped change the composition of those individuals who are removed – helping ICE to significantly increase the number of convicted criminals and egregious immigration law violators detained and removed. As a result, through November 2011, ICE has removed more than 111,400 immigrants identified through Secure Communities who were convicted of crimes, including more than 40,000 convicted of aggravated felonies (“Level 1”) like murder, rape, and the sexual abuse of children, or multiple felonies.

Overall, in FY 2011, ICE removed nearly 397,000 individuals — the largest number in the agency’s history. Approximately 55 percent of those removed—more than 216,000—were convicted criminals, an 89 percent increase in the removal of criminals since FY 2008. ICE achieved similar results with regard to other categories prioritized for removal. In Fiscal Year 2011, over 90% of our removals fell within our priority categories: Criminal Aliens (55%), Repeat Immigration Law Violators (20%), Border Removals (12%) and Immigration Fugitives (5%).

Improvements to Secure Communities

DHS has been mindful of the concerns raised about Secure Communities. ICE has received constructive feedback from our state and local law enforcement partners, as well as from other stakeholders. For example, some law enforcement partners raised concerns that information sharing could discourage community policing. Likewise, some stakeholders expressed that victims could be concerned about reporting crimes for fear of deportation. In June 2011, Director Morton announced a number of steps and changes that will help improve the program and clarify its goals to its field officers and attorneys, state and local law enforcement and the public. They include:

Advisory Committee Input: A Task Force to the Homeland Security Advisory Council examined ways to improve Secure Communities, including providing recommendations on how to best focus on individuals who pose a true public safety or national security threat. The council issued a report of Findings and Recommendations in September 2011. ICE is currently reviewing the report and considering the recommendations.

Issuance of prosecutorial discretion guidance: ICE Director Morton has issued a new memo providing guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise discretion when appropriate—authority designed to help ICE better focus on meeting the priorities of the agency and to use limited resources to target criminals and those that put public safety at risk. The memo makes clear that the favorable exercise of discretion is not appropriate in cases involving threats to public safety, national security and other agency priorities. Moreover, to ensure that this agency guidance is implemented consistently, ICE has developed an intensive practical training module for its attorneys, and will be discussing the proper exercise of prosecutorial discretion with our field leadership at meetings scheduled in the upcoming weeks. Training of all ICE field management nationwide will be completed by January 13, 2012. Director Morton has also personally visited many of our field offices to speak with both ICE officers and attorneys about his guidance memo and its proper implementation. These proactive measures reflect our firm commitment to effectively prioritizing our immigration cases

Outreach to states: ICE and the DHS Office for Civil Rights and Civil Liberties (CRCL) have developed new series of training/awareness materials for state and local law enforcement agencies to provide clear information for state and local law enforcement about how Secure Communities works and how it relates to laws governing civil rights. CRCL has plans to develop a total of 8 videos and other materials over the course of the next several months, and will include input from law enforcement and community focus groups. The potential audience is hundreds of thousands of police officers. One video has been already been delivered and posted to the web site; there are an additional three videos that are scheduled for release by the end of January 2012. In addition to primary distribution via the Internet, DVDs and accompanying

materials will be distributed: at conferences such as the International Association of Chiefs of Police and the National Sheriffs' Association; through training academies; by direct outreach to large departments; and through the DHS Office for State and Local Law Enforcement's email distribution capability.

Protection of victims & witnesses of crimes: At the direction of Secretary of Homeland Security, ICE, in consultation with CRCL, has developed a new policy designed specifically to protect victims of domestic violence and other crimes and to ensure these crimes continue to be reported and prosecuted. This policy directs ICE officers to exercise appropriate discretion to ensure victims and witnesses to crimes are not penalized by removal. In fact, ICE is not aware of any individual who was removed following identification by Secure Communities that was found to be a victim or a witness of a crime. ICE is also working to develop additional tools that will help identify people who may be a victim, witness, or member of a vulnerable class so officers can exercise appropriate discretion.

Issuance of a revised detainer policy: ICE has revised the detainer form that ICE sends to local jurisdictions to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours. The form, which will be deployed by the end of the year, also requires local law enforcement to provide arrestees with a copy, which includes information on how to file a complaint if an individual believes their civil rights have been violated. ICE and DHS CRCL have also developed a protocol for addressing complaints raised.

Statistical review: ICE and CRCL have created an ongoing quarterly statistical review of data generated through Secure Communities. This review will examine data for each jurisdiction where Secure Communities is activated to identify effectiveness and any indications of

potentially improper use. Statistical outliers in local jurisdictions will be subject to an in-depth analysis and DHS and ICE will take appropriate steps to resolve any problems.

ICE and CRCL have posted both a concise explanation of this project and a technical paper on the data and statistical calculations being employed on the ICE web site, www.ice.gov/secure_communities. The page also contains links to the various initiatives associated with Secure Communities.

CONCLUSION

Secure Communities is an essential component that supports ICE's public safety and law enforcement mission. I thank the Committee for its continued support of ICE, which is so important to the men and women at ICE, who work each day to ensure the safety and security of the United States. I would be pleased to answer any questions you have at this time.