

**Secure Communities
Frequently Asked Questions
Addendum to Governor Notifications**

1. What is Secure Communities?

When allocating its enforcement resources, U.S. Immigration and Customs Enforcement (ICE) prioritizes the expenditure of those resources on cases involving public safety and national security, the integrity of the immigration system, and border security. As a result, ICE focuses on the removal of criminal aliens and repeat immigration violators, as well as on the enhancement of border security through the removal of those who recently unlawfully entered the United States. Secure Communities is a simple and common sense tool that helps ICE effectuate these priorities. It utilizes an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) and helps to identify removable aliens who have been arrested and booked for violations of criminal law, without imposing new or additional requirements on state and local law enforcement.

For decades, local jurisdictions have shared the fingerprints of individuals who are booked into jails with the FBI to determine if they have a criminal record. Under the Secure Communities program, the FBI, as mandated by statute, automatically sends these fingerprints to DHS to check against its immigration databases. If these checks reveal that an individual may be unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE determines what, if any, enforcement action to take – prioritizing the removal of those individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors, as well as those who have repeatedly violated immigration laws.

Secure Communities imposes no new or additional requirements on state and local law enforcement, and only the federal government, not the state or local law enforcement agency, determines what immigration enforcement action, if any, is appropriate.

2. How does Secure Communities work?

When state and local law enforcement officers arrest and book someone into a jail for a violation of a state or local criminal offense, they generally fingerprint the person. After fingerprints are taken at the jail, the state and local authorities submit the fingerprints to the FBI. The FBI takes these fingerprints and runs them through its database of criminal records and sends the state and local authorities a record of the person's criminal history.

Under Secure Communities, DHS receives these fingerprints from the FBI, so that ICE can determine if that person is also subject to removal (deportation). This approach, whereby the fingerprints that are sent to the FBI are then shared them with DHS, fulfills a 2002 Congressional mandate for federal law enforcement agencies to share information that is relevant to determine the admissibility or deportability of an alien. *See* 8 U.S.C. § 1722(a)(2).

If the person has been previously encountered and fingerprinted by an immigration official and there is a digitized record, then the immigration database will register a “match.” ICE then reviews other databases to determine whether the person is here illegally or is otherwise removable.

In cases where the person appears from these checks to be removable, ICE may issue a detainer on the person, requesting that the state or local jail facility hold the individual no more than an extra 48 hours (excluding weekends and holidays) to allow for an interview of the person. Following the interview, ICE decides whether to seek the person’s removal.

In making these decisions, ICE considers a number of factors, including the person’s criminal history, immigration history (such as whether the person was previously deported or has an outstanding removal order from an immigration judge), family ties, duration of stay in the U.S., significant medical issues, and other circumstances.

3. What are states required to do under Secure Communities?

In jurisdictions where Secure Communities has been activated, Secure Communities imposes no new or additional requirements on state or local law enforcement. In fact, following the activation of Secure Communities in a jurisdiction, it is important that law enforcement agencies enforce the criminal law in exactly the same manner as they did before Secure Communities was activated.

Under Secure Communities, state and local law enforcement officers are not deputized, do not enforce immigration law, and are not tasked with any additional responsibilities. In all jurisdictions except the few in which there is an agreement with the federal government in place under Section 287(g) of the Immigration and Nationality Act, only federal DHS officers make immigration enforcement decisions, and they do so only after a completely independent decision by state and local law enforcement to arrest and book an individual for a criminal violation of state law separate and apart from any violations of immigration law. Additionally, it is DHS and the FBI, and not state or local governments, that perform the information sharing that is the cornerstone of Secure Communities.

4. What reforms of Secure Communities have been implemented?

On June 17, 2011, ICE announced key improvements to the Secure Communities program. Secure Communities has proven to be a critical tool for carrying out ICE’s enforcement priorities. To continue to improve the program, DHS and ICE are committed to addressing concerns that have been raised about its operation, including through the following reforms:

- **Advisory Task Force & Minor Traffic Offenses:** ICE has created a new advisory task force that will advise the Director of ICE on ways to improve Secure Communities, including making recommendations on how to best focus on individuals who pose a true public safety or national security threat. This panel is composed of chiefs of police, sheriffs, state and local prosecutors, ICE agents from the field, immigration advocates, and leading academics. The first report of this advisory group will provide recommendations on how ICE can adjust the Secure Communities program to mitigate

potential impacts on community policing practices, including how to implement policies related to the detention and removal of individuals charged with, but not convicted of, minor traffic offenses who have no other criminal history or egregious immigration violations. For a full list of committee members, visit:

<http://www.dhs.gov/files/committees/task-force-on-secure-communities-membership.shtm>.

- **Prosecutorial Discretion:** ICE Director John Morton has issued a new memo providing guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise discretion when appropriate—authority designed to help ICE better focus on meeting the priorities of the agency by using its limited resources to target criminals, those that put public safety at risk, and those who have repeatedly violated the nation’s immigration laws. The memo also clarifies situations in which the exercise of discretion is inappropriate—cases involving threats to public safety or national security, among others. The new memo can be accessed at: <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.
- **Training for States:** ICE and the DHS Office for Civil Rights and Civil Liberties (CRCL) have developed a new training program for state and local law enforcement agencies to provide more information about how Secure Communities works and how it relates to civil rights and aliens’ rights in the criminal justice system. The first set of training materials can be accessed at: http://www.ice.gov/secure_communities/crcl.htm.
- **Protecting Victims & Witnesses of Crimes:** At the direction of Secretary of Homeland Security Janet Napolitano, ICE, in consultation with CRCL, has developed a new policy specifically to protect victims of domestic violence and other crimes and to ensure that these crimes continue to be reported and prosecuted. This policy directs all ICE officers and attorneys to exercise appropriate discretion to ensure that victims of and witnesses to crimes are not penalized by removal. ICE is also working to develop additional tools that will help identify people who may be victims, witnesses, or members of a vulnerable class so officers can exercise appropriate discretion. The policy can be accessed at: <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.
- **Detainer Form:** ICE has revised the detainer form that it sends to local jurisdictions to request that an alien be held for ICE to interview, to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours (excluding weekends and holidays). Once implemented (likely in September 2011) the form will also require local law enforcement to provide arrestees with a copy, which includes an explanation of how to make a complaint in six languages and a number to call if the arrestee believes his or her civil rights have been violated in a manner connected to immigration enforcement. The revised detainer form can be accessed at: <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.
- **Civil Rights Complaints:** ICE and CRCL have created a new complaint system whereby individuals or organizations who believe civil rights violations connected to Secure Communities have occurred can file a complaint. For example, CRCL will investigate complaints of racial or ethnic discrimination by policing jurisdictions for which Secure Communities has been activated, and DHS will take steps to ensure that bias or other abuses do not affect immigration enforcement. Details on the new

complaint system are available at:

http://www.dhs.gov/xabout/structure/gc_1273526572731.shtm.

- **Data Collection and Monitoring:** ICE and CRCL have created an ongoing quarterly statistical review of the program to examine data for each jurisdiction where Secure Communities is activated to identify effectiveness and any indications of potentially improper use of the program. Statistical outliers in local jurisdictions will be subject to an in-depth analysis and DHS and ICE will take appropriate steps to resolve any issues. More information on the statistical review is available at: <http://www.ice.gov/doclib/secure-communities/pdf/statisticalmonitoring.pdf>.

5. What are the benefits of Secure Communities?

Along with border enforcement, ICE's top civil enforcement priorities are the identification and removal of criminal aliens, other aliens who pose a threat to public safety, and aliens who have repeatedly violated our nation's immigration laws. In ICE's experience, the most effective way to identify such aliens is by checking the immigration status of individuals arrested and booked into state and local jails for violations of state or local criminal laws. Secure Communities allows ICE to efficiently identify these high priority cases by taking advantage of state and local law enforcement agencies' long-standing practice of voluntarily submitting fingerprint information to the FBI for criminal background checks.

Under Secure Communities, DHS receives this information from the FBI, determines the individual's immigration status, and then makes a decision about what immigration enforcement action, if any, should be taken. By focusing on individuals who have been arrested and booked into state and local jails for alleged violations of state and local criminal laws, Secure Communities has proven to be one of ICE's most important tools for identifying and removing criminal aliens as well as repeat immigration violators.

However, that is not the only benefit of Secure Communities. Other benefits include:

- The program is designed to ensure that the responsibility of immigration enforcement remains with federal officials. It does not authorize or permit state or local law enforcement to enforce federal immigration law.
- The program is designed to not require or permit any change to law enforcement agencies' customary booking process.
- Finally, information is shared in near real time and is based on biometrics, in this case fingerprints. Fingerprints are accurate, reliable, and virtually impossible to forge.

The National Sheriffs' Association, Major County Sheriffs' Association, New York Sheriffs' Association and the New York Association of Chiefs of Police have all issued formal statements in support of Secure Communities.

6. When is ICE planning to activate Secure Communities nationwide?

ICE continues to work with its law enforcement partners across the country to responsibly and effectively implement this federal information sharing capability and plans to reach complete nationwide activation by 2013. When Secure Communities is activated in a jurisdiction, the FBI automatically sends the fingerprints it receives from that jurisdiction to DHS to check against DHS's immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE determines what, if any, enforcement action to take.

7. How does ICE define “criminal aliens”?

Criminal aliens are immigrants who have been convicted of a crime by a court of law. This conviction may occur in the United States or overseas, provided that the overseas conviction is one that is recognized in the United States.

8. Why are immigration violators who have *not* been convicted of a crime being identified by Secure Communities, and why are some of them being removed from the United States?

Immigration violators who have not been convicted of a crime are being identified by Secure Communities because Secure Communities identifies all people who have been arrested and booked into custody and have had some prior contact with immigration officials—including people who, for example, have received an immigrant benefit as well as those who were previously apprehended while attempting to cross the border or applied for a now-expired visa. Some of the individuals without criminal convictions who are identified through Secure Communities are being removed because, although they have not been convicted of a crime, they still fall within ICE's enforcement priorities—for example by repeatedly violating U.S. immigration law or because they are fugitives from immigration court. Where an individual who is awaiting trial on certain criminal offenses falls within ICE's enforcement priorities and already has an outstanding final order of removal, ICE may, in some circumstances, decide to remove that individual before the criminal trial.

9. Can a state or local law enforcement agency choose not to have fingerprints it submits to the FBI checked against DHS' system?

This question has been asked in many contexts, and it is important to clarify that the information-sharing partnership between DHS and the FBI that is the cornerstone of Secure Communities is mandated by federal law, which means that state and local jurisdictions cannot prohibit information-sharing between agencies in this respect. Secure Communities is mandatory in that, once the information-sharing capability is activated for a jurisdiction, the fingerprints that state and local law enforcement voluntarily submit to the FBI to be checked against the DOJ's biometric identification system for criminal history records are automatically sent to DHS's biometric system to check against its immigration and law enforcement records. The United States government has determined that a jurisdiction cannot choose to have the fingerprints it submits to the federal government processed *only* for criminal history checks. Further, jurisdictions cannot ask that the identifications that

result from DHS's processing of the fingerprints not be shared with local ICE field offices in that jurisdiction. It is ICE, and not the state or local law enforcement agency, that determines what immigration enforcement action, if any, is appropriate.

A state or local jurisdiction may, however, choose not to receive the information about identifications that result from processing fingerprints through DHS's databases that is provided to the local ICE field office. A jurisdiction's decision not to receive this information does not affect whether the local ICE field office in that jurisdiction will or will not take enforcement action based on those results.

10. What protocols are in place to monitor State and local conduct to guard against profiling?

ICE will not allow Secure Communities to turn into a conduit for any civil rights abuses. ICE and CRCL have recently improved safeguards—training, complaint processes, and data collection and monitoring—to further protect the program from officers or jurisdictions that may engage in racial or ethnic profiling, or would otherwise affect ICE's prioritization through improper policing practices. As described in part above, several initiatives to achieve these goals are underway:

- In all ICE detention facilities, ICE prominently advertises a 24-hour phone number for those who feel they have been the targets of racial or ethnic profiling and ensures that complaints, including those about Secure Communities, are transmitted to CRCL, the Department of Justice, or other appropriate office.
- In order to identify jurisdictions that *may* be making improper arrests that could result in identification of aliens through Secure Communities, ICE and CRCL have retained a leading statistician who is examining data for each jurisdiction where Secure Communities is deployed. Statistical outliers will be subject to in-depth analysis. This analysis will take place four times per year to ensure consistent monitoring, and DHS and ICE will take appropriate steps to resolve any issues.
- To prevent and address possible abuses of Secure Communities, ICE and CRCL are working together to develop new outreach and awareness materials for state and local law enforcement agencies in jurisdictions where Secure Communities is deployed.
- ICE and CRCL have created a complaint system whereby individuals or organizations who believe civil rights violations connected to Secure Communities have occurred can file a complaint. For example, CRCL will investigate complaints of ethnic discrimination by policing jurisdictions for which Secure Communities has been deployed, and DHS will take steps to ensure that bias or other abuses do not affect immigration enforcement.
- ICE has revised the immigration detainer form to ensure that any alien who is detained receives a copy. The revised form will include information on how to file a complaint in six languages.
- ICE, in consultation with CRCL, has developed a new policy specifically to protect victims of domestic violence and other crimes and to ensure that these crimes continue to be reported and prosecuted. This policy directs ICE officers and attorneys to exercise appropriate discretion to ensure immediate victims of and witnesses to crimes are not penalized by removal. ICE is also working to develop additional tools that will help

identify people who may be victims, witnesses, or members of a vulnerable class so officers can exercise appropriate discretion.

DHS and ICE take allegations of racial profiling and other complaints relating to civil rights and civil liberties violations very seriously. Formal allegations are referred to CRCL, which is tasked with guarding against violations in DHS programs. ICE fully supports all CRCL investigations, including by taking action to ensure witnesses and complainants are able to remain in the United States.

11. In the past, ICE has entered into agreements with states before activating Secure Communities. Is this step required to operate Secure Communities in a state?

No, a memorandum of agreement (MOA) is not required to activate Secure Communities for a state. Secure Communities relies on an already-existing federal information-sharing program, consisting of the sharing of biometric data between two federal law enforcement agencies—DHS and the FBI—and is designed to advance the federal government’s responsibility to enforce immigration laws. Once a state or local law enforcement agency voluntarily submits fingerprint data to the federal government, no agreement with the state is legally necessary for one part of the federal government to share it with another part. Accordingly, no state act or permission is required to allow ICE to activate or operate Secure Communities for a state or local jurisdiction, and an MOA with a state is not required to activate Secure Communities for jurisdictions within that state.

12. Will the Secure Communities MOAs that have already been executed remain in effect? What is the effect of a termination of a Secure Communities MOA?

Because ICE has determined that an MOA with a state is not necessary to activate or operate Secure Communities for jurisdictions within that state, ICE has decided to terminate all existing MOAs. For states that already terminated their MOAs, ICE will honor the state’s desire to no longer receive information regarding the immigration status of an individual whose fingerprint information is submitted to the federal government via the FBI, and will cease providing the immigration status information generated through Secure Communities to the state.

The termination of the MOAs will have no effect on the operation of Secure Communities for any state. ICE will continue to operate Secure Communities for jurisdictions where it is already deployed and, over the next two years, will activate the program for the remaining jurisdictions. ICE will fully deploy Secure Communities for all jurisdictions by the end of 2013. Prior to the activation of new jurisdictions within a state, ICE will provide advance notice to both the state and local governments.

13. Will the federal government continue its practice of validating Original Agency Identification numbers (ORIs) in my state immediately prior to Secure Communities activation?

No. The federal government is changing the manner in which it activates Secure Communities. As a result of these changes, your state will eventually not need to validate an ORI number immediately prior to Secure Communities activation. Within the next few weeks, the federal government will provide additional information to your State Identification Bureau regarding the new Secure Communities activation process.