



HISPANIC BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

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December 16, 2011

Via First Class Mail

The Honorable Janet Napolitano
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Re: Secure Communities

Dear Secretary Napolitano:

On behalf of the Hispanic Bar Association of the District of Columbia ("HBA-DC"), we write to echo many of the growing concerns surrounding the Department of Homeland Security's ("DHS") Secure Communities program and to urge DHS to suspend the program until reliable measures can be implemented that will clear the program of its existing flaws.

I. Secure Communities is not operating as intended.

Introduced under the Bush Administration in 2008, the program was presented as a common sense initiative that would help Immigration and Customs Enforcement ("ICE") meet its enforcement priorities.¹ Secure Communities was designed to focus ICE's limited resources on the removal of individuals lacking lawful status who are serious criminals.²

Contrary to the priorities selected by DHS, its statistics reveal that Secure Communities is not focused on the targeted population. Rather, statistical information plainly demonstrates that low-level offenders and non-criminals are reaching the attention of ICE at a much higher rate

¹ Dep't of Homeland Sec., Immigration and Customs Enforcement, *Secure Communities: Get the Facts* http://www.ice.gov/secure_communities/get-the-facts.htm (last visited November 13, 2011).

² *Id.*

than serious criminals.³ During the 2011 fiscal year, 348,958 individuals were brought to the attention of ICE through Secure Communities.⁴ Only 70,970 of those individuals – a distinct minority – fit the category targeted by Secure Communities.⁵ Therefore, suspension of the program would be warranted to address this significant disparity.

II. Secure Communities invites discriminatory implementation.

In addition to straying from its stated purpose, Secure Communities also has raised fears that it invites racial profiling by local law enforcement. In fact, a recent analysis of ICE statistics reveals that an alarmingly 93% of those detained by Secure Communities are from Latin American countries.⁶ U.S. citizens have also been unlawfully detained as a result of Secure Communities.⁷ Such disturbing developments are sure to intensify public distrust in local law enforcement and discourage the reporting of crimes.

DHS has explained that Secure Communities does not impose any new responsibilities on local law enforcement because local law enforcement's sole duty is to transfer biometrics information to ICE.⁸ Nevertheless, there is a public perception that charging local law enforcement with this obligation allows it to act as an extension of ICE. This perception not only leads to public distrust of law enforcement but it also promotes a lesser willingness to report crimes within immigrant communities.

Moreover, Secure Communities raises the threat of racially-motivated arrests because there is no mechanism to control the abuses of any biased police officers who may proceed with the knowledge that the program can result in the deportation of immigrants.⁹ Suspension of the program would allow for time to design appropriate complaint mechanisms to address the very real threat of racially-motivated arrests and other associated abuses.

³Dep't of Homeland Sec., Immigration and Customs Enforcement, *Secure Communities IDENT/IAFIS Interoperability Monthly Statistics through September 30, 2011*, http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ Aarti Kohl, et. al., The Chief Justice Earl Warren Institute on Law and Social Policy, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, (available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

⁷ *Id.*

⁸ *Supra* note 1.

⁹ *See, e.g.*, National Immigration Law Center, *More Questions Than Answers about the Secure Communities Program* (Washington, DC: March 2009) (no redress mechanism for individuals wrongfully identified by DHS).

III. Secure Communities acts as an unfunded mandate.

Without appropriated funding, Secure Communities amounts to an unfunded mandate for states and local jurisdictions. In the District of Columbia, the local agreement with ICE specified no federal funding. The District would have had to bear the cost of extended incarceration of individuals who had completed their sentences and were awaiting transfer to ICE custody. Other states would likewise be facing increased costs in housing, food, medical care, and transportation. This does not include the added costs of procuring and maintaining the technology Secure Communities needs to transfer arrest data to ICE.

Given all of these questions surrounding Secure Communities, the District and several states and local jurisdictions have opted out of the program. DHS, however, ultimately stated that Secure Communities is a mandatory program;¹⁰ states and local law enforcement have only the choice of whether to receive the results of ICE's investigation of an individual's legal status.¹¹ This does little to avert the funding concerns of states.

Secure Communities has expanded significantly under the Obama Administration¹² and DHS has specified that it expects complete participation throughout the United States by 2013.¹³ This is in spite of the numerous concerns raised by local governments and immigrant advocates alike. While DHS has announced several measures that it will take to address complaints,¹⁴ we encourage DHS to suspend Secure Communities and take a more thorough inventory of its deficiencies before it proceeds with the program.

The HBA-DC exists in part to promote equal justice and opportunity for all Hispanics.¹⁵ Consistent with its mission, the HBA-DC hopes that these comments will assist the Administration in evaluating the manifest problems associated with Secure Communities. Thank you for your attention to our concerns.

Very truly yours,



Brian Castro, Chairperson
Legislative & Policy Issues Committee

¹⁰ *Supra* note 1.

¹¹ *Id.*

¹² *Supra* note 3.

¹³ *Supra* note 1.

¹⁴ *Id.*

¹⁵ The HBA-DC is a non-profit organization established in the District of Columbia in 1977 and our membership includes several hundred lawyers practicing in Washington, D.C., Maryland and Virginia, Latino students attending local law schools, and other non-lawyers who join as associate members.