



**Homeland  
Security**

# **Written testimony of U.S. Immigration and Customs Enforcement Director John Morton for a House Committee on Homeland Security, Subcommittee on Border and Maritime Security hearing titled “Building a Secure Community: How Can DHS Better Leverage State and Local Partnerships?”**

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311 Cannon

## **Introduction**

Chairman Miller, Ranking Member Cuellar, and distinguished members of the Subcommittee:

Thank you for the opportunity to address you today regarding U.S. Immigration and Customs Enforcement (ICE)’s Secure Communities strategy which improves and modernizes the identification and removal of criminal aliens and other high priority aliens from the United States. ICE is the principal investigative arm of the U.S. Department of Homeland Security (DHS), and our 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. Secure Communities is critical to our success in targeting and removing convicted criminals, those who pose a threat to public safety and egregious immigration law violators.

The reality of finite resources requires law enforcement – at all levels – to use resources strategically and wisely to accomplish their mission. Over the past three and a half years, ICE has established clear priorities that focus our enforcement resources on aliens that pose a threat to public safety or national security, repeatedly violate our immigration laws or recently crossed our borders. Secure Communities, utilizes the interoperability between the DHS Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigations (FBI) Integrated Automated Fingerprint Identification System (IAFIS), as a tool to focus the agency’s resources on identifying and apprehending convicted criminals and other high priority aliens.

At the end of Fiscal Year 2009 (FY09), Secure Communities’ use of this federal biometric information sharing capability was deployed to 88 jurisdictions across the nation. That year, only 35 percent of ICE’s removals were of criminal aliens. At the end of FY11, Secure Communities deployed this capability to 1,595 jurisdictions. In FY11, 55 percent of all of ICE’s removals were of criminal aliens – the highest percentage of criminal aliens removed in decades. These successes are a direct result of Secure Communities’ expansion of this federal biometric information sharing capability and highlight the effectiveness ICE’s overall effort to establish clear priorities and focus agency resources.

## **Secure Communities**

### *Overview*

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 aligns with our operational priorities. Unfortunately, ICE’s initial public statements often caused confusion about how Secure Communities works and who is required to participate. Given that there may remain some confusion surrounding Secure Communities, I want to take a moment to clarify what it is, and more importantly what it is not. Secure Communities focuses on improving and modernizing the identification and removal of criminal aliens and other high priority aliens from the United States. The cornerstone of Secure Communities relies on the sharing, between DOJ and DHS, of fingerprints submitted to the FBI by state and local law enforcement agencies for criminal justice purposes. The federal biometric information sharing

that Secure Communities uses typically begins when an individual is arrested and booked on a state or local criminal charges and his or her fingerprints are digitally scanned and transmitted to a State Identification Bureau (SIB). In turn, the SIB submits the fingerprints to the FBI Criminal Justice Information Services Division (CJIS) to check against IAFIS for criminal data.

When fingerprints are submitted to the FBI, they are shared with DHS. If submitted fingerprints match a record in the DHS US-VISIT database, which contains biometrics on individuals who have had prior encounters with immigration officials, ICE Law Enforcement Support Center (LESC) personnel will then query additional DHS databases to determine if the person may be present in violation of U.S. immigration law. LESC personnel also query criminal history databases to compile a more complete criminal history record of current and prior criminal offenses for ICE enforcement personnel to review.

The findings are sent electronically to the local ICE Field Office or a Secure Communities Interoperability Response Center where a determination is made whether to initiate an immigration enforcement action in line with ICE's enforcement priorities. This determination is based on the subject's criminal and immigration history, available ICE resources in the location, and other mitigating circumstances that ICE agents and officers consider when determining whether the individual is an appropriate candidate for prosecutorial discretion. If feasible, based upon the arresting agency's technical capabilities and upon the request of the state, the findings are also made available to the SIB and the law enforcement agency that submitted the fingerprint to aid in clarifying the identity of the subject. Neither the state nor the arresting law enforcement agency, in the absence of formal 287(g) delegated authority from an agreement with DHS, is authorized to take immigration enforcement action against the person arrested. This authority remains solely with DHS.

Secure Communities' use of this information sharing capability does not in any way authorize a state or local agency to enforce immigration laws. The determination to make an arrest is at the sole discretion of the state and local law enforcement officer, acting under the criminal law authority of the jurisdiction in which they operate. Not every person arrested will be subject to a Secure Communities' IDENT/IAFIS Interoperability query. Only when state or local law or policy prescribes that the fingerprints be taken from an individual in custody for a criminal charge and then be submitted to the FBI's IAFIS database will that individual's fingerprints be checked against DHS's immigration databases. Even when an individual's fingerprints are submitted, ICE may choose not to take action if the individual does not meet ICE enforcement priorities. While state and local law enforcement officials decide whom to arrest and whether to submit fingerprints to the FBI, when there is a biometric match through Secure Communities' use of this information sharing capability an ICE official reviews both the criminal record and the immigration history and then determines if an immigration enforcement action is warranted in light of ICE's enforcement priorities.

Only those fingerprints submitted to the FBI in relation to a criminal charge are subject to Secure Communities' use of IDENT/IAFIS interoperability. By comparison, prints submitted to the FBI as part of a background check for employment or other non-criminal purposes are not subject to Secure Communities' use of IDENT/IAFIS interoperability.

### *Improvements to Secure Communities*

In 2011, as part of the Administration's continued commitment to smart, effective immigration enforcement, ICE announced key improvements to IDENT/IAFIS interoperability through Secure Communities, including:

**Advisory Committee Input:** In light of the confusion about how Secure Communities works and who is required to participate that had been created by certain ICE statements, a Task Force of 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 threat to public safety or national security and how to address some of the concerns that "relate to [its] impact on community policing and the possibility of racial profiling."

This Task Force issued a report of Findings and Recommendations. ICE appreciates the Task Force's diligent work in preparing their Report, which ICE took seriously. In response to it, ICE then conducted a detailed review of the Report, and in April 2012 issued its response highlighting key improvements to Secure Communities. In this response, ICE adopted a new policy regarding individuals arrested for minor traffic offenses. Under this policy, ICE will only consider issuing detainers for individuals arrested solely for minor traffic offenses who have not been previously convicted of other crimes and do not fall within any other ICE priority category, upon conviction for the minor criminal traffic offense. This new policy will help focus ICE resources on those who pose a threat to public safety or national security, as well as repeat or egregious immigration law violators and recent border crossers. It is also designed to create a disincentive for local law enforcement from making pretextual arrests of traffic violators.

**Issuance of prosecutorial discretion guidance:** On June 17, 2011, I issued a memorandum providing guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise discretion when appropriate. This long-standing

authority is designed to help ICE better focus on meeting the priorities of the agency and to use ICE's enforcement resources to target criminals and those that put public safety at risk. The memorandum applies fully to any enforcement action taken with respect to individuals identified through Secure Communities' use of IDENT/IAFIS interoperability.

The memorandum 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 developed an intensive practical training module for its attorneys and field leadership on the proper exercise of prosecutorial discretion. I have also personally visited many of our field offices to speak with both ICE officers and attorneys about the guidance memo and its proper implementation. These proactive measures reflect our firm commitment to effectively prioritizing our immigration cases.

**Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs:** At the direction of the 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 afforded the legal protections for which they may be eligible. ICE is also working to develop additional tools, such as a risk classification assessment tool to be used during intake into detention, to help identify people who may be victims, witnesses, or members of a vulnerable class so that officers can exercise discretion as appropriate. The memorandum also applies fully to any enforcement action taken with respect to individuals identified through Secure Communities' use of IDENT/IAFIS interoperability. .

**Outreach to states:** ICE and the DHS Office for Civil Rights and Civil Liberties (CRCL) have developed a series of briefing and awareness materials for state and local law enforcement agencies to provide clear information about how Secure Communities works and how it relates to laws governing civil rights. The briefings take the form of a series of videos and supplemental materials, which include input from law enforcement and community groups, to be shown to local law enforcement during daily roll-call and during other trainings. Three of the eight planned modules—those on Secure Communities, immigration detainees, and consular notification—have been released and can be viewed on the ICE web site. The remaining modules are expected to roll out through the end of 2012.

**Issuance of a revised detainer policy:** ICE has revised the detainer form that ICE sends to local jurisdictions to emphasize the longstanding guidance that upon receipt of a detainer subject to which an alien is to be held, state and local authorities are not to detain an individual for more than 48 hours beyond the time when the individual would have otherwise been released from state or local custody, excluding weekends and holidays. The form also requests that local law enforcement officials provide arrestees with a copy, which includes information in several languages on how to file a complaint if an individual believes their civil rights have been violated or that they have been the victim of a crime, or that they are able to make a claim of U.S. citizenship, which can be directed to a new 24-hour hotline answered by the ICE Law Enforcement Support Center.

**Complaints:** ICE takes seriously complaints raised about civil rights violations related to Secure Communities. As a part of our commitment to ensure that Secure Communities appropriately fulfills its mission, ICE has worked with CRCL to publicly explain, through a series of town halls and on both ICE and CRCL's websites, the protocol for addressing complaints raised about civil rights violations related to Secure Communities, including complaints regarding state and local law enforcement actions. CRCL has opened investigations under that framework. In addition, ICE's Public Advocate, who works directly for the Executive Assistant Director of Enforcement and Removal Operations (ERO), is available to assist individuals and community stakeholders in resolving complaints and concerns with agency policies and operations, including concerns with Secure Communities.

**Statistical review:** ICE and CRCL have created an ongoing quarterly statistical review of data generated through Secure Communities' use of IDENT/IAFIS interoperability. This review examines data for each jurisdiction where Secure Communities' use of IDENT/IAFIS interoperability is deployed to identify any indications of anomalous arrest patterns that may indicate bias. 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](http://www.ice.gov/secure_communities). The page also contains links to the various initiatives associated with Secure Communities.

### *Enhancing the Effectiveness of Secure Communities*

On March 27, 2012, the DHS Office of the Inspector General (OIG) issued two audit reports on Secure Communities: (1) *"Effectiveness of U.S. Immigration and Customs Enforcement's Secure Communities"* and (2) *"Communication Regarding Participation in Secure Communities."* Overall, the OIG determined that Secure Communities was effective in identifying criminal aliens and, in most cases; ICE officers initiated enforcement actions according to agency enforcement policy. OIG also

found that ICE did not intentionally mislead the public or state and local jurisdictions during implementation of Secure Communities and its use of IDENT/IAFIS interoperability.

In the first report, on effectiveness, OIG determined that ICE expanded its ability to identify criminal aliens in geographical areas not covered by its other programs. In addition, the report found that ICE was able to identify criminal aliens earlier in the justice process, some of whom it would not have identified under other programs. Through use of existing technical capabilities, Secure Communities' use of IDENT/IAFIS interoperability was implemented at little or no additional cost to local law enforcement jurisdictions. In that report, OIG made two recommendations to improve ICE's overall management of Secure Communities. To improve the transparency and thoroughness of its processes under Secure Communities, OIG noted that ICE needs to: (1) eliminate the duplication of research; and (2) ensure that officers fully document their actions. ICE concurred with both recommendations and is taking action to implement them.

In the second OIG report, regarding communications, OIG indicated that it did not find evidence that ICE intentionally misled the public or state and local jurisdictions during implementation of Secure Communities. OIG did note that ICE did not clearly communicate to stakeholders the intent of Secure Communities and their expected roles and made recommendations to ensure that expected participation is clearly communicated for Secure Communities and future ICE programs and initiatives.

In response to these recommendations ICE has also addressed the roles and responsibilities of ICE senior leadership and coordination with the Department regarding future immigration enforcement program development and implementation. Additionally, ICE has taken steps to respond to criticism about Secure Communities implementation, and to understand how the lessons learned about the importance of clear, effective communications about enforcement programs goals and objectives can guide future immigration enforcement program development and implementation.

## Conclusion

Secure Communities serves a critical role in ICE's overall effort to focus agency resources on criminal aliens, repeat immigration violators, and recent border crossers. I again thank the Committee for its continued support and the opportunity to share with you the good work of U.S. Immigration and Customs Enforcement. I am proud of the work our ICE teams do each and every day all around the world to help strengthen and secure our homeland and make our communities safer. On behalf of the men and women of ICE, I thank you for the opportunity to testify on these efforts. I would now welcome any questions you may have.

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