

# **HOMELAND SECURITY ADVISORY COUNCIL**



## **TASK FORCE ON SECURE COMMUNITIES FINDINGS AND RECOMMENDATIONS**

**SEPTEMBER 2011**

## **Task Force on Secure Communities**

**Chuck Wexler** (Chair), Executive Director, Police Executive Research Forum

**Bo Cooper**, Partner, Berry Appleman & Leiden L.L.P.

**Adrian Garcia**, Sheriff, Harris County, Texas

**Douglas Gillespie**, Sheriff, Las Vegas Metropolitan Police Department

**Robert Graves**, Executive Director, The Chicago Bar Foundation

**Benjamin Johnson**, Executive Director, American Immigration Council

**Andrew Lauland**, Homeland Security Advisor to Maryland Gov. Martin O'Malley

**Laura Lichter**, Partner, Lichter & Associates, P.C.

**David A. Martin**, Professor of Law, University of Virginia

**Charles Ramsey**, Commissioner of Police, Philadelphia

**Lupe Valdez**, Sheriff, Dallas County, Texas

**Roberto Villaseñor**, Chief of Police, Tucson, Arizona

**Wendy Wayne**, Director, Immigration Impact Unit, Committee for Public Counsel Services

**Sister Rosemary Welsh**, Executive Director, Casa de Misericordia and Director, Mercy Ministries Outreach

# Table of Contents

Introduction .....	4
Findings and Recommendations.....	9
I. Misunderstandings Regarding the Secure Communities Program and the Role of Local Law Enforcement Agencies.....	10
II. Perceived Inconsistencies Between Secure Communities' Stated Goals and Outcomes...	16
III. Minor Traffic Offenses and Misdemeanors .....	21
IV. Unintended Consequences of Secure Communities on Community Policing and Community Impact .....	24
V. The Question of Whether to Suspend Secure Communities.....	27
Conclusion .....	28
Appendix A: Task Force on Secure Communities: Tasking Document .....	30
Appendix B: Subject Matter Experts .....	31
Appendix C: Task Force Field Meetings: Information Gathering Sessions.....	33

# INTRODUCTION

The Task Force on Secure Communities is a subcommittee of the Homeland Security Advisory Council (HSAC) and was created in June 2011 at the request of DHS Secretary Janet Napolitano. HSAC, which is comprised of leaders from state and local government, first responder agencies, the private sector, and academia, provides advice and recommendations to the Secretary on matters related to homeland security. The Task Force was asked to consider how Immigration and Customs Enforcement (ICE) may improve the Secure Communities Program, including how to address some of the concerns about the program that “relate to [its] impact on community policing and the possibility of racial profiling,”<sup>1</sup> and “how to best focus on individuals who pose a true public safety or national security threat.”<sup>2</sup> In addition, the Task Force was specifically charged with making recommendations “on how ICE can adjust the Secure Communities program to mitigate potential impacts on community policing practices, including whether and how to implement policy regarding the removals of individuals charged with, but not convicted of, minor traffic offenses who have no other criminal history.”<sup>3</sup>

The Task Force is a broad-based panel made up of local and state law enforcement and homeland security officials, attorneys with expertise in immigration practice and criminal law, labor union officials who represent federal immigration enforcement workers, academics, social service agency leaders, and others. Task Force members donated their time to serve on this panel.

Under Secure Communities, fingerprints of persons arrested by state and local law enforcement agencies, which those agencies routinely submit to the FBI for criminal justice database checks, are automatically shared with DHS. ICE then checks the local arrestee information against the Department of Homeland Security (DHS) immigration databases. If ICE determines that it has an interest in an individual arrestee, the agency then determines what enforcement action to take. In most cases, the people determined to be of interest to ICE are subject to ICE enforcement action for reasons independent of the arrest or conviction. That is, the check of databases may indicate, for example, that the person is removable because he or she entered the country without inspection or overstayed a visa.

---

<sup>1</sup> Homeland Security Advisory Council, Task Force on Secure Communities: Tasking (attached as Appendix A to this report).

<sup>2</sup> From the ICE website (Sept. 9, 2011), [http://www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities), click on “What’s New.”

<sup>3</sup> *Ibid.*

DHS officials maintain that Secure Communities is not a program that was established solely on the basis of executive branch authority, but rather that it has been mandated by Congress in appropriations legislation for DHS and other laws. However, several Task Force members noted that whether the program is mandatory is subject to different interpretations. DHS cites 8 U.S.C. § 1722(a)(2) and (5), which requires the executive branch to develop “an interoperable electronic data system to provide current and immediate access to information in databases of Federal law enforcement agencies . . . that is relevant to determine . . . the inadmissibility or deportability of an alien . . . . [This information] shall be readily and easily accessible . . . to any Federal official responsible for determining an alien’s admissibility to or deportability from the United States.” Other legislative language focuses specifically on persons who have been convicted, with a priority on those guilty of serious crimes. For example, the FY 2010 DHS appropriations legislation requires ICE to obligate at least \$1.5 billion “to identify aliens convicted of a crime who may be deportable, and to remove them from the United States once they are judged deportable . . . [and to] prioritize the identification and removal of aliens convicted of a crime by the severity of that crime.”

Secure Communities is not yet a nationwide program. Launched in 2008, Secure Communities has been activated in approximately half of jurisdictions nationwide, according to ICE.<sup>4</sup> DHS plans nationwide activation of Secure Communities by 2013.

To complete its mission, the Task Force met three times in Washington, D.C. and held numerous conference calls to discuss issues related to Secure Communities and to review several drafts of this report. At its meetings, the Task Force also heard from a broad range of subject matter experts, state officials, and other stakeholders via conference calls and in-person presentations, and it considered statements submitted to the Task Force via a public email mailbox. Many of the experts, community leaders, and law enforcement officials who spoke conveyed a variety of strong criticisms of Secure Communities. Others were more supportive, seeing the program as an appropriate way for DHS to cooperate with local and state law enforcement to carry out the Department’s overall priorities.

---

<sup>4</sup> As of August 2, 2011, Secure Communities has been activated in 1,508 out of an estimated 3,181 jurisdictions (47%). <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>. It is important to note that these numbers do not reflect the total number of participating agencies, because a single jurisdiction with a regional jail, for example, may send fingerprints to the FBI based on arrests by numerous other law enforcement agencies.

The Task Force also convened four information-gathering sessions to solicit feedback from individuals who are familiar with the Secure Communities program. These sessions were held on August 9, 2011 in Dallas; August 15, 2011 in Los Angeles; August 17, 2011 in Chicago; and August 24, 2011 in Arlington, VA. Attendance at the sessions ranged from approximately 200 people in Dallas to 300-400 in Los Angeles and Arlington and over 500 in Chicago. Participants in these public hearings represented a wide variety of organizations, including immigrants' rights groups, faith-based organizations, and local government agencies. Other speakers did not represent any organizations but spoke of their own experiences with immigration enforcement. By a very significant margin, most speakers at these sessions criticized or expressed concerns about Secure Communities. Many speakers commented that the program is resulting in deportation of persons arrested only for minor offenses as well as victims of crime, that such deportations split families apart, and that Secure Communities makes people afraid to call their local police when they are victims of or witnesses to crime. A few speakers stated that the program has had a positive impact, particularly in identifying and removing serious criminals or providing information useful to local law enforcement that would not always be available from the FBI database alone. For members of the Task Force, the meetings provided an opportunity to see how Secure Communities is perceived in some communities.

The members of the Task Force on Secure Communities have a wide variety of perspectives regarding the program, due to their different roles as law enforcement officials, immigration lawyers, law professors, and other stakeholders. The Task Force's internal discussions were spirited, but the considerable expertise of Task Force members and the diversity of their backgrounds resulted in findings and recommendations that the Task Force hopes will receive widespread acceptance and support.

With a few exceptions that are noted, this report reflects a consensus view of the Task Force. It should be noted that individual Task Force members see some of the issues covered in this report differently. The report is the result of a good deal of "give and take" and an effort to find common ground.

While the Task Force was conducting its deliberations, the Obama Administration announced two major developments regarding immigration enforcement that have implications for Secure Communities.

First, on August 5, ICE Director John Morton announced that ICE had decided to terminate all existing Memoranda of Agreement (MOA) that it had entered into with the states regarding the operation of Secure Communities. In his letter to Governors, Mr.

Morton said that the MOA had resulted in “substantial confusion” regarding whether a state was required to enter into such an agreement in order for Secure Communities to operate in that state. “ICE has determined that an MOA is not required to activate or operate Secure Communities for any jurisdiction,” Morton wrote. “Once a state or local law enforcement agency voluntarily submits fingerprint data to the federal government, no agreement with the state is legally necessary for one part of the federal government to share it with another part.”

The second development was that on August 18, DHS and the White House announced that the executive branch is undertaking a large-scale review of existing deportation caseloads in order to focus resources more effectively on the removal of persons who are considered high-priority under DHS guidelines. The goal of the review, the White House statement said, will be to strengthen DHS’s ability “to target criminals even further by making sure [DHS is] not focusing our resources on deporting people who are low priorities for deportation. This includes individuals such as young people who were brought to this country as small children, and who know no other home. It also includes individuals such as military veterans and the spouses of active-duty military personnel. It makes no sense to spend our enforcement resources on these low-priority cases when they could be used with more impact on others, including individuals who have been convicted of serious crimes.”<sup>5</sup> The Department further explained the objectives and operations of the review process on its website: “DHS must ensure its immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose a threat to public safety such as criminal aliens and national security threats, as well as repeat immigration law violators and recent border entrants. In fact, the expenditure of resources on cases that fall outside our enforcement priorities hinders our public safety mission by clogging immigration court dockets and diverting resources . . . .”<sup>6</sup>

Accordingly, DHS, along with the Justice Department, “will be reviewing the current deportation caseload to clear out low-priority cases on a case-by-case basis and make more room to deport people who have been convicted of crimes or pose a security risk,” the White House said. “And they will take steps to keep low-priority cases out of the deportation pipeline in the first place.”

---

<sup>5</sup> <http://www.whitehouse.gov/blog/2011/08/18/immigration-update-maximizing-public-safety-and-better-focusing-resources>.

<sup>6</sup> <http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf>.

**Specific findings and recommendations are offered below. There is a strong consensus view, within the Task Force and in communities across the nation, that it is appropriate for ICE to continue to take enforcement action against serious criminal offenders who are subject to deportation. But because there are circumstances in which Secure Communities results in the removal of persons who are minor offenders or who have never been convicted of a crime, and because statements by ICE have left much confusion about the full reach of its enforcement priorities, many jurisdictions are concerned about the impact of Secure Communities on community policing. We recommend specific steps on which there is Task Force consensus that would help build trust in the program.**

**Many Task Force members would go further, including recommending suspension of the program until major changes are made, or even recommending termination of what they believe is a fundamentally flawed program. Other members believe that reforms are necessary but the program nonetheless must continue to function. Those differences of view are reflected in the discussion below.**

**ICE must recognize that it does not work in a vacuum and that its enforcement actions impact other agencies and the relationships with their communities in what some may conclude is a negative way. The following pages contain recommendations for ICE to revise the program while working with state and local police, elected officials, and other stakeholders, taking their concerns seriously and working in partnership to find appropriate solutions.**



## FINDINGS AND RECOMMENDATIONS

This report includes the major findings of the Task Force and its recommendations to ICE. Both findings and recommendations are organized into the following categories that reflect the primary concerns of implementing Secure Communities:

- I. Misunderstandings Regarding the Secure Communities Program and the Role of Local Law Enforcement Agencies
- II. Perceived Inconsistencies between Secure Communities' Stated Goals and Outcomes
- III. Minor Traffic Offenses and Misdemeanors
- IV. Unintended Consequences of Secure Communities on Community Policing and Community Impact
- V. The Question of Whether to Suspend Secure Communities

### **Our overall recommendations are:**

- ICE must clarify the goals and objectives of the Secure Communities program, as well as the parameters and functioning of the program, and accurately relay this information to participating jurisdictions, future participating jurisdictions, and the communities they serve. Regardless of whether ICE has legal authority to operate Secure Communities without local agreement, ICE must work to develop good working relationships with states, cities, and communities.
- ICE must improve the transparency of the program.
- There is broad consensus in the nation that persons convicted of serious crimes who are in the United States illegally should be subject to deportation. ICE must build on that consensus by implementing systematic mechanisms to ensure that Secure Communities adheres to its stated enforcement objective of prioritizing those who pose a risk to public safety or national security.
- ICE should 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.

- DHS must exercise its prosecutorial discretion, in all its immigration enforcement endeavors, in line with stated enforcement priorities, and take systematic steps to train and monitor field officers and attorneys as they implement Departmental policies on prosecutorial discretion.
- DHS must strengthen accountability mechanisms, including remedies for and prevention of civil rights and civil liberties violations.

## **I. Misunderstandings Regarding the Secure Communities Program and the Role of Local Law Enforcement Agencies**

### **Findings**

**1. Confusion about the Secure Communities program – what it is, and what it isn't.** There has been much confusion about the Secure Communities program and the role of state and local police and sheriffs' departments, caused in part by brochures and other documents issued by DHS in the past that advertised Secure Communities as a program designed to remove serious violent offenders from the streets. ICE currently describes Secure Communities as "interoperability" between FBI and DHS databases. In practice, in activated jurisdictions, when an individual is arrested and booked in a police station or jail by a law enforcement agency (prior to any adjudication), his or her fingerprints and booking information are sent to the FBI, which shares the fingerprints and information with DHS. DHS checks the data against the Automated Biometric Identification System (IDENT), which is part of the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT), in addition to the other criminal databases that are generally checked through the FBI following an arrest.

If there is a database "hit," meaning that the arrested person is matched to an immigration record in the DHS system, ICE and the law enforcement agency are notified. ICE then determines the individual's immigration status and whether any action is necessary or appropriate based on agency priorities. If the person appears to have violated the immigration laws, ICE decides whether to issue a detainer for the arrested individual. A detainer is a request from ICE to the law enforcement agency to

notify ICE before it releases an individual so that ICE has the opportunity to transfer the individual to federal custody.<sup>7</sup>

According to ICE, Secure Communities only entails the sharing of information—“interoperability”—between local law enforcement, the FBI, and DHS. Any subsequent immigration enforcement action that is taken is not part of Secure Communities, but instead is the result of an independent determination by ICE Enforcement and Removal Operations (ERO). Similarly, any action taken by the local law enforcement agency prior to booking and submission of fingerprints to the federal databases is not part of Secure Communities.

However, much of the criticism of the program relates to enforcement activities before and after the information sharing which defines the process. While ICE might distinguish between Secure Communities’ “interoperability” function and the subsequent detention and/or removal of an individual, the distinction is lost on stakeholders. In reality, most believe that Secure Communities is more than simple information sharing between databases, and that interoperability is only one of the stages in the process that begins with an arresting police agency and ends with ICE enforcement action.

Secure Communities is commonly perceived as this entire process, which begins with an arrest by the local law enforcement agency and ends in deportation. To the community at large--especially immigrant communities--local law enforcement agencies cooperating with ICE or participating in Secure Communities may be viewed as immigration agents, regardless of the actual role they play in the process. Some local law enforcement agencies and state government officials are uncomfortable with being perceived as a “pass-through” to ICE via Secure Communities.

Furthermore, from a practical standpoint, local police have no choice but to take the first step of forwarding arrestees’ fingerprints *to the FBI* in order to obtain information that is critically important for crime-fighting purposes, such as data on outstanding arrest warrants in another jurisdiction. The sharing of information between local law enforcement agencies and the FBI is essential to effective policing.

**2. Secure Communities was presented as a program that targets serious criminals, but that has been called into question.** Based on what they were told, many state and local officials believed they were joining a program targeting serious offenders. ICE has stated that it prioritizes the removal of criminal aliens, as well as

---

<sup>7</sup> 8 CFR 287.7(a) and 8 CFR 287.7(d). Federal law provides that an individual cannot be held on a detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the detainer expires.

those who pose a threat to public safety and repeat immigration violators.<sup>8</sup> A March 2011 memo on “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens” states that “ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency’s highest enforcement priorities, namely national security, public safety, and border security.”<sup>9</sup> In addition, the House Report accompanying the 2010 appropriations bill stated that ICE’s highest priority should be the removal of aliens “convicted of serious crimes.”<sup>10</sup>

Some Secure Communities documents and presentations further state that Secure Communities would focus on “the worst of the worst,”<sup>11</sup> and “the most dangerous and violent offenders.”<sup>12</sup> Memoranda of Agreement (MOAs) entered into by ICE and various state and local jurisdictions state that Secure Communities “is a comprehensive ICE initiative that focuses on the identification and removal of aliens who are convicted of a serious criminal offense and are subject to removal.” They also state that “ICE will employ a risk-based approach to identify aliens charged with or convicted of a serious criminal offense and incarcerated in jails and prisons throughout the United States who are eligible for removal based on the severity of their offenses.”

However, as will be discussed in detail below, the impact of Secure Communities has not been limited to convicted criminals, dangerous and violent offenders, or threats to public safety and national security. Moreover, the program has raised real concerns for some law enforcement agencies because of the adverse impact it has on community policing and the perception that law enforcement agencies are participating in immigration enforcement.

**3. Early and continuing missteps in launching and expanding Secure Communities:** Much of the confusion surrounding Secure Communities is due to inaccurate or incomplete information presented by ICE to states and localities regarding the program. DHS/ICE has acknowledged that a poorly managed rollout of Secure

---

<sup>8</sup> From ICE’s Secure Communities website, [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/).

<sup>9</sup> Memorandum from John Morton, Assistant Secretary, ICE, on *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (March 2, 2011). This memo was originally issued on June 30, 2010, then updated and re-issued. It is available at: <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

<sup>10</sup> H.R. Report 111-157 (2009).

<sup>11</sup> U.S. Immigration and Customs Enforcement, ICE Fiscal Year 2008 Annual Report 5 (2008).

<sup>12</sup> U.S. Immigration and Customs Enforcement, *Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens*. January 2010. Available at [www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf](http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf).

Communities, coupled with incorrect statements from DHS/ICE representatives and unilateral policy changes, has created confusion among state and local government and law enforcement officials. This is particularly true of information provided by ICE regarding whether the program is mandatory or optional, the program's goals and procedures, and the implementation of the program at the local level.

**4. The Memoranda of Agreement signed by ICE and state identification bureaus have created additional confusion:** There has been much confusion regarding whether state and local jurisdictions have the power to decline, suspend or terminate participation in Secure Communities. While the MOAs included a termination and modification clause, ICE has not complied with localities' request to exercise this option. Instead, DHS recently changed its position, stating that state and local jurisdictions cannot terminate their participation in Secure Communities because it is essentially an information-sharing program between two federal agencies (the FBI and DHS). As a result, on August 5, 2011, DHS announced that it was unilaterally terminating all of the 42 previously signed MOAs, on the basis that they are not needed for the operation of Secure Communities. However, several Task Force members noted that the legal authority on which DHS relies in asserting that the program is mandatory continues to be subject to differing interpretations.<sup>13</sup>

DHS's current position is that a state or locality may only "opt-out" of whether to receive the information from ICE that is generated by the processing of arrestees' fingerprints through DHS's biometric system. Concerns have been raised that the information that ICE sends to law enforcement agencies may inappropriately influence the actions of local law enforcement officials, who may believe that all persons flagged by ICE are serious offenders or high-priority cases for ICE. However, even if a law enforcement agency chooses not to receive immigration information from ICE, this does not prevent the transmission of that individual's information to the local ICE field office to determine whether to take enforcement action. In other words, if a law enforcement agency chooses to "opt out" of receiving ICE information about arrestees, that decision will have no impact on ICE's ability to receive fingerprints, review the information, or take enforcement action against an individual. According to the legal interpretation under which DHS and the FBI now operate, once a law enforcement agency transmits fingerprints and booking information to the FBI for a criminal background check, it does not have any ability to halt the transmission of the fingerprints or information to ICE, or to prohibit the use of such information by ICE.

---

<sup>13</sup> Related issues are being addressed in ongoing FOIA litigation. See *NDLON et.al. v. ICE et. al*, 10 Civ. 3488 (SAS).

ICE stated that its August 5 announcement was intended to clarify the role of state and local jurisdictions in the operation of Secure Communities. However, jurisdictions may perceive this as a significant change in the program rather than merely a clarification of existing procedures.

**5. Secure Communities is just one of several DHS enforcement programs that may be operating in a jurisdiction:** Secure Communities is one of several DHS enforcement and removal programs, including 287(g)<sup>14</sup> and the Criminal Alien Program,<sup>15</sup> through which ICE partners with law enforcement agencies or operates in state and local jails. In some localities, ICE operates Secure Communities and other programs simultaneously. In addition, other DHS enforcement programs, including those operated by the Border Patrol, often result in placing persons in removal proceedings. The general public and local law enforcement agencies may not always be aware that DHS is operating these different programs in their communities, and local agencies and the public may not fully understand the similarities and differences among these programs. Without this full understanding, local officials as well as community members are likely to be confused about which of these programs are being used to make enforcement and removal decisions by DHS personnel.

When a particular case involving a deportation is highlighted in the media or becomes a concern to a community, it may not be clear whether the enforcement actions originated with Secure Communities, the 287(g) program, the Criminal Alien Program, the Border Patrol, or some other mechanism. **In many jurisdictions, the Task Force’s hearings revealed, any immigration enforcement action that is seen as disproportionate or unwarranted, such as steps to remove a young traffic law violator who has lived in this country since infancy, is likely to be attributed to Secure Communities. From the standpoint of immigrant communities, the general public, local law enforcement executives and other local officials, it does not matter which particular DHS program may have resulted in the deportation of a person who is apparently innocent of any criminal violations or is a minor offender.** This can be especially true in some immigrant communities, where people may be unaware of any distinction between their local police and federal enforcement agents, and where some

---

<sup>14</sup> The 287(g) program “allows a state and local law enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement (MOA). The state or local entity receives delegated authority for immigration enforcement within their jurisdictions.” See <http://www.ice.gov/287g/>.

<sup>15</sup> The Criminal Alien Program identifies, processes and removes criminal aliens incarcerated in federal, state and local prisons and jails throughout the U.S. See <http://www.ice.gov/criminal-alien-program/>.

residents may have come from nations that have a history of undemocratic institutions, as well as police corruption and oppression.

## **Recommendations**

**1. Increase transparency and clarify what the Secure Communities program is and how it works.** ICE must clarify the parameters and goals of the Secure Communities program, as well as the rights and responsibilities of the state and local law enforcement agencies that participate in the program (and are expected to provide accurate information about implementing the program at the local level).

**2. Clarify the role of states and local jurisdictions in Secure Communities.** This includes a frank and open discussion of any agreements between ICE and the FBI, the agreements between states and the FBI, and whether it is technologically possible and legally permissible to prevent fingerprints or other information submitted to the FBI from being sent to ICE. DHS should clarify the statutory authority it relies upon to assert that local participation in Secure Communities is mandatory. DHS should work collaboratively with states and local jurisdictions to address their concerns about participating in Secure Communities.

**3. Increase consistency among immigration enforcement programs:** DHS should develop consistent principles and procedures so that all immigration enforcement and removal programs, particularly those involving state and local law enforcement, are implemented consistently across the U.S. This must include enforcement actions taken not only by ICE but also by the other immigration components of the Department of Homeland Security that have the authority to initiate removal proceedings: Customs and Border Protection, and US Citizenship and Immigration Services. The thrust of the recommendations in this report should apply not only to Secure Communities, but to all DHS enforcement initiatives, including the 287(g) program, the Criminal Alien Program, and any other enforcement programs that involve local law enforcement agencies.

**4. Work with state and local officials to develop trust in Secure Communities:** Secure Communities has been sharply criticized in some state and local communities in recent months, and DHS has announced several new initiatives regarding Secure Communities, including policy statements by ICE Director Morton to ICE employees, a new system for handling complaints of biased enforcement or misconduct by enforcement officials, plans for training of state and local police by DHS regarding Secure Communities, and a large-scale review of cases already in the deportation “pipeline” to focus on high-priority cases and suspend or close the cases of persons

categorized as low priority for deportation. All of this has created an impression that Secure Communities is currently a program in a great deal of flux.

Thus, the Task Force believes that this is a good time for DHS to consider several steps aimed at rebuilding trust in Secure Communities, so that it will receive stronger support from the public, from the ICE employees who implement it on a daily basis, and from the local governments and local officials who are seen, fairly or unfairly, as the “gateway” to immigration enforcement. These steps include:

- Devising oversight and management mechanisms to ensure that DHS’s stated priorities are adhered to in the field, and that prosecutorial discretion produces the appropriate focus on serious offenders, not only in Secure Communities but in all DHS enforcement programs;
- Establishing a more comprehensive system for monitoring the implementation of Secure Communities;
- Consolidating existing policy documents into a single document that defines Secure Communities and other DHS enforcement programs in clear, understandable language aimed at the general public as well as the state, local, and federal officials who have a role in implementing Secure Communities;
- Conducting a nationwide educational campaign, in a number of different languages, to bring that information to the public, including the use of radio, television, newspapers, and social media used by immigrant communities and the general public;
- Providing state and local communities with useful statistics, consistently presented, on a monthly basis regarding the persons identified through Secure Communities and other DHS enforcement programs who are being subjected to removal from the United States or lesser enforcement actions, and the reasons why those persons were chosen for enforcement actions.

## **II. Perceived Inconsistencies Between Secure Communities’ Stated Goals and Outcomes**

### **Findings**

**1. Secure Communities has resulted in the arrest and deportation of minor offenders and non-criminals.** Secure Communities has sometimes been presented



as a program intended to focus on “the worst of the worst,”<sup>16</sup> and “the most dangerous and violent offenders.”<sup>17</sup>

The Task Force’s public hearings, other hearings, and news media accounts have produced many stories of deportations of persons who had violated no law other than a civil immigration violation and who did not apparently fall into ICE’s other categories of priorities for enforcement. The apparent “disconnect” between the DHS documents describing a tight focus on dangerous criminal offenders and the actual operation of Secure Communities has led to criticism of the program and is a key reason for opposition to the program in a number of cities, counties, and states.

## **2. Among some members of state and local law enforcement, as well as the general public, there is confusion about how ICE enforces its stated priorities:**

ICE’s most recent and complete statement of its removal priorities is found in a memorandum from ICE Director John Morton of March 2, 2011. It sets forth the following priorities:

- **Priority 1. Aliens who pose a danger to national security or a risk to public safety.**

Under Priority 1, ICE defines 3 levels of crimes to gauge the risk to public safety or national security. The highest priority for enforcement, “Level 1 Offenders,” consists of persons who have been convicted of at least one aggravated felony, or two or more felonies. “Level 2 Offenders” are those who have been convicted of any felony, or three or more misdemeanors. The lowest subcategory within this priority for enforcement actions, “Level 3 Offenders,” covers those convicted of fewer than three misdemeanors. Furthermore, the March 2 memorandum by Director Morton to ICE employees notes that “some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.”

- **Priority 2. Recent illegal entrants**

ICE describes this category as persons “who have recently violated immigration controls at the border, at ports of entry, or through knowing abuse of the visa and visa waiver programs.” ICE’s explanation of Priority 2 is that recent illegal entrants deserve a high level of priority “in order to maintain control at the border

---

<sup>16</sup> U.S. Immigration and Customs Enforcement, ICE Fiscal year 2008 Annual Report 5 (2008).

<sup>17</sup> U.S. Immigration and Customs Enforcement, *Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens*. January 2010. Available at [www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf](http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf).

and ports of entry,” and to avoid a return to the practice known as “catch and release.”

- **Priority 3. Aliens who are fugitives or who have otherwise flouted immigration controls**

Fugitives, as the term is used by ICE, are persons who have received a final and enforceable order of removal but who did not surrender to ICE for actual removal or otherwise depart from the country. ICE elaborates on Priority 3 by listing categories of fugitive aliens, in descending order of priority, including: fugitives who pose a danger to national security; fugitives who have been convicted of violent crimes; fugitives who have convictions for other crimes; etc. This priority also covers persons who reenter the country illegally after removal, whether or not they are federally prosecuted for that act.

This memorandum was intended as an authoritative statement of ICE’s removal priorities by the Director, but it stands in tension with statements in earlier Secure Communities documents and MOAs, summarized above, that speak of focusing on violent offenders or the “worst of the worst.”

### **3. Local police practices vary greatly regarding information submitted**

**electronically upon booking.** Not all law enforcement agencies submit the fingerprints of everyone they arrest to the FBI; some jurisdictions have categories of minor offenses that result in the issuance of citations or summonses, rather than a full-custody arrest. Some observers have questioned why local agencies that are concerned about Secure Communities do not simply adjust their own policies, limiting the amount of information they send to the FBI regarding persons arrested at the local level for minor offenses. Essentially, if these low-priority arrestees’ fingerprints are not sent to the FBI, they could not be forwarded to ICE through Secure Communities for immigration enforcement purposes. However, a number of law enforcement experts have explained that that is not a realistic option. Failing to submit fingerprints would negatively impact crime control at the local level, because some individuals arrested for low-level offenses may have serious criminal histories or outstanding warrants for serious crimes that would not come to the attention of law enforcement officials if their fingerprints and information were never sent to the FBI. Thus, withholding fingerprints and forgoing FBI criminal background checks would hurt public safety and would subject law enforcement agencies to public criticism. The same experts noted that information from immigration databases that pertains to identity and past criminal activity and criminal warrants can be valuable for public safety and crime control.

## Recommendations

**1. ICE must reaffirm its enforcement priorities and ensure that Secure Communities adheres to these stated goals:** ICE should reaffirm that the Secure Communities program's highest priority is to identify and remove aliens "who pose a danger to national security or a risk to public safety."<sup>18</sup> Mere fingerprinting by a local law enforcement agency is not sufficient indication in itself that a person poses such a threat.

**2. "Prosecutorial discretion": DHS must ensure systematic exercise of prosecutorial discretion in all cases by its enforcement personnel.** DHS policy is clear that agency employees have the authority to determine on a case-by-case basis whether or not to initiate a specific enforcement action, even if the person appears to have violated federal immigration law. On June 17, 2011 ICE issued two memos regarding the use of prosecutorial discretion.<sup>19</sup> The Morton Memo on Prosecutorial Discretion calls on ICE attorneys and employees to "regularly exercise" prosecutorial discretion in order to prioritize ICE's overall enforcement efforts and expend the agency's limited resources on persons who are higher enforcement priorities. It notes as generally positive factors that should "prompt particular care and consideration" before taking enforcement action: veterans and members of the armed forces, long-time lawful permanent residents, minors and the elderly, and individuals present in the United States since childhood, among others. Morton's second memo focuses on exercising discretion in cases involving victims, witnesses to crimes, and plaintiffs in good faith civil rights lawsuits. In a letter to Senate Majority Leader Harry Reid dated August 18, 2011, Secretary Napolitano made it clear that the June 17 standards are Department-wide priorities "that govern how DHS uses its immigration enforcement resources." That letter went on to describe the launch of an interagency process that will "clear out low-priority cases" in the current deportation caseload.

**In accordance with the March 2011 Morton memo on agency priorities, the June 17, 2011 Morton memo on prosecutorial discretion, and the August 18, 2011 announcement by Secretary Napolitano, DHS should consider the totality of the circumstances in reviewing individual cases and in deciding whether to take**

---

<sup>18</sup> Morton March 2, 2011 memorandum.

<sup>19</sup> See John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, U.S. Immigration and Customs Enforcement (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>; and *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, U.S. Immigration and Customs Enforcement (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.

**enforcement actions, including whether to issue detainers, take individuals into custody, initiate removal proceedings or proceed to deportation.**

Another factor that should be taken into consideration is whether an individual is indigent and deportable as a result of a guilty plea or conviction for which he or she had no appointed counsel. The Task Force heard testimony that immigrants often plead guilty to minor offenses without understanding that those guilty pleas may result in deportation.

It should be noted that there is nothing unusual about DHS's use of prosecutorial discretion in immigration enforcement. 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, as envisioned in the June 17, 2011, memorandum from Director Morton and the August 18, 2011, letter from Secretary Napolitano, 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.

**3. DHS must train and support its own personnel in exercising discretion, and should consult with the field and ICE's own subject matter experts in developing future policies:** The March 2011 and June 17, 2011 Morton memos and the August 18, 2011, announcement should be the basis for developing training for DHS personnel. DHS should take additional steps to assure effective implementation in all field offices with authority to initiate enforcement action, not only for ICE but also for CBP and USCIS. DHS should fully engage and coordinate with its personnel to assist in operationalizing policies and implementing recommendations and other changes. Specifically, DHS should:

- Issue more detailed guidance, checklists or worksheets for use by front-line officers in deciding what is appropriate enforcement action, including issuing detainers, setting bond, and making similar decisions. This guidance should be supported by technology where possible to promote consistency and uniformity and to reduce time spent on paperwork;
- Develop detailed training for officers and attorneys on the prosecutorial discretion process and criteria;
- Establish monitoring and quality control procedures and mechanisms;
- Take steps to assure that officers and attorneys who reasonably exercise their prosecutorial discretion in accordance with agency guidance will be supported by their supervisors and DHS leadership if the decision becomes controversial; and

- Consult with ICE personnel in the field and other agency subject matter experts in developing future policies and guidance.

**4. ICE must improve data collection and be more transparent:** To promote transparency and alleviate confusion, ICE should strengthen the comprehensiveness of its data and continue to distribute information that allows the public to track the implementation and adherence to the stated goals of Secure Communities, including those described in the memos of March 2011 and June 17, 2011 and the August 18, 2011 letter from Secretary Napolitano to Senate Majority Leader Reid. ICE should consider revising the current statistical categories to more accurately capture ICE enforcement and removal activity.

ICE should consider expanding to all states the practice it employs in Colorado, where a panel of state officials, under the direction of the Governor, crafted an agreement to help the state monitor actions under Secure Communities and their impact on state priorities under state law. Under the agreement, which ICE accepted, ICE provides the state with quarterly reports detailing whether identified individuals have been convicted of crimes or are in a noncriminal category of other ICE enforcement priorities. ICE also committed to ensuring that illegal immigrants who come to the attention of police because they are victims of domestic violence or other crimes will be protected.<sup>20</sup>

### **III. Minor Traffic Offenses and Misdemeanors**

#### **Findings**

Secure Communities must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement agencies. Immigration enforcement against traffic offenders and others arrested only for minor offenses poses the greatest risks of undermining community policing. Some members of the Task Force see an equal risk in all misdemeanor-based enforcement. In that light, the Task Force carefully considered a variety of issues regarding Secure Communities' treatment of persons arrested for traffic violations or

---

<sup>20</sup> "Colorado's pact with ICE becoming national template." *Denver Post*, August 13, 2011. [http://www.denverpost.com/news/ci\\_18673491](http://www.denverpost.com/news/ci_18673491)

other misdemeanors. Some members believe that fairly extensive restrictions on immigration enforcement against such categories are necessary to salvage the integrity of the program, while other members are keenly aware of the difficult trade-offs involved in the curbing of immigration enforcement against any immigration law violators identified through Secure Communities. As there remain differences of view among members regarding the full range of changes that should be undertaken, the recommendations below include both those that had consensus among the Task Force members and one that did not, with the differences noted.

### **Recommendations:**

#### **1. Withhold ICE enforcement action based solely on minor traffic offenses, and consider alterations, including conditional detainers, for other minor offenses:**

- Absent information that an individual falls into a higher category of enforcement priorities set forth in the March 2, 2011 memorandum, or poses a national security or public safety risk, ICE should not issue detainers or initiate removal proceedings on persons identified through Secure Communities based on arrests for minor traffic offenses. Importantly, the category of minor traffic offenses should *not* include driving under the influence, hit-and-run, or reckless driving resulting in injury to persons, or other violations that have the potential of causing serious injury or harm to the public.
- ICE should consider extending such treatment to include other minor misdemeanors.<sup>21</sup> If ICE decides not to accept this recommendation, it should issue conditional detainers on persons who are arrested for such misdemeanors. The conditional detainer would become fully operational only if the person is actually convicted of the offense. (In this sense, it would amount to a “post-conviction model.”) Such a policy would discourage minor arrests undertaken only to channel noncitizens into the ICE system, when the local jurisdiction has no real intention to expend its own prosecutorial and judicial resources on such a case. It would therefore reduce the risk of racial profiling or other distortions of standard arrest practices followed by arresting or correctional officers. ICE should further consider other exercises of prosecutorial discretion for such individuals, such as deferred action in accordance with existing memoranda or under the new procedures being

---

<sup>21</sup> The Task Force’s tasking document, Appendix A to this report, specifically mentions loitering as just one example of a minor misdemeanor that is not a traffic offense.

developed to implement the August 18, 2011 announcement of a more systematic exercise of prosecutorial discretion.<sup>22</sup>

- A significant percentage of Task Force members further believe that ICE should not issue detainers or initiate removal proceedings on persons identified through Secure Communities based on arrests for *any* misdemeanors that do not pose a public safety or national security risk. If ICE does not accept this recommendation, those members believe that it should consider issuing conditional detainers and other exercises of prosecutorial discretion as discussed above. Other Task Force members believe that this proposal goes too far, in part because of variations in local laws that can result in significant offenses being classified as misdemeanors.
- Several Task Force members are concerned that many individuals are identified by Secure Communities for enforcement action based on past civil immigration offenses. This means that communities will continue to perceive Secure Communities as a program that targets traffic violators or low-level offenders if any arrest for even a minor offense may result in deportation. Several other Task Force members, however, believe that it is appropriate for ICE to engage in enforcement in these circumstances, in accordance with the March 2011 priorities.

## **2. Continue fingerprint checks:**

If a law enforcement agency chooses to send the fingerprints of persons arrested for minor traffic offenses or minor misdemeanors to the FBI, those fingerprints should continue to be checked against immigration databases. The purpose of these checks is to reveal aliases and also to identify persons who have prior criminal convictions or other factors that indicate the person poses a serious risk to public safety or national security, or who come within the higher immigration enforcement priorities, such as persons who returned to the United States without permission after a prior removal.

---

<sup>22</sup> See memorandum on prosecutorial discretion by ICE's then principal legal advisor William J. Howard on October 24, 2005; Available online at <http://www.scribd.com/doc/22092975/ICE-Guidance-Memo-Prosecutorial-Discretion-William-J-Howard-10-24-05>.

## IV. Unintended Consequences of Secure Communities on Community Policing and Community Impact

### Findings

**1. Secure Communities has had unintended local impacts.** Secure Communities and other federal enforcement and removal programs do not operate in a vacuum. In many localities, police leaders have said that immigration enforcement policies are disrupting police-community relationships that are important to public safety and national security. Law enforcement experts have stated that the trust that exists between police and immigrant communities can take years to develop and can remain tenuous despite the hard work of local law enforcement agencies. When communities perceive that police are enforcing federal immigration laws, especially if there is a perception that such enforcement is targeting minor offenders, that trust is broken in some communities, and victims, witnesses and other residents may become fearful of reporting crime or approaching the police to exchange information. This may have a harmful impact on the ability of the police to build strong relationships with immigrant communities and engage in community policing, thereby negatively impacting public safety and possibly national security. To the extent that Secure Communities may damage community policing, the result can be greater levels of crime. If residents do not trust their local police, they are less willing to step forward as witnesses to or victims of crime. As a result, some Task Force members believe that decisions by local jurisdictions regarding participation in Secure Communities should be honored.

**2. Ensure that protections exist for crime victims and witnesses, and victims of domestic violence.** Much of the fear within immigrant communities stems from concerns that immigrants are putting themselves or their family members in danger of deportation if they contact authorities to report crimes as victims or witnesses. The Task Force notes that Secure Communities was designed to minimize any such fear, because it obtains information only on persons arrested and fingerprinted, not on others who may have contact with police. ICE's June 17 memorandum regarding victims and witnesses to crime provides valuable guidance to help reduce the impact of ICE enforcement programs on the willingness of crime victims and witnesses to call the police and cooperate in criminal investigations. Secure Communities also operates in the context of other important protections for victims and witnesses developed in recent years through statutes, regulations, and guidance—including the Violence Against Women Act, and the provisions for T and U visas for victims of trafficking or criminal abuse helping with investigations or prosecutions.



**3. Make certain that local police receive timely information.** It is important for state and local law enforcement to continue to be able to identify arrestees and to determine their criminal histories by submitting their fingerprints to the FBI. It may also be important for state and local law enforcement to receive back from ICE some information about the arrestees—for example, information that an arrestee is on a terrorist watch list, information on aliases used by the arrestee, or information that may be helpful in determining whether the arrestee is a member of a certain gang. However, some law enforcement experts indicated that not all types of information about an individual's immigration status are relevant to a law enforcement agency's mission of ensuring public safety.

**4. Current complaint procedures are inadequate.** Individuals in jurisdictions with Secure Communities who feel they have been inappropriately profiled or subjected to other civil rights violations or abuse need to be able to report these complaints to the proper authorities. In order for ICE's existing protections to have integrity, community members also need to believe that complaints will be taken seriously—that they will be investigated within a reasonable timeframe, that any investigation will be transparent, and that there will be significant consequences for civil rights violations. The Secure Communities complaint procedure requires individuals to file complaints with the DHS Office for Civil Rights and Civil Liberties (OCRCL).<sup>23</sup> However, the complaint procedure has not been well publicized, and individuals may not be aware that they were identified through the Secure Communities program and may not have access to complaint forms or the internet. Furthermore, OCRCL's jurisdiction, authority, and capacity to respond to complaints are limited, yielding uncertain results.

## Recommendations

**1. Secure Communities must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement agencies.** One critical element is ensuring that the program adheres to its stated priorities and goals, as discussed above. Another critical element is recognizing that the goals of civil immigration enforcement and those of law enforcement agencies are not always aligned and may sometimes be contradictory. DHS must be flexible in its implementation of any program involving law enforcement agencies to minimize the risk that its goals might undermine those of local law enforcement or work against community safety.

---

<sup>23</sup> See June 14, 2011 memo from Margo Schlanger to ICE and CRCL personnel regarding Secure Communities complaints. <http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf>.

Furthermore, ICE should develop training programs and written materials for law enforcement agencies and local communities that explain and clarify the Secure Communities and other DHS enforcement programs and the role of law enforcement agencies. DHS should enhance its transparency and credibility by strengthening education and outreach to state and local law enforcement and communities to help them better understand all DHS enforcement and removal programs. DHS must also be willing to adjust its enforcement programs to minimize the risk that they will adversely impact local law enforcement efforts.

**2. Victims and witnesses to crime and victims of domestic violence must not be subject to immigration enforcement actions:** Every effort must be made to ensure that crime victims and witnesses, particularly in domestic violence cases, are protected against unwarranted immigration enforcement actions, as outlined in Director Morton's June 17, 2011 memo. DHS should further establish systematic mechanisms to ensure that the instructions set forth in the June 17, 2011 prosecutorial discretion memo are adhered to by all DHS enforcement personnel.

**3. Tailoring the information provided to local police:** In terminating the MOAs on August 4, 2011, ICE stated that local jurisdictions still have an option with regard to the information they receive back on the basis of the DHS database checks. ICE personnel should work closely with participating law enforcement agencies to tailor the immigration information it returns to law enforcement agencies to transmit only relevant information. Law enforcement agencies will then be able to define the information that they consider relevant to their criminal law enforcement objectives. Furthermore, ICE should not send law enforcement agencies any immigration database "hit" information on persons who are naturalized U.S. citizens.

**4. The complaint process must be meaningful and accessible:** DHS enforcement programs should include a meaningful, confidential, and accessible complaint process for individuals who feel they have received unfair treatment. DHS should consider the role of the Department of Justice (DOJ) in investigating complaints of improper policing tied to Secure Communities.

**5. Remedial measures to prevent abuse:** ICE should monitor the impact of immigration enforcement policy at the state and local levels, with regard to unconstitutional arrests and unlawful detention past 48 hours on expired detainers. ICE should enhance mechanisms, including data collection and analysis, for detecting inappropriate use of ICE enforcement and removal programs to support or engage in biased policing, and should establish effective remedial measures to stop any such

misuses and avoid becoming a conduit for unlawful practices.

**6. ICE should consider establishing, as a pilot initiative in a selected jurisdiction, an independent, multi-disciplinary panel to review specific cases:** ICE should consider implementing a process that would allow for an independent, multidisciplinary group of law enforcement and community members to routinely review a random sampling of cases that were initiated through the Secure Communities program to ensure that these cases represent ICE's stated enforcement priorities. The panel should reflect the makeup of its jurisdiction, and panel members should have credibility with the stakeholders they represent. This panel should have the authority to initiate reviews of any cases that are brought to the panel's attention that raise questions or concerns about how ICE is implementing prosecutorial discretion. The findings from these reviews should be made public, and the panel should be able to make specific case recommendations to ICE. ICE should report on whether the panel's recommendations were implemented or not. This type of local monitoring could help ensure the transparency of Secure Communities and rebuild trust in the program.

## **V. The Question of Whether to Suspend Secure Communities**

The Task Force reached agreement on the large majority of issues pertaining to Secure Communities. **However, there was one significant area in which agreement was not reached, namely, whether the Secure Communities program should be immediately suspended until DHS has had an opportunity to consider and implement reforms, or even terminated. The Task Force was split on this question, with roughly half of the members in favor of some degree of suspension or termination of Secure Communities, and the other half believing that reforms are necessary but that the program out of necessity must continue to function.**

More specifically, many Task Force members believe that DHS should suspend the expansion of Secure Communities to any new jurisdictions until DHS can consider the reforms recommended in this report, and implement the recommendations it accepts. Those Task Force members believe that it makes little sense to expand a program that many community leaders and elected officials consider deeply flawed, especially as to its impact on community policing and civil rights. In addition, a number of Task Force members believe that DHS should suspend immigration enforcement

actions against low-level offenders, pending consideration and/or implementation of reforms. Those members believe that by suspending the program, DHS would acknowledge that significant reforms must be made, and that until that is accomplished, Secure Communities will lack credibility. Finally, some Task Force members believe that the credibility of Secure Communities has been so severely damaged that it cannot be repaired and therefore should be terminated.

On the other hand, Task Force members who oppose any suspension or termination of Secure Communities adhered to a different view, that “DHS needs to fix this airplane while it is still flying,” as one member expressed it. A number of members noted that DHS has limited resources and must have some strategy for focusing immigration enforcement on certain immigration violators. Considering that other strategies such as workplace enforcement actions may result in greater levels of arbitrariness, Secure Communities offers a way to focus resources on those who have run afoul of the criminal justice system, and is thus a sensible approach, those members said. Because of the above reasons, and because Secure Communities has resulted in the deportation of many dangerous offenders who were in the United States illegally, many state and local law enforcement agencies and elected officials support Secure Communities. Others agree with the DHS legal position that the information-sharing facilitated by Secure Communities’ interoperability is mandated by Congress, and therefore, suspension or termination may be legally impossible. Several members noted that there is a risk that any suspension of Secure Communities might result in the failure to detain or deport a person who later would commit a serious crime.

## **CONCLUSION**

**Although Secure Communities has resulted in the identification and removal of many individuals posing a risk to public safety, serious concerns have been raised about the program, including its design, activation, implementation and unintended negative impact on local communities. The findings and recommendations set forth in this report are intended to identify and remedy those concerns. The Task Force believes that ICE must take a more comprehensive approach to ensuring that Secure Communities is well understood by local law enforcement agencies and communities. In order to achieve that, ICE must take a less technical approach to Secure Communities and recognize that the entire process – from arrest to deportation – is inherently associated with the data sharing component of the program. There is strong consensus within the Task Force—and across the nation—that it is important that ICE continue to take enforcement action against serious criminal offenders. At**

**the same time, mixing individuals who have no criminal convictions or who have only low-level convictions with serious offenders is having the unintended consequence of undercutting the credibility of the entire Secure Communities program. The systematic and professional use of prosecutorial discretion is the key to regaining public support and to making the best use of limited resources. In order for the Secure Communities program to regain public trust and confidence, DHS must review these recommendations and reintroduce the program in close cooperation with local communities and police leaders.**

The Task Force recognizes DHS Secretary Janet Napolitano for taking the initiative to form the Task Force, and thanks Mr. Morton and the other DHS officials who made presentations to us and provided information we requested. The Task Force urges DHS and ICE to continue soliciting views about Secure Communities from a wide range of stakeholders, especially from the state and local government officials who play a key role in Secure Communities.

We urge DHS and ICE to give serious consideration to these findings and develop a plan to implement the recommendations. Specifically, the Task Force requests that DHS and ICE prepare a written response to the Task Force that addresses the extent to which the recommendations in this report will be implemented, and the reasons why specific recommendations may not be acted upon. Moreover, the DHS Office of Inspector General and the Government Accountability Office (GAO) are currently engaged in a review of Secure Communities. Their findings will provide additional recommendations to ICE and should be carefully considered and incorporated into the program.

## Appendix A

### Homeland Security Advisory Council Task Force on Secure Communities: Tasking Document

Secure Communities is one of the Department's most important tools to ensure that the federal government's limited immigration enforcement resources are used in the most effective way possible to improve public safety.

As a matter of policy, Secure Communities should **advance** U.S. Immigration and Customs Enforcement (ICE) priorities, **namely protecting public safety and national security, border security, and the integrity of the immigration system.**

Concerns have been expressed regarding the identification and removal, **through Secure Communities**, of aliens charged with, but not convicted of, minor traffic offenses who have no other criminal history or history of immigration violations. Some of these concerns relate to the impact on community policing and the possibility of racial profiling. One possible avenue for potentially addressing some of these concerns could be a policy that would await conviction prior to removal for those charged with low level traffic offenses (excluding driving under the influence, hit and run, and other traffic offenses affecting public safety) or other minor misdemeanor offenses who have no outstanding orders of removal or history of immigration violations.

The Task Force on Secure Communities (TFSC) will review the extent to which those concerns are borne out in the field and provide substantive, actionable recommendations to the Homeland Security Advisory Council (HSAC) on how substantive contours of Secure Communities policy could be formulated to address valid concerns, including recommendations on policy changes and the best procedural way to implement any policy changes.

Specifically, the Task Force will address the following questions:

- How should Secure Communities address those arrested for minor traffic offenses?
- What traffic offenses should be considered minor?
- Does the identification of minor traffic offenders through Secure Communities influence community policing or the reporting of crimes?
- Are there other misdemeanor offenses such as loitering that should be treated as a minor offense?
- How should the implementation of **any** policy with regard to minor traffic offenders or other minor criminal offenders be announced to and coordinated with state and local law enforcement agencies?

## Appendix B Subject Matter Experts

<b>Name</b>	<b>Title, Organization</b>
<b>Gaby Benitez</b>	Tennessee Immigrant & Refugee Rights Coalition
<b>Miguel Carpizo</b>	Tennessee Immigrant & Refugee Rights Coalition
<b>Alphonso David</b>	Deputy Secretary for Civil Rights, Office of the Governor, New York
<b>Ed Davis</b>	Commissioner, Boston Police
<b>Elizabeth Glazer</b>	Deputy Secretary for Public Safety, Office of the Governor, New York
<b>Enid Gonzalez</b>	Attorney, CASA de Maryland
<b>Seth Grossman</b>	Chief of Staff, Office of the General Counsel, DHS
<b>Jon Gurule</b>	Acting Chief for the Secure Communities Unit, ICE, DHS
<b>Greg Hamilton</b>	Sheriff, Travis County, Texas
<b>Mary Beth Heffernan</b>	Secretary of Public Safety and Security, Massachusetts
<b>Aarti Kohli</b>	Director of Immigration Policy, Warren Institute, Berkeley School of Law
<b>Scott C. Kroeber</b>	Commander, Los Angeles Police Department
<b>Gary Mead</b>	Executive Associate Director for Enforcement and Removal Operations, ICE, DHS
<b>Marc Rapp</b>	Acting Assistant Director, Secure Communities Program, ICE, DHS
<b>John Morton</b>	Director, Immigration and Customs Enforcement
<b>Lynn Neugebauer</b>	Supervising Attorney of the Safe Horizon Immigration Law Project
<b>John Sandweg</b>	Counselor to the Secretary of Homeland Security

<b>Margo Schlanger</b>	Officer for Civil Rights and Civil Liberties, DHS
<b>John Schomberg</b>	Governor's General Counsel, Illinois
<b>Peter H. Schuck</b>	Simeon E. Baldwin Professor Emeritus of Law and Professor (Adjunct) of Law at Yale Law School
<b>Donald B. Smith</b>	Sheriff, Putnam County, New York
<b>Jerry Stermer</b>	Governor's Senior Advisor, Illinois
<b>Fred Tsao</b>	Illinois Coalition for Immigrant and Refugee Rights
<b>Jessica M. Vaughan</b>	Director of Policy Studies for the Center for Immigration Studies

#### **HSAC STAFF**

##### Executive Director

Becca Sharp

##### Acting Deputy Executive Director

Mike Miron

##### Interns:

Sarah Martin

Sarah Weiner

Jack Wisnefske

#### **PERF STAFF**

##### Director of Homeland Security

Gerard Murphy

##### Chief of Staff

Andrea Luna

##### Director of Communications

Craig Fischer



## Appendix C

### Task Force Field Meetings: Information Gathering Sessions

**Tuesday, August 9, 2011**

Dallas County Community College  
Bill J. Priest Campus, Hoblitzelle Auditorium  
1402 Corinth Street  
Dallas, Texas 75215  
6:00 p.m. to 8:00 p.m.

**Monday, August 15, 2011**

St. Anne's Residential Facility  
155 North Occidental Boulevard  
Los Angeles, California 90026  
6:00 p.m. to 8:00 p.m.

**Wednesday, August 17, 2011**

IBEW Hall  
600 W. Washington Boulevard  
Chicago, Illinois 60661  
6:00 p.m. to 8:00 p.m.

**Wednesday, August 24, 2011**

George Mason University  
Founder's Hall  
3351 Fairfax Drive  
Arlington, Virginia 22201  
6:00 p.m. to 8:00 p.m.