Secure Communities

The Secure Communities program was created with the goal of improving the removal of unauthorized immigrants convicted of crime, with a priority on removing violent offenders. The program has faced criticism over whether it is voluntary or mandatory for states and localities, and whether it is meeting its objective of prioritizing dangerous or violent criminals for deportation. In 2012, the U.S. Department of Homeland Security (DHS) Task Force on Secure Communities made recommendations to Immigration and Customs Enforcement (ICE) to clarify the role of local law enforcement and addressed concerns related to community policing, civil rights, and deporting people for minor offenses. The White House has created a new training program for state and local law enforcement on how Secure Communities relates to laws governing civil rights, established a task force to identify recommendations to mitigate potential impacts on community policing, and adopted a new policy to protect victims of domestic violence and other crimes. California is working on legislation that prioritizes high-level offenders and releases low-level offenders from immigration holds.

Background

Congress established the Secure Communities program to improve and modernize the identification and removal of criminal unauthorized immigrants from the United States. The program expands access for state and local law enforcement to the US-VISIT and IDENT databases, and adds biometric fingerprints to the biographical information currently used to identify immigration status. Secure Communities links local and county jails to ICE, DHS and Federal Bureau of Investigations (FBI) databases to screen individuals booked into jail for citizenship status, past criminal violations and deportation orders.

ICE prioritizes removal cases based on a tiered system.

- **Level 1 offenders: Violent Crimes/Major Drug.** This category includes immigrants convicted of “aggravated felonies,” or two or more crimes each punishable by more than one year, commonly referred to as “felonies.” Felonies include major drug offenses and violent offenses such as murder, manslaughter, rape, robbery, and kidnapping.

- **Level 2 offenders: Property Crimes/Minor Drug.** This category includes immigrants convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as misdemeanors. Misdemeanors include minor drug offenses and property offenses such as burglary, fraud, larceny, and money laundering.

- **Level 3 offenders: Public Disorder/DUI/all others.** This category includes immigrants convicted of less than three misdemeanors.

As of June 5, 2012, the program is in effect in 3,074 jurisdictions in 50 states, four territories and Washington, D.C. DHS expects to have a Secure Communities presence in each state and local jail in the country by 2013.

Pros and Cons

Proponents say the Secure Communities program improves the accuracy and speed of identifying and removing unauthorized immigrants who have committed crimes. Since biometric information sharing was first activated in 2008, it has helped ICE identify and remove more than 147,440 convicted criminal aliens from the United States. The federal biometric information sharing capability helps overcome previous problems with manual inquiries, forgeries and multiple aliases. The Secure Communities program requires no change to current law enforcement procedures. The computerized biometric system automatically checks federal databases for immigration status after an individual’s fingerprints are taken at booking. Unlike the 287(g) program, Secure Communities does not require
law enforcement officers to enforce immigration law. ICE agents maintain all authority in determining an individual’s status and any enforcement action.

Opponents say Secure Communities is detrimental to community policing goals which rely on the trust and support of community members to protect public safety. Believing that local police have become ICE agents, victims or witnesses may not report crimes or testify for fear of deportation. In addition, police sometimes arrest and fingerprint both parties in domestic violence cases, putting the victim into the system and potentially leading to his or her deportation. Contrary to the ICE objective of focusing on level 1 violent offenders, more deportations are processed for level 2 and 3 misdemeanor offenders. In FY 2010, only 15% of the 248,000 database hits were charged with level 1 offenses and the remaining 85% offenders were for level 2 and 3 offenses. Finally, the program suffers from inconsistent reports on whether participation by state and local government is mandatory or voluntary.

State and Federal Responses to Secure Communities

In the spring of 2011, governors in Massachusetts, New York, and Illinois ended their states’ memorandum of agreement (MOA) with DHS for participation in Secure Communities, citing concerns that the program did not meet its purpose of focusing on the most violent offenders and that immigrants may be deterred from cooperating with state and local police for fear of being deported. ICE subsequently determined that MOAs were “not required to activate or operate Secure Communities in any jurisdiction.” ICE terminated all existing MOAs in 2011, effectively making the program mandatory.

In part due to the confusion about the voluntary or mandatory nature of Secure Communities, the Secretary of DHS created a Task Force on Secure Communities comprised of representatives of law enforcement, state government, first responders, private sector and academia. The Task Force issued a report in November 2011 with a series of recommendations under the following five categories:

- Misunderstandings Regarding the Secure Communities and the Role of Local Law Enforcement Agencies
- Perceived Inconsistencies between Secure Communities’ Stated Goals and Outcomes
- Minor Traffic Offenses and Misdemeanors
- Unintended Consequences of Secure Communities on Community Policing and Community Impact
- The Question of Whether to Suspend Secure Communities

ICE responded to these recommendations in April 2012 and adopted several changes. For example, ICE will consider issuing a detainer only after conviction (rather than after an arrest) for minor traffic offenses, if the person had no previous conviction for other crimes, and the person does not fall within any other ICE priority category. This policy will allow ICE to better focus resources on those who pose a larger public safety or national security threat.

On June 16, 2012, The White House announced improvements to Secure Communities including a new training program for state and local law enforcement on civil rights, a task force to identify recommendations to mitigate potential impacts on community policing, and a new policy to protect victims of domestic violence and other crimes.

Pending state action: California’s AB 1081 would limit local law enforcements' compliance with voluntary requests by ICE to hold immigrants after they would be eligible for release. The legislature found that Secure Communities shifts the burden and responsibility of federal civil immigration enforcement onto local law enforcement while undercutting community policing. Under AB 1081, low level offenders would no longer be detained on immigration hold after that individual becomes eligible for release from criminal custody. This legislation also requires that only those convicted of serious felonies be referred to Immigration and Customs Enforcement. This legislation was approved by the California Senate on July 5, 2012 and has been returned to the Assembly for concurrence. This legislative initiative appears to be the first of its kind nationwide.

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