



35th Anniversary

HISPANIC BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

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November 21, 2012

Via First Class Mail

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

Re: The Implementation and Effect of Secure Communities

Dear Madame Secretary:

On behalf of the Hispanic Bar Association of the District of Columbia (“HBA-DC”), we write to continue to voice our concerns surrounding the Department of Homeland Security’s (“DHS”) Secure Communities program and to urge DHS to terminate this failed program because its harms greatly outweigh its intended benefits.

Nearly a full year has passed since we articulated our concerns to you with regard to the Secure Communities program.¹ At that time, we argued for only a suspension of the program “until reliable measures can be implemented that will clear the program of its existing flaws.” In the past year it has become apparent that although severe problems persist with Secure Communities, the program will not be adjusted to correct those problems. Hence, we are compelled to modify our recommendation from mere suspension to full termination of the Secure Communities program.

Reforming our broken immigration laws and strengthening national security and public safety are laudable goals. Unfortunately, neither of those goals are appropriately served or evenly advanced by the Secure Communities program. To the contrary, evidence reveals a striking dissonance between the program’s stated purpose of removing dangerous criminals and its actual effect. Secure Communities was promoted as a common sense initiative that would help Immigration and Customs Enforcement (“ICE”) meet its enforcement priorities and purportedly was designed to focus ICE’s limited resources on the removal of individuals lacking lawful status who are serious criminals,² but this is not what the program is doing.

ICE’s own data reveals that Secure Communities is not focused on its targeted population. Rather, statistical information demonstrates that individuals who lack any criminal record or those that have been convicted of only minor offenses, including traffic violations, are reaching the attention of ICE and

¹ Letter to Secretary Janet Napolitano regarding Secure Communities, December 16, 2011, http://www.hbadc.org/resource/resmgr/endorsement_letters/jn12.16.11.pdf

² 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 October 19, 2012).

subsequently being deported at a much higher rate than serious criminals.³ The high rate of non-criminal deportations caused by this program suggests that Secure Communities is not living up to its name. In effect, the program acts in significant part as a deportation dragnet, ensnaring without real distinction any immigrant who is placed in police custody, undermining community safety and leading to public distrust of law enforcement, raising the threat of racially-motivated arrests, and jeopardizing civil and human rights. This manner of harmful immigration enforcement contravenes HBA-DC's mission of equal justice and opportunity for all Hispanics as well as our position on immigration reform, a position we have maintained for over five years.⁴

Concerns with Secure Communities increasingly have been recognized since the inception of the program in 2008. It has been sharply criticized by the governors and state legislators of Illinois, New York, and Massachusetts; local officials from numerous cities and counties, including the District of Columbia, Los Angeles, Chicago, and San Francisco; dozens of Congressional representatives; many prominent law enforcement officials; hundreds of immigrant rights, criminal justice, and privacy advocates; religious leaders; and community members. Even DHS itself created a task force to review Secure Communities and the report generated by that task force confirmed the concerns that have been raised over the years. The report corroborated the disparity between the purported goals of Secure Communities and its results. It found that “[i]mmigration enforcement against traffic offenders and others arrested only for minor offenses poses the greatest risks of undermining community policing.”⁵ It made clear that Secure Communities sows mistrust of the police and other uniformed personnel, thereby making our communities less safe, particularly when it comes to reporting crimes. The excessively broad scope of the program results in immigrants, both documented and undocumented, being afraid to cooperate with police officers, because doing so may lead to deportation of themselves or their families. This understandable reticence makes it harder for the police to investigate crimes that happen in our communities.

The response by DHS to the recommendations made by the Task Force on Secure Communities demonstrates that it is not serious about ameliorating the problems of Secure Communities.⁶ DHS chose to ignore most of the Task Force's already modest recommendations. Instead of taking the opportunity to acknowledge the flawed outcomes of the Secure Communities program, DHS cited to its own memos that were in place before the Task Force was even created – in essence, taking the position that there is no problem of disparity between goals and results because goals had been clearly laid out all along. DHS did make one policy change. Even then, that modification does little to cure the program's failure to focus on the more serious criminals as it holds that an individual who is arrested for a minor traffic violation, such as driving without a license, can still be detained and deported by ICE, except that now ICE will wait to deport the individual until after conviction for the minor traffic violation.

³ Dep't of Homeland Sec., Immigration and Customs Enforcement, *Secure Communities IDENT/LAFIS Interoperability Monthly Statistics through August 31, 2012*, http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf (last visited on October 19, 2012). See also, *Sharp Decline in ICE Deportation Filings: Targeting of Serious Criminals Fails to Improve*, TRAC Immigration, February 21, 2012, <http://www.trac.syr.edu/immigration/reports/274>. Assessing information provided by ICE, including a spreadsheet representing 32,298 cases of all detained individuals as of October 3, 2011, listing both the threat level and the individual's "most serious" criminal conviction, TRAC determined that traffic offenses were listed as the "most serious" criminal conviction for a number of individuals categorized as a Level One threat and subsequently deported by ICE.

⁴ See e.g., Letter to Congress regarding Comprehensive Immigration Reform, December 19, 2011, http://www.hbadc.org/resource/resmgr/endorsement_letters/2011_hba-dc_cir_letter.pdf

⁵ *Task Force on Secure Communities: Findings and Recommendations*, U.S. Dept. of Homeland Security, September 2011, <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf>

⁶ *Protecting the Homeland: ICE Response to the Task Force on Secure Communities Findings and Recommendations* (Office of the Director, U.S. Immigration and Customs Enforcement, April 27, 2012), <http://www.ice.gov/doclib/secure-communities/pdf/hsac-sc-taskforce-report.pdf>

DHS Director Morton's recent statements before the U.S. House of Representatives Committee on Homeland Security Subcommittee on Border and Maritime Security further demonstrate DHS's unwillingness to address the real problems existing in the Secure Communities program.⁷ Despite his description of ICE's commitment to "continuing to make operational adjustments to ensure that Secure Communities aligns with our operational priorities," Director Morton failed to identify any adjustments that would address the problems identified above or even acknowledge that there was any real problem with the implementation of Secure Communities.

Our national history reflects a long tradition of working towards more just laws and policies. From the women's suffrage movement, through the fight for civil rights and overturning Jim Crow and other segregation laws in the 1960s, to the elimination of laws that discriminate on the basis of sexual orientation today, our nation's promises of equality and due process under law have been advanced when unjust laws and policies have been revised through critical and honest assessment. Acknowledging and resolving the flaws of Secure Communities is the next step in our country's progress towards the fair and equal treatment of immigrants, individuals who have historically formed the bedrock of our nation.

We urge you to consider the harmful impact this program has on local communities and the danger it poses to community policing and public safety, and immediately end this disturbing program. We strongly believe that terminating Secure Communities is a necessary first step to begin an honest assessment of comprehensive immigration reform that does not merely rely on an enforcement-only approach such as this program. Repairing our unjust immigration system and ensuring the protection of the civil and human rights of all immigrants requires that the blunt methods of enforcement be set aside when their impact carries the kind of disruptive effect suffered under Secure Communities.

The HBA-DC exists in part to promote equal justice and opportunity for all Hispanics.⁸ Consistent with its mission, the HBA-DC intends for its comments to assist the Administration in evaluating and responding to the manifest problems associated with Secure Communities. Thank you for your continued attention to these important and difficult issues.

Very truly yours,



Eissa Villaseñor, Chairperson
Legislative & Policy Issues Committee

⁷ Statement of John Morton, Director U.S. Immigration and Customs Enforcement Regarding a Hearing on "Secure Communities" Before the U.S. House of Representatives Committee on Homeland Security Subcommittee on Border and Maritime Security, July 10, 2012.

⁸ 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 law schools, and other non-lawyers who join as associate members. The HBA-DC is affiliated with the Hispanic National Bar Association.