

ICE'S MINOR ADJUSTMENTS TO "SECURE COMMUNITIES": WHY THEY FALL FAR SHORT

On June 17, 2011, Immigration and Customs Enforcement (ICE) announced a set of adjustments to its controversial "Secure Communities" program (S-Comm). This program puts local police on the frontlines of immigration enforcement to assist ICE to meet the Obama Administration's quota of deporting 400,000 immigrants each year.

Summary of why the tweaks fall short:

1. ICE's adjustments come in response to growing opposition from states and localities, but fail to address their desire to not participate and the fundamental problems associated with S-Comm—including how collaborations between police and ICE funnel people into an unjust detention and deportation system.
2. ICE did not set any restrictions on who they could deport—ICE has always had the power to exercise prosecutorial discretion but has rarely done so.
3. S-Comm still undermines community policing, and the adjustments do not address the burden that the program places on already-stretched police departments.
4. ICE did **not** explicitly accept the decisions of counties across the country and three states who have refused to participate because of the serious problems with the program. Nor did ICE explain whether jurisdictions that were previously activated into the program can exit.

Prosecutorial Discretion Memos^{*}: The main "reforms" are new memos from ICE Director John Morton: One purports to guide ICE personnel regarding whom they should prosecute; the other purports to address the reluctance of immigrant crime victims and witnesses to cooperate with police investigations out of fear of deportation. Both memos largely restate existing ICE policy on prosecutorial discretion.

- The "Exercising Prosecutorial Discretion" memo does not prevent ICE from using S-Comm to deport any individual who is subject to deportation, including undocumented immigrants, permanent residents, and visa holders.
- For over a year, Director Morton has been instructing ICE to focus on serious offenders—yet S-Comm has continued to operate as a deportation dragnet. ICE statistics show most of the people arrested and deported through S-Comm have minor or no convictions.
- The "Certain Victims" memo states that ICE will offer special treatment for crime victims and witnesses. Yet ICE fails to acknowledge the complex dynamics of domestic violence and human trafficking, and all too often police do not recognize arrestees as victims. For example, police often arrest both parties to a domestic dispute and sort out the true perpetrator later. Because of S-Comm, "later" is too late: their fingerprints will already be sent to ICE.
- This memo provides no process for making sure ICE knows whether someone is a crime victim or witness or for informing such persons that being a victim or witness will make a difference. Too often people are pressured into signing away their rights to an immigration hearing and never have the chance to point out that they are victims or witnesses.

* The two memos issued June 17, 2011: "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" and "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs"

Advisory Committee: ICE is creating an Advisory Committee to monitor S-Comm and make recommendations on how to “mitigate potential impacts on community policing practices.” It will purportedly work on limiting deportations of people who charged with but not convicted of “minor traffic offenses. The Committee is tasked with producing a report within 45 days.

- ICE is essentially hand-picking individuals who will be monitoring and proposing fixes while duplicating—and possibly undercutting—the Inspector General’s upcoming investigation of S-Comm.
- That ICE now claims it will review deportations of “traffic offenders” for a program purportedly focused on public safety shows that S-Comm functions primarily as a mass deportation program bent on meeting record-breaking quotas.

Training Videos: ICE announced it will produce training videos and briefings for local law enforcement agencies on subjects like outreach to immigrant communities and immigration laws that offer protections to victims (see video at http://www.ice.gov/secure_communities/crcl.htm).

- These trainings and videos do nothing to address the burdens that S-Comm places on already-stretched police departments.
- A one-size-fits-all video and training produced by a federal agency cannot effectively instruct local departments on preserving community trust and conducting effective community policing.
- It is highly problematic that the video purports to tell police not to racially profile based on race or nationality, while at the same time repeatedly showing images of Latinos as “illegal” and non-Latinos as law enforcement.

Complaint Process: ICE has tasked the DHS Office of Civil Rights and Civil Liberties (CRCL) with responding to complaints about S-Comm from individuals, community organization, and media reports. CRCL will also conduct quarterly statistical reviews to detect patterns of racial profiling.

- CRCL is an arm of DHS and is not an independent watchdog agency with teeth.
- CRCL has discussed neither how it will make individuals aware of the complaint process nor what resources it has to handle these complaints. Nor has it stated whether it can keep immigrants who have filed complaints from being deported while investigations are pending.

Detainer Form: ICE revised the “detainer” form, an ICE request to local law enforcement agencies to hold an individual beyond when she would otherwise be released so that ICE can take custody. ICE also stated that it will set up a system for informing individuals if they have a detainer issued on them.

- ICE still fails to make clear that detainers are hold *requests* that local law enforcement do not have to submit to. ICE also fails to address a range of other problems associated with detainers, including their constitutionality.
- ICE continues to violate due process rights by not informing people why they are being jailed and by causing differential treatment in the criminal justice system (for example, detainees with immigration holds are routinely denied bail and jailed longer).