



AMERICAN IMMIGRATION LAWYERS ASSOCIATION

AN AFFILIATED ORGANIZATION OF THE AMERICAN BAR ASSOCIATION

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TESTIMONY OF THE WASHINGTON, D.C., CHAPTER OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

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

**Hearing on November 30, 2011: "Is Secure Communities Keeping
Our Communities Secure?"**

The Washington, D.C. Chapter of the American Immigration Lawyers Association (AILA-DC Chapter) submits its testimony with regard to the Subcommittee on Immigration Policy and Enforcement hearing on the Department of Homeland Security's (DHS') Secure Communities Program. The AILA DC- Chapter is comprised of approximately 900 active members of the American Immigration Lawyers Association (AILA) practicing in Washington, D.C., the State of Maryland, and the Commonwealth of Virginia. Our membership is active in advancing sound nationwide immigration policy, as well as in each of our three jurisdictions. We are among the largest AILA Chapters in the United States by membership.

Secure Communities is a DHS program by which the Federal Bureau of Investigation (FBI) makes available to Immigration and Customs Enforcement (ICE) the fingerprints of persons arrested by local law enforcement. ICE then checks these fingerprints against its immigration databases. If ICE believes that the results of these checks establish that an arrestee is unlawfully present in the United States or is otherwise removable, it will issue a detainer requesting that the state or local jail facility hold the individual up to an additional 2 to 4 days to allow for an ICE interview of the person. ICE thereafter determines a course of action, which could include immediate removal, depending on the facts of the case.

Although ICE initially presented Secure Communities to state and local jurisdictions as a voluntary, opt-in program, DHS later clarified that the passage of arrestee fingerprints from the FBI to ICE would occur irrespective of the wishes of the state and local law enforcement. The only optional aspect of Secure Communities, apparently, is whether the arresting law enforcement agency chooses to receive ICE's findings with regard to arrestee's immigration status.

The AILA-DC Chapter supports the testimony and recommendations of the American Immigration Lawyers Association (AILA) in expressing grave concerns with regard to the impact of Secure Communities on achieving its stated objective of promoting public safety. We are also concerned with the overrepresentation of non-criminal aliens among those removed by ICE after identification through the program, as well as the diversion of federal resources from programs more representative of the Administration's current discretionary policies with regard to removal of aliens. We also remain concerned as to the absence of guidelines to prevent racial profiling as well as other unaddressed civil rights considerations.

That fully 60% of Secure Communities-related removals are of persons who either have no criminal record or who have only misdemeanor convictions is directly contrary to the program's stated objective of "identifying and removing convicted criminal aliens who pose a public safety threat to American communities"¹. Inasmuch as misdemeanor convictions usually correlate to regulatory infractions and similarly modest misbehaviors, it is difficult to conclude that any American community's public safety has been materially enhanced as a result of Secure Communities findings. A more effective program would concentrate solely on apprehended persons who are in fact serious and dangerous criminals.

The AILA-D.C. Chapter is also concerned that highly publicized "partnering" of federal, state and local law enforcement personnel blurs the critical distinction between constitutionally mandated federal and state jurisdiction over immigration matters. Immigration enforcement is an inherently federal function, as it relates to laws governing admission to and status in the United States as a whole, and not with regard to lawful presence in any particular state or locality. Federal law has long established that states are precluded from seeking to regulate entry, exit, and residence of persons from their individual borders. Secure Communities erodes that well established and fundamental precedent.

While the use of state and local resources to police the federal immigration federal function may prove politically expedient in some (perhaps many) jurisdictions harboring an intent to usurp federal authority, doing so runs counter to basic principles of separation of federal and state powers. Moreover, the greater the involvement of state and local law enforcement in executing federal immigration policy, the less likely immigrant communities will be willing to report crimes and criminal activity to police, out of concern stemming from their own immigration situations, or those of family members'. Thus the indirect effect of Secure Communities may be to shield the very criminals ICE seeks to remove from the U.S. as public safety threats.

¹ Press Release, *Secretary Napolitano Announces Secure Communities Deployment to All Southwest Border Counties, Facilitating Identification and Removal of Convicted Criminal Alien* (August 10, 2010).
AILA InfoNet Doc. No. 11113060. (Posted 11/30/11)

Our Chapters also remains concerned that DHS has yet to address concerns relating to the potential for Secure Communities to result in civil rights and civil liberties violations. DHS has thus far failed to publish quarterly statistical analyses to identify jurisdictions where racial profiling might be occurring, or to establish the level of transparency necessary to ensure that persons in custody are not victims of unlawful racial profiling.

The AILA-DC Chapter concurs with the recommendations of AILA in its Testimony, and recommends that:

- DHS suspend Secure Communities until significant reforms are made to ensure it operates as it was intended to, and that the program actually targets persons who pose a meaningful risk to public safety or national security;
- DHS should clarify that immigration law violators with clean criminal records or who have been convicted of or charged with only misdemeanor offenses are not enforcement priorities absent indicia of a serious risk to public safety or national security. In cases of more serious criminal convictions, enforcement personnel must consider other risk factors beyond the fact of the conviction itself, consistent with current US law that distinguishes, *inter alia*, between aggravated felonies and other, less serious crimes in determining removability.
- Secure Communities undermines the level of trust between immigrant communities and state and local law enforcement, creating critical risks to public safety, and thereby aiding violent criminals in avoiding apprehension.
- Secure Communities and other DHS programs that invite state and local law enforcement collaboration should be suspended in jurisdictions where the U.S. Department of Justice has initiated an investigation or litigation over concerns about racial profiling or civil rights abuses.

Please feel free to contact us on (202) 349-2176 or chair@ailadc.org should you wish to discuss any aspect of this testimony.

Sincerely yours,

Brenda J. Oliver
Chapter Chair