



## **INTRODUCTION**

Sergio Brizuela brought this action for habeas corpus or, in the alternative, declaratory and injunctive relief on behalf of a proposed class of all persons who are or will be held in the custody of the Connecticut Department of Correction (DOC) based solely on an administrative detainer notice issued by U.S. Immigration & Customs Enforcement (ICE). Two days after Sergio Brizuela filed this action, Secretary of Homeland Security Janet Napolitano announced the activation of a controversial ICE program entitled “Secure Communities” in testimony before Congress. Throughout Connecticut, Secure Communities begins today. See Silva Decl., Exhibit D, Statement by Connecticut Undersecretary for Criminal Justice Mike Lawlor.

With the activation of Secure Communities in Connecticut, changes to federal policy are set to dramatically and immediately increase the number of people subjected to Respondents’ unconstitutional practice of confining individuals solely on the basis of an immigration detainer. For this reason, the Court should expeditiously order Respondents to show cause why the writ should not issue and why declarative and injunctive relief should not be granted. The Court should also allow appropriate precertification discovery to begin, and order that Respondents comply with discovery requests on an expedited basis.

It is the policy and practice of Respondents to routinely enforce unlawful immigration detainers issued by ICE. Individuals are held by Respondents solely on the basis of these detainers without a probable cause hearing before a neutral decisionmaker, or any probable cause determination whatsoever, and in the absence of sworn evidence. These detainers lack any governing standards and improperly conscript state and local criminal law enforcement officials in furtherance of a federal civil enforcement regime. Because these detainers are themselves unconstitutional, they can provide no legal authority for continued detention. Nevertheless, on

the basis of these detainers alone, Respondents regularly maintain custody of proposed class members after all other legal authority for custody has expired. See Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, ECF No. 1 (hereinafter “Petition”) at ¶ 9. Petitioner Brizuela, for instance, was detained by Respondents solely on the basis of an ICE detainer for four days after his discharge from state criminal custody. Respondents therefore continuously and irreparably deprive members of the proposed class of their Fourth and Fourteenth Amendment rights to be free of arbitrary and unreasonable executive detention, and unlawfully commandeer state correctional resources in the service of a federal regulatory regime, in violation of the Tenth Amendment.

Over the past five months, several individuals have filed individual habeas petitions in the U.S. District Court for the District of Connecticut challenging Respondents’ policy of physically confining them solely on the basis of an ICE detainer. Each prior petitioner was unable to obtain a ruling on the merits of the habeas petition before being transferred out of the custody of Respondent Department of Correction, thus mooted the petition. These individual actions offer examples, however, of the operation of DOC’s policy of honoring immigration detainers.

On October 1, 2011, Roberto Carlos Menjivar Lopez was arrested in Waterbury, Connecticut and charged with a single misdemeanor count of sixth degree larceny, based on an alleged shoplifting incident. Mr. Menjivar Lopez had no prior criminal history. Respondents lawfully detained Mr. Menjivar Lopez until the State’s Attorney dismissed the single charge against him. DOC then continued to detain Mr. Menjivar Lopez for one day solely on the basis of an immigration detainer after the dismissal of the criminal charge. See Lopez v. Feliciano, No. 3:11-cv-01743 (JCH) (D. Conn filed Nov. 11, 2011), ECF No. 1. Mr. Menjivar Lopez filed a

petition for a writ of habeas corpus, but ICE assumed custody before process was served. The habeas petition was dismissed. Id., ECF No. 6. ICE correctly determined that Mr. Menjivar Lopez was neither dangerous nor a flight risk and released him without any bond, subject to an order that he report regularly to ICE offices in Hartford. See Silva Decl., Exhibit A, Order of Release on Own Recognizance.

On October 6, 2011, Manuel Sebastian Castro Largo was arrested in Meriden, Connecticut and charged with driving without a license and registration and for interfering with arrest. On October 7, 2011, the Connecticut Superior Court ordered Mr. Castro Largo released on his own recognizance pending disposition of his minor traffic charges. Despite having been ordered released, Respondents detained Mr. Castro Largo for five days solely on the basis of an immigration detainer and without a probable cause hearing, until ICE assumed custody of him, on October 12, 2011. See Silva Decl., Exhibit B, Claim of Manuel Sebastian Castro Largo under the Federal Torts Claims Act. A next friend of Mr. Castro Largo filed a habeas petition, Gaspar v. Feliciano, No. 3:11-cv-01548 (PCD) (D. Conn filed Oct. 11, 2011), ECF No. 1, but ICE assumed custody before a summons was served. ICE subsequently released Mr. Castro Largo on bond. Mr. Castro Largo pleaded guilty to an infraction and paid a fine to resolve his criminal charges, and his habeas petition was dismissed. Id., ECF No. 5.

On November 20, 2011, Petitioner in the instant action, Sergio Brizuela, was arrested by authorities in East Haven, Connecticut after helping to break up a fight in a local bar. Petition, ECF No. 1, at ¶ 2. Mr. Brizuela was initially charged with several crimes, including a felony count of strangulation. See Silva Decl., Exhibit C, Judicial Branch Pending Case Detail. The State's Attorney subsequently withdrew the felony charge, and on February 10, 2012, Mr. Brizuela pleaded guilty to two misdemeanors and one motor vehicle infraction. Petition, ECF

No. 1 at ¶ 4. He received a suspended sentence and was ordered released with credit for time served. *Id.* at ¶ 5. Notwithstanding their lack of any legal authority to do so, Respondents continued to detain Mr. Brizuela beyond February 10, 2012 solely on the basis of an immigration detainer, and turned Mr. Brizuela over to ICE four days later, on February 14, 2012.<sup>1</sup>

Respondents violated the constitutional rights of Mr. Menjivar Lopez, Mr. Castro Largo, and Petitioner Sergio Brizuela, as well as all members of the proposed class, by continuing their detention after all legal authority to incarcerate them had expired, at the behest of the federal immigration authorities. *See* Petition at ¶¶ 32-63.

Secure Communities is a federal program designed to greatly expand and accelerate this process by initiating an automated immigration status check every time a person is fingerprinted upon arrest and booking by a state, local, or tribal law enforcement agency anywhere in Connecticut. ICE then issues the same flawed immigration detainers challenged in this action, directing state, local and tribal agencies to detain individuals until ICE decides assume custody. Secure Communities is being activated across Connecticut today. *See* Silva Decl., Exhibit D, Statement by Connecticut Undersecretary for Criminal Justice Mike Lawlor. As a result, the universe of individuals who will be subject to Respondents' unconstitutional practice of detention and irreparable harm is set to grow significantly. It is therefore with the upmost urgency that Petitioner requests issuance of order to show cause and to commence precertification discovery.

## **ARGUMENT**

### **I. THIS COURT SHOULD ISSUE THE ORDER TO SHOW CAUSE AND SET AN EXPEDITIOUS RETURN DATE.**

#### **A. This Court Should Issue an Order To Show Cause.**

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<sup>1</sup> This action was filed on February 13, 2012, while Mr. Brizuela was still in the custody of the Respondents. Mr. Brizuela also moved for certification as a representative action on the date he filed this action. ECF No. 2.

This Court has the authority to issue an order to show cause why the writ of habeas corpus should not issue. 28 U.S.C. § 2243 (“A court . . . entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.”); see also Walker v. Johnston, 312 U.S. 275, 284 (1941) (“This practice has long been followed by this court and by the lower courts.”).

Further, unless the petition is frivolous or obviously meritless, the Court must issue an order to show cause. See U.S. ex rel. Holes v. Mancusi, 423 F.2d 1137, 1141 (2d Cir. 1970); U.S. ex rel. Robinson v. Pate, 345 F.2d 691, 697 (7th Cir. 1965) (“Under the mandatory provisions of 28 U.S.C. § 2243 a return is required unless the petition is patently frivolous or obviously without merit”) (emphasis added); Wright v. Dickson, 336 F.2d 878, 881 (9th Cir. 1964) (“Unless a petition for habeas corpus reveals on its face that as a matter of law the petitioner is not entitled to the writ, the writ or an order to show cause must issue . . . . The usual practice is for the petitioned court to issue an order to show cause”) (emphasis added).

In this case, Petitioner has, on behalf of himself and a class of other individuals who are presently or will be held solely on the basis of an immigration detainer, challenged the legality of that detention and sought release from custody or, in the alternative, declaratory and injunctive relief. The petition is not frivolous or meritless and so an order to show cause why that relief should not be granted is therefore appropriate.

**B. Secure Communities Will Substantially Increase the Number of Unlawful Detentions in Connecticut Pursuant to Immigration Detainers and Its Implementation in the State Heightens the Need for an Expedious Return.**

Starting today, ICE will increase the number of standardless immigration detainers it issues in Connecticut through the implementation of a program it calls “Secure Communities.”

See Silva Decl., Exhibit D, Statement by Connecticut Undersecretary for Criminal Justice Mike Lawlor. Under this program, when a local police department makes an arrest and submit the individual's fingerprints to the FBI for criminal history check, the FBI will automatically share that data with The Department of Homeland Security (DHS) so that the agency can run those fingerprints through its own database of biometric information about individuals who have had contact with the immigration authorities. See Silva Decl., Exhibit E, DHS Secure Communities Website. DHS-ICE uses the results of this process to issue immigration detainers to custodial agencies for individuals the Department believes may be removable from the United States. See Silva Decl., Exhibit E, Secure Communities Standard Operating Procedures.

ICE claims that it has authority to impose Secure Communities on states and localities without their consent and plans to activate the program nationwide by 2013. See Silva Decl., Exhibit F, Homeland Security Advisory Council, Task Force on Secure Communities: Findings and Recommendations at 5-7. But it has failed to identify adequate legal authority for the program. See id. at 13. Nor has it identified legal authority for state or local officials to hold persons based on nothing more than an ICE detainer.

Immigration detainers are an integral part of the Secure Communities program; indeed, the program depends on immigration detainers to work. See Silva Decl., Exhibit E, Secure Communities Website. The proposed class will expand dramatically as Secure Communities is activated in Connecticut. Secure Communities will automatically result in an immigration status check for every individual arrested anywhere in the state, no matter how minor the charges against that individual or their eventual disposition. Those status checks will enlarge the total pool of individuals against whom detainers will be lodged.

As the principal custodial agency in Connecticut, Respondent Connecticut Department of Correction and its Commissioner, Respondent Arnone, are responsible for virtually all pretrial and postconviction detention in Connecticut. These respondents have physical custody of the vast majority of individuals who are subject to immigration detainers in Connecticut, and will have custody of those who are subject to such detainers under Secure Communities.

28 U.S.C. § 2243, which provides the process for issuing an Order to Show Cause, prescribes a return within three days of the order's issuance. The heightened urgency created by the high likelihood of an immediate and dramatic expansion of unconstitutional detention by Respondents justifies the expeditious issuance of an Order to Show Cause and strict adherence to the statutory three-day return period set out in 28 U.S.C. § 2243.

## **II. THE COURT SHOULD SWIFTLY GRANT LEAVE TO PROPOUND PRECERTIFICATION DISCOVERY REQUESTS.**

### **A. This Court Has The Authority To Order Precertification Discovery.**

Precertification discovery is a standard practice of class action litigation. It serves the interests of the Court and the parties in identifying and narrowing the common questions of law and fact, and testing whether the requirements of class certification are met: “[D]iscovery often has been used to illuminate issues upon which a district court must pass in deciding whether a suit should proceed as a class action under Rule 23, such as numerosity, common questions, and adequacy of representation.” Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 n.13 (1978).

The Second Circuit has long recognized that Rule 23 of the Federal Rules of Civil Procedure, while not directly applicable in a habeas suit, nevertheless supplies an appropriate analog for the rules and procedures to be used in representative habeas actions. In United States ex rel. Sero v. Preiser, 506 F.2d 1115, 1125-26 (2d Cir. 1974), the Second Circuit allowed the



petitioner to represent a class of young adults serving state sentences who were challenging the length of those sentences, certifying the case to proceed as “a multi-party proceeding similar to the class action authorized by the Rules of Civil Procedure.” Id. at 1125.

Because Rule 23 is not, strictly speaking, controlling in representative habeas actions, the Second Circuit fashioned procedures appropriate for such an action pursuant to the All Writs Act, 28 U.S.C. § 1651. See Harris v. Nelson, 394 U.S. 286, 299 (1969) (holding courts may use “appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage” in the habeas context). In so doing, the Second Circuit explicitly looked to Rule 23 and applied its four criteria — numerosity, typicality, commonality, and adequacy — to the petitioners’ request for certification. Sero, 506 F.2d at 1126-27.<sup>2</sup> The Second Circuit has thus adopted Rule 23 as a guide to the administration and management of representative habeas actions.

Moreover, under longstanding Second Circuit precedent, district courts have the authority to order discovery prior to Rule 23 class certification. Sirota v. Solitron Devices, Inc., 673 F.2d 566, 571 (2d Cir. 1982) (“[T]here can be no doubt that it is proper for a district court, prior to certification of a class, to allow discovery and to conduct hearings to determine whether the prerequisites of Rule 23 are satisfied.”); Phillip Morris, Inc. v. Nat’l Asbestos Workers Medical Fund, 214 F.3d 132, 135 (2d Cir. 2000) (per curiam) (affirming Sirota); see also, Charles v. National Mut. Ins. Co., 2010 WL 7132173, at \*4 (E.D.N.Y. May 27, 2010); Rahman v. Smith & Wollensky Rest. Group, 2007 WL 1521117, at \*3 (S.D.N.Y. May 24, 2007); Nat’l Org. for

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<sup>2</sup> The Sero court was hesitant to fully extend Rule 23 to representative habeas actions, noting “the very substantial burdens of discovery and proof which would be required to rebut even the most frivolous allegations.” 506 F.2d at 1125. However, the reason for the Sero court’s hesitancy is not relevant in this matter. Mr. Brizuela’s allegations are far from frivolous, and he seeks limited discovery to assist the Court in deciding the certification question and in shaping the appropriate class. Id. (quoting Harris, 394 U.S. at 297).

Women, Farmington Valley Chapter v. Sperry Rand Corp., 88 F.R.D. 272, 276 (D. Conn. 1980).

Circuit precedent clearly permits this Court to order precertification discovery in this action.

**B. Precertification Discovery is Necessary in this Case.**

To enable Petitioner a fair opportunity to demonstrate that the Rule 23 requirements are satisfied, and to permit the Court to adjudicate the pending motion for class certification, ECF No. 2, on a full record, precertification discovery is appropriate in this case. Fed. R. Civ. P. 23(a); Sero, 506 F.2d at 1126-27.

Respondents are the only source of the information Petitioner needs to adequately brief his pending motion for class certification or representative habeas action. See ECF No. 2. Respondents possess the detention records of potential class members, including, but not limited to, which individuals are the subject of an immigration detainer and the nature of each individual's criminal charges and/or convictions. This information is germane to the Petitioner's ability to satisfy the requirements of Rule 23(a).

Petitioner needs this information to demonstrate numerosity, commonality, typicality, and adequacy. First, there are some ways in which members of the proposed class may differ. For example, DOC holds many potential class members on immigration detainers which are clearly ultra vires to the governing statute. See Petition, ECF No. 1 at ¶¶ 23-26. But it holds other class members, namely those convicted of certain controlled substance violations, on immigration detainers that arguably may be authorized by federal statute. See id. (Stating that ICE may be authorized to issue a detainer regarding persons convicted of a controlled substance violation does not render that detainer mandatory on Respondents, nor does it supply legal authority for Respondents to hold the subject of the detainer.)

Similarly, Respondents detain some potential class members are held for less than the 48 hours, while holding others for longer. See Petition, ECF No. 1 at ¶¶ 27-33. While DOC holding an individual based solely on a detainer for less than 48 hours is unconstitutional, longer periods of detention also implicate the bright-line 48-hour rule of County of Riverside v. McLaughlin, 500 U.S. 44 (1991). Information about the individuals in DOC custody currently subject to detainers can therefore help inform this Court's definition of a class and of potential subclasses. Precertification discovery is the best avenue available to Petitioner to secure such information.

**C. Petitioner Seeks Limited Discovery Relevant to the Class Allegations and Such Discovery Would Not Impose Any Undue Burden on Respondents.**

1. Routine Precertification Discovery.

Petitioner seeks leave to propound precertification discovery requests that would be permitted under the Federal Rules of Civil Procedure, including appropriate requests for production, interrogatories, and depositions. Petitioner foresees that such precertification requests will include, but not be limited to, the following:

a) *Statistical and Aggregate Data*

Petitioner will seek statistical and other data in the possession of the DOC that is probative of the number and relevant characteristics of proposed class members. In particular, Petitioner will seek data, including but not limited to:

- The total number of individuals in DOC custody against whom a detainer has been lodged, both retrospectively and, upon the activation of Secure Communities today, February 22, 2012, on an ongoing basis;
- The number of individuals held solely on the basis of an immigration detainer, both retrospectively and on an ongoing basis;

- The average number at any time of individuals in DOC custody against whom a detainer has been lodged. This information may be provided through statistical sampling; and
- The average number at any time of individuals in DOC custody who are held solely on the basis of an immigration detainer. This information may be provided through statistical sampling.

This information bears on the issue of numerosity, and is in the sole possession of the DOC.

Petitioner will further seek associated information bearing on the questions of commonality, typicality, and adequacy:

- For each individual identified, the facility in which he or she is or was detained;
- For each individual identified, the length of his or her detention based solely on an immigration detainer;
- For each individual identified, the criminal charges and/or convictions associated with his or her incarceration at the relevant time.

When such statistical or aggregate information is necessary to establish a petitioner or plaintiff's case for certification of a class and is in the sole possession of the defendant, courts have deemed the production of this type of precertification discovery necessary and proper. See, e.g., Nat'l Org. for Women, 88 F.R.D. at 278 (permitting precertification discovery of the number of males and females employed in various positions by the defendant in a gender discrimination case); Velasquez v. Faurer, 101 F.R.D. 8, 9 (D. Md. 1983) (authorizing precertification discovery in race discrimination case of "information regarding the numbers and comparative percentages of whites and Hispanics who applied for or who were considered for hiring or promotion by defendant as well as information concerning those who were evaluated, hired and/or promoted by the aforementioned Agency"); Nash v. City of Oakwood, Ohio, 90

F.R.D. 633, 637 (S.D. Ohio 1981) (permitting pre-certification “discovery of statistical or factual data [which] may well be relevant to the class action question”); Hastings v. Asset Acceptance, LLC, CIV.A. 1:06-CV-418, 2007 WL 461477 at \*3 (S.D. Ohio Feb. 7, 2007) (unpublished) (“Defendants . . . are in possession and control of the documents and evidence needed to resolve [certification] issues . . . . This information is clearly relevant to the issues of class certification and the merits and should be produced.”).

This request will not be burdensome, nor will it implicate privacy concerns. It appears that DOC already tracks which individuals have an immigration detainer on file electronically. On its online inmate locator system, DOC’s “Inmate Information” report contains a “Detainer” field which at times indicates an “immigration” detainer. See Silva Decl., Exhibit G, Example DOC Inmate Information Printouts. This suggests that DOC’s electronic database contains a populated field indicating whether an immigration detainer has been lodged against a given individual, facilitating uncomplicated retrieval of the requested information. Further, this information is routinely available to the public via DOC’s website, and so the Department appears to recognize that no privacy concerns are implicated in releasing this information in discovery. However, insofar as there are concerns regarding privacy, this court has already made available a standing protective order which DOC may invoke at any time. See ECF No. 4. Therefore, even if “disclosure of the information sought by plaintiff could be invasive of the privacy rights of non-parties, as well as putative class members, these concerns can be adequately addressed through a well-crafted protective order limiting access to the parties, their attorneys, and Court personnel.” Hastings, CIV.A. 1:06-CV-418, 2007 WL 461477, at \*3.

b) *Immigration Detainers and Other Immigration Documentation.*

For each putative class member, Petitioner will also request copies of the Immigration Detainer (DHS Form I-247), see Silva Decl., Exhibit H, Sample Immigration Detainer, and other documents related to that individual issued by DHS, including, but not limited to, a Notice to Appear (Form I-862) and an Administrative Warrant of Removal (Form I-205). This documentation relates to ICE's purported justification and basis for lodging a detainer against an individual. Discovery of this information will reveal whether DOC treats all potential class members the same, regardless of ICE's purported justification for lodging a detainer, and may therefore bear upon the questions of commonality, typicality, and adequacy for the proposed class. This kind of request for production of documents is routine under Fed. R. Civ. P. 34. And, as noted above, any privacy concerns the DOC has may be addressed by invoking the standing protective order in this case. ECF No. 4.

2. Additional Pre-Certification Discovery Appropriate Under the Circumstances.

In addition to the routinely available tools of discovery, the unique circumstances of this case justify additional measures for facilitating access to potential class members by Petitioner's counsel. This discovery is proper under the circumstances for three reasons. First, DOC's physical custody of members of the proposed class within corrections facilities means that Respondents have total control over and access to class members, while access by Petitioner's counsel is severely limited. Second, the extraordinarily rapid turnover of proposed class members currently held on a detainer seriously exacerbates the problems associated with counsel's limited access to potential class members with relevant information. Finally, the contours of the class will become less predictable with the activation of Secure Communities.

Therefore, Petitioner seeks leave to request the following additional forms of pre-certification discovery:

- a) *List of Putative Class Members; Or, in the Alternative, Notice to Putative Class Members.*

Petitioner will request a list of the names of each individual who may be a class member currently in the custody of the DOC, along with DOC identification number, and the name of the facility in which the individual is incarcerated. Petitioner will further request that DOC arrange for undersigned counsel to have routine access for legal visits with or telephone calls to potential class members. This information and access is necessary to investigate the constitution of the class, determine whether sub-classes are appropriate, and establish numerosity, commonality, typicality, and adequacy. Such information will assist the Court in ruling upon the class certification motion.

Where a class consists of individuals in prison or jail, information about proposed class members is controlled by prison officials, and particularly difficult for class representatives to obtain by other means. Therefore, in such special circumstances, courts have recognized that a list of prisoners who may be class members is a legitimate precertification discovery request. See, e.g., Franklin v. Barry, 909 F. Supp. 21, 29 (D.D.C. 1995) (“[L]isting of all Hispanic prisoners incarcerated in D.C. institutions” provided by defendant in precertification discovery established numerosity).

In addition, it is not uncommon for courts to authorize discovery of contact information for proposed class members when that information is in the possession and control of the defendant. See, e.g., Artis v. Deere & Co., 276 F.R.D. 348, 352 (N.D. Cal. 2011) (noting that “[t]he disclosure of names, addresses, and telephone numbers [of proposed class members] is a common practice in the class action context”) and (collecting cases); Whitehorn v. Wolfgang's

Steakhouse, Inc., 09 CIV. 1148 (LBS), 2010 WL 2362981 (S.D.N.Y. June 14, 2010)

(unpublished) (permitting “pre-certification discovery of employee contact information” in Fair Labor Standards Act suit). In Artis, the court found that the plaintiff was “entitled to the contact information of putative class members” because that information “and subsequent contact with potential class members is necessary to determine whether Plaintiff’s claims are typical of the class, and ultimately whether the action may be maintained as a class action.” Id.<sup>3</sup>

b) *Continuing Disclosure; Or, in the Alternative, Notice to Proposed Class Members.*

In light of the imminent activation of the Secure Communities program across Connecticut, the number of individuals in the proposed class may soon dramatically increase. In addition, the distribution of crimes with which those individuals have been charged and of which they have been convicted may change once the program is activated as more minor offenders or non-offenders are swept up into Secure Communities’ broad net. Therefore, Petitioner requests, in addition to information regarding current proposed class members in section II.C.2.(a), ongoing notification of every detainer lodged against an individual in DOC custody until the Court has determined whether the class should be certified. This information will permit Petitioner to establish numerosity, commonality, typicality, and adequacy under the new Secure Communities regime automating the issuance of immigration detainers.

It is critical that such information be provided immediately upon receipt of the detainer by DOC. Detainers purport to authorize detention for 48 hours, not including weekends and holidays, by the DOC after state authority to detain ceases. Some individuals against whom a

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<sup>3</sup> In the event this Court does not order immediate discovery of all individuals currently held in DOC custody solely on the basis of an ICE detainer, updated regularly by Respondents, Petitioner requests in the alternative that the Court direct that, upon service of an ICE detainer on a detainee, Respondents simultaneously serve each putative class member, and his or her counsel of record, written notification in his or her native language of the pendency of this action and undersigned counsel’s contact information. Such notice would also be served on the criminal defense attorney for each potential class member. See Silva Decl., Exhibit H, Sample Immigration Detainer (directing service upon its subject).



detainer has been lodged may, therefore, be held for only a matter of days or even hours before being transferred to ICE custody. Others, like Petitioner Brizuela or the prior petitioners Menijar Lopez and Castro-Largo, may be detained for up to four or five days by Respondents. If notice is not immediate, Petitioner may have no opportunity to investigate such recurring instances of brief but unlawful detention, particularly if ICE subsequently transfers potential class members out of state or deports them. Lack of immediate notification may therefore artificially skew information bearing on numerosity, commonality, typicality, and adequacy by excluding those held briefly from the total class sample.

Recognizing the burden this request may pose, Petitioner is prepared to accept an agreement that Respondents will simultaneously serve each putative class member, and his or her counsel of record, written notification in his or her native language of the pendency of this action and undersigned counsel's contact information as soon as the detainer is lodged and on a continuing basis until the Court has determined whether the class should be certified in this matter.

### **CONCLUSION**

For the foregoing reasons, Petitioner Brizuela respectfully requests that this Court expeditiously order Respondent to show cause why the writ should not issue or, in the alternative, declarative and injunctive relief should not be granted within the three-day period required by 28 U.S.C. § 2243. Petitioner further requests that this Court grant leave to propound the requested precertification discovery and order Respondents to respond to discovery requests in an expedited manner.

DATED: February 22, 2012  
New Haven, Connecticut

Respectfully submitted,

/s/

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*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2012, a copy of the foregoing Memorandum of Law in Support of Petitioner's Motion for an Order to Show Cause and Leave to Propound Precertification Discovery Requests was filed electronically and that notice of this filing was sent by FedEx to the parties at the addresses listed below.

Jose Feliciano  
Warden, New Haven Correctional Center  
245 Whalley Avenue  
P.O. Box 8000  
New Haven, CT 06511

Leo C. Arnone  
Commissioner  
Connecticut Department of Correction  
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Office of the Attorney General  
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\_\_\_\_\_/s/\_\_\_\_\_  
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*Counsel for Petitioner*

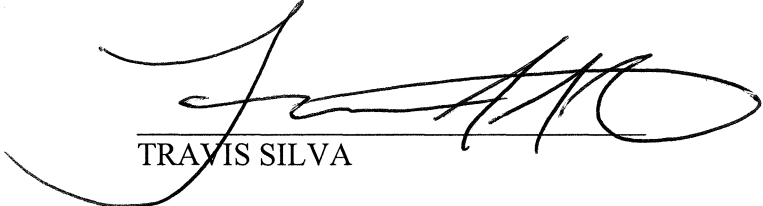


2012. The statement is publicly available on the Governor of Connecticut's website at <http://www.governor.ct.gov/malloy/cwp/view.asp?Q=499428&A=4010>.

6. Attached hereto as Exhibit E are true and correct copies of the Department of Homeland Security's website regarding the Secure Communities program, publicly available at [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/), and its Standard Operating Procedures for the program, publicly available at [http://epic.org/privacy/secure\\_communities/securecommunitiesops93009.pdf](http://epic.org/privacy/secure_communities/securecommunitiesops93009.pdf)
7. Attached hereto as Exhibit F is a true and correct copy of a report of the Homeland Security Advisory Council's Task Force on Secure Communities dated September, 2011. The report is publicly available on the Department of Homeland Security's website at <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf>.
8. Attached hereto as Exhibit G are true and correct redacted copies of various Connecticut Department of Correction "Inmate Information" printouts. These printouts were obtained and printed from the Department of Correction by law student interns at the Jerome N. Frank Legal Services Organization working under my supervision.
9. Attached hereto as Exhibit H is a true and correct copy of an example immigration detainer, ICE form I-247.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Dated: February 22, 2012  
New Haven, Connecticut



TRAVIS SILVA

JEROME N. FRANK  
LEGAL SERVICES ORGANIZATION  
P.O. Box 209090  
New Haven, CT 06520-9090  
Telephone: (203) 432-4800  
Facsimile: (203) 432-1426

# Exhibit A

U.S. Department of Homeland Security

## Order of Release on Recognizance

File No: [REDACTED]

Date: December 8, 2011

Event No: LSC1210000085

Name: Roberto Carlos MENJIVAR-LOPEZ

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Department of Homeland Security or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☒ You must report in (writing) (person) to 450 Main Street Room 501 060 Hartford Ct 06103  
(Name and Title of Case Officer)  
 at Hartford, CT 06103 on June 8<sup>th</sup>, 2012 at 8:00 AM  
(Location of DHS Office) (Day of each week or month) (Time)  
860-240-3012

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the immigration officer listed above.

☒ You must not violate any local, State, or Federal laws or ordinances.

☒ You must assist the Department of Homeland Security in obtaining any necessary travel documents.

☐ Other: \_\_\_\_\_

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

**NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.**

[Signature]  
(Signature of DHS Official)

Ward, Priscilla  
(Printed Name and Title of Official)

## Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the \_\_\_\_\_ language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

[Signature]  
(Signature of Immigration Officer Serving Order)

X Roberto C. Menjivar Lopez  
(Signature of Alien)

12/8/2011  
(Date)

## Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.

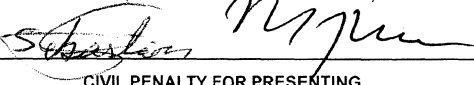
☐ The alien was taken into custody for removal.

\_\_\_\_\_  
(Signature of Immigration Officer Canceling Order)

\_\_\_\_\_  
(Date)

# Exhibit B



<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:  Department of Homeland Security Immigration and Customs Enforcement			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.  See Attachment.		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH [REDACTED]	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT Friday 10/7/11 to Wed 10/12/11	
7. TIME (A.M. OR P.M.) n/a					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).  See Attachment					
<b>9. PROPERTY DAMAGE</b>					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).  n/a					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).  n/a					
<b>10. PERSONAL INJURY/WRONGFUL DEATH</b>					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.  See Attachment					
<b>11. WITNESSES</b>					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
See Attachment		See Attachment			
<b>12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)</b>					
12a. PROPERTY DAMAGE  n/a		12b. PERSONAL INJURY  \$300,000		12c. WRONGFUL DEATH  n/a	
12d. TOTAL (Failure to specify may cause forfeiture of your rights).					
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM [REDACTED]		14. DATE OF SIGNATURE 11/14/11
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b>  The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b>  Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

## INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

n/a

n/a

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

n/a

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

n/a

## INSTRUCTIONS

**Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.**

**Complete all items - Insert the word NONE where applicable.**

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

**Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.**

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Attachment to:

CLAIM FOR DAMAGE, INJURY, OR DEATH

Re: Manuel Sebastian Castro Largo

November 14, 2011

Answer 2

*Claimant*

Manuel Sebastian Castro Largo

*Legal Representative*

Michael Wishnie, Supervising Attorney  
Anne Lai, Supervising Attorney  
Trudy Rebert, Law Student Intern  
Sirine Shebaya, Law Student Intern  
Matthew Vogel, Law Student Intern  
Cody Wofsy, Law Student Intern  
Worker & Immigrant Rights Advocacy Clinic  
Yale Law School  
P.O. Box 209090  
New Haven, CT 06520-9090

Answer 8

Claimant, Mr. Manuel Sebastian Castro Largo, was unlawfully detained from on or about October 7, 2011 until on or about October 12, 2011 in violation of Connecticut common law.<sup>1</sup> Mr. Castro Largo was detained past the point of his judicially authorized release solely pursuant to an Immigration Detainer – Notice of Action, DHS Form I-247, issued by U.S. Immigration and Customs Enforcement (“ICE”). Therefore, Mr. Castro Largo brings this claim based on the unlawful conduct of the ICE officials involved in issuing that detainer and communicating it to Connecticut Department of Correction (“DOC”) officials, in violation of Connecticut common law, including, but not limited to, the torts of: negligent and/or intentional false imprisonment, negligent and/or intentional infliction of emotional distress, civil conspiracy and/or aiding and abetting, negligent training and supervision, abuse of process, and prima facie tort.

Mr. Castro Largo was arrested for a traffic violation by the Meriden, Connecticut Police Department on or about October 6, 2011. On October 7, 2011, the Superior Court, Geographical Area 7 at Meriden ordered Mr. Castro Largo released on his own recognizance subject to a promise to appear. Lawful authorization for the detention of Mr. Castro Largo thus ended on October 7, 2011. At that point, he should have been released from all custody, as there was no longer any lawful justification for continued custody. However, ICE issued an immigration detainer, which caused New Haven

---

<sup>1</sup> In addition, Immigration and Customs Enforcement’s actions violated federal law and the Fourth, Fifth, and Tenth Amendments to the United States Constitution.

Correctional Center employees to continue to detain Mr. Castro Largo for six days, solely on the basis of the immigration detainer.

ICE did not have any probable cause to believe that Mr. Castro Largo had committed any further crime, nor did it undertake any probable cause hearing or present sworn evidence establishing probable cause to a neutral and detached magistrate; it issued the detainer pursuant to 8 C.F.R. § 287.7 only, which contains no standards for the issuance of a detainer. The regulation that ICE relied on provides no authority for ICE to direct or require local officials to continue detention, and ICE possesses no independent legal authority to continue detention past the point of judicially authorized release. ICE's issuance of an immigration detainer was the sole reason the Connecticut authorities continued to hold Mr. Castro Largo. By issuing the detainer, ICE directed Connecticut authorities to hold Mr. Castro Largo and led the New Haven Correctional Center to believe that his extended detention was required. Thus, ICE's issuance of the detainer intentionally or negligently caused the unlawful six-day-long false imprisonment of Mr. Castro Largo.

In so issuing the detainer, ICE officials also intentionally and/or negligently inflicted emotional distress on Mr. Castro Largo. ICE officials knew or should have known that causing the unlawful detention of Mr. Castro Largo, without cause, notice, or explanation, would result in distress, anxiety, trauma and personal humiliation. Unsurprisingly, Mr. Castro Largo has suffered severe emotional distress and trauma that was caused by, and directly resulted from, the unlawful actions of ICE agents. Mr. Castro Largo continues to bear the stigma and feelings of helplessness that were caused by his false detention. He remains fearful and uncertain of whether law enforcement officers will target him and/or his friends and family in the future.

The ICE agents who lodged a detainer against Mr. Castro Largo also committed abuse of process. Statutory authorization to issue immigration detainers exists only for non-citizens whose offenses are related to a controlled substance violation. *See* 8 U.S.C. § 1357(d). The ICE agents knew or should have known that the regulation under which they issued the detainer, 8 C.F.R. § 287.7, is *ultra vires* of the statute because it authorizes the issuance of immigration detainers to hold non-citizens whose alleged offenses are unrelated to controlled substance violations. The ICE agents knew or should have known that Mr. Castro Largo was not arrested on a controlled substance violation. They nevertheless issued a detainer for the unlawful purpose of detaining Mr. Castro Largo.

Moreover, upon information and belief, those ICE agents could have attended Mr. Castro Largo's bond hearing and effected an arrest when he was released on his own recognizance, but declined to do so. The ICE agents knew or should have known that the issuance of detainers to investigate, without any production of sworn evidence to a neutral magistrate judge, was unlawful. The agents knew or should have known that DOC had no authority to detain Mr. Castro Largo after the point of judicially authorized release. ICE nevertheless issued a detainer for the unlawful purpose of detaining Mr.

Castro Largo until it was convenient for ICE to arrest him. In doing so, they committed abuse of process.

ICE agents committed a prima facie tort by issuing the detainer, knowing that it would cause the detention of Mr. Castro Largo past his judicially authorized custody. The ICE agents therefore knew the issuance of the detainer was going to infringe upon Mr. Castro Largo's legally protected liberty interests, including those described above, and his rights to substantive and procedural due process. Furthermore, ICE's failure to properly train and supervise its employees led to the commission of the abovementioned torts against Mr. Castro Largo and the violation of his legally protected liberty interests. ICE officials knew or should have known that their failure to train and supervise ICE employees would lead to unlawful detention and the deprivation of legally protected liberty interests.

Finally, by agreeing to act in an unlawful manner against Mr. Castro Largo and his legally protected interests, and subsequently committing actions in furtherance of that scheme and object, the ICE agents entered into a civil conspiracy and/or participated in aiding and abetting to deprive Mr. Castro Largo of his rights.

Answer 10

As a result of the actions of the government and its agents in committing torts, without limitation, of negligent and/or intentional false imprisonment, negligent and/or intentional infliction of emotional distress, civil conspiracy and/or aiding and abetting, negligent training and supervision, abuse of process, and prima facie tort, Mr. Castro Largo suffered humiliation, damage to his reputation, emotional distress, and deprivation of and restrictions on his liberty. Claimant demands no less than \$300,000 for these damages.

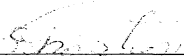
Answer 11

- A. Mackie, Immigration Enforcement Agent, c/o Immigration and Customs Enforcement, Department of Homeland Security, Williston, VT 05495
- Jose Feliciano, Warden, New Haven Correctional Center, Connecticut Department of Correction
- Hipolito N. Rodriguez, Deputy Warden, New Haven Correctional Center, Connecticut Department of Correction
- Karl Lewis, Deputy Warden, New Haven Correctional Center, Connecticut Department of Correction
- Manuel Sebastian Castro Largo, [REDACTED]

I, Manuel Sebastian Castro Largo, hereby authorize the Jerome N. Frank Legal Services Organization to file a Federal Tort Claims Act claim on my behalf for events that occurred in relation to my detention from on or about October 7, 2011 until on or about October 12, 2011.

11/17/2011

Date



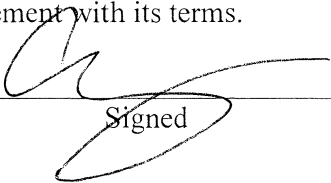
Manuel Sebastian Castro Largo

**CERTIFICATE OF TRANSLATION**

I, Cody Wofsy, hereby certify that I am fluent in English and Spanish, that I have translated the foregoing in Spanish to Manuel Sebastian Castro Largo, and he or she acknowledged having understood its meaning and expressed agreement with its terms.

11/17/11

Date

  
Signed

# Exhibit C





# State of Connecticut Judicial Branch



Thursday,  
December 29,  
2011 Docket  
Search by Court  
Location

Thursday,  
December 29,  
2011 Docket  
Search by  
Defendant

Pending Cases  
Search by  
Defendant

Pending Cases  
Search by  
Docket Number

Convictions  
Search by  
Defendant

Convictions  
Search by  
Docket Number

GA Court Phone  
Numbers

JD Court Phone  
Numbers

Home

## Pending Case Detail

*Data as of the Previous Business Day*

### Defendant Information

**Last, First:** BRIZUELA SERGIO A  
**Birth Year:** 1979

**Represented By:** 401759 JM CHASE  
**Times on the Docket:** 4

### Docket Information

**Docket No:** N23N-CR11-0123385-S

**Arresting Agency:** LOCAL POLICE EAST HAVEN

**Companion:**

**Program:**

**Arrest Date:** 11/20/2011

**Court:** New Haven GA 23

**Bond Amount:** \$25,000 (This case only)

**Miscellaneous:**

**Bond Type:** Set  
(Not Released From Custody)

**Activity:** Awaiting Plea

**Next Court Date:** 1/12/2012 10:00 AM

### Current Charges

Statute	Description	Class	Type	Occ	Offense Date	Plea	Verdict Finding
53a-61	ASSAULT 3RD DEG	A	Misdemeanor	1	11/20/2011		
53a-130	CRIMINAL IMPERSONATION	A	Misdemeanor	1	11/20/2011		
53a-167a	INTERFERE WITH OFFCR/RESISTING	A	Misdemeanor	1	11/20/2011		
53a-181	BREACH OF PEACE 2ND DEG	B	Misdemeanor	1	11/20/2011		
53a-64bb	STRANGULATION SECOND DEGREE	D	Felony	1	11/20/2011		

Back

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# Exhibit D

## Governor Dannel P. Malloy

STATE OF CONNECTICUT  
GOVERNOR DANIEL P. MALLOY

February 20, 2012

**STATEMENT BY UNDERSECRETARY FOR CRIMINAL JUSTICE MIKE  
LAWLOR**

Mike Lawlor, Under Secretary for Criminal Justice Policy and Planning, today released the following statement on the Federal Department of Homeland Security's decision to activate their "Secure Communities" program statewide in Connecticut:

"While we are very mindful of the need to enhance public safety, there are legitimate concerns when it comes to the implementation of the Secure Communities program. Six months ago, when the Department of Homeland Security announced that Secure Communities was scheduled to go "live" statewide in Connecticut, Governor Malloy asked for and received a delay in the activation because of these concerns.

"What this program does is it essentially converts local law enforcement officers into defacto agents of the Immigration and Customs Enforcement Agency (ICE). The Governor shares the opinion of many police chiefs that this policy could lead to a situation where victims and witnesses in the immigrant community would be reluctant to cooperate with local and state law enforcement, something that would completely undermine the goals of this program.

"The Governor has asked Department of Corrections Commissioner Leo Arnone to create an ongoing review of how this program is implemented and what the ramifications are, and see what if any corrective action is needed going forward. Decisions on how to respond to each request will be made on a case-by-case basis.

"As the report itself says: 'DHS must ensure its immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose a threat to public safety such as criminal aliens and national security threats, as well as repeat immigration law violators and recent border entrants. In fact, the expenditure of resources on cases that fall outside our enforcement priorities hinders our public safety mission by clogging immigration court dockets and diverting resources . . . .'"

For more information on the Task Force's report, click [here](#). DHS's program will begin on Wednesday, February 22nd.

###

For Immediate Release: February 20, 2012

Contact: Andrew Doba

[Andrew.Doba@ct.gov](mailto:Andrew.Doba@ct.gov)

860-524-7308 (office)

860-770-8090 (cell)

Twitter: [@GovMalloyOffice](#)Facebook: [Office of Governor Dannel P. Malloy](#)



# Exhibit E



# **Immigration and Customs Enforcement (ICE)**

## **Secure Communities (SC)**

### **Standard Operating Procedures (SOP)**

**Distributed for adoption by participating county and local  
law enforcement agencies**

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## **1.0 INTRODUCTION**

The Secure Communities (SC) initiative makes the removal of aliens convicted of serious criminal offenses from the United States a priority. The SC initiative's three main objectives are: (1) identify aliens in federal, state, and local custody charged with or convicted of serious criminal offenses who are subject to removal and at large aliens convicted of a serious criminal offense who are subject to removal; (2) prioritize enforcement actions to ensure apprehension and removal of aliens convicted of serious criminal offenses; and (3) transform criminal alien enforcement processes and systems to achieve lasting results.

The premise behind SC technology is biometric interoperability between the Department of Justice (DOJ) Federal Bureau of Investigation's (FBI) Criminal Justice Information Services Division (CJIS) Integrated Automated Fingerprint Identification System (IAFIS) and the Department of Homeland Security's (DHS) United States Visitor and Immigrant Status Indicator Technology's (US-VISIT) Automated Biometric Identification System (IDENT). The IDENT/IAFIS Interoperability interface connects the FBI fingerprint system housed in the FBI's CJIS Division with a DHS fingerprint system maintained by the US-VISIT program. Through IDENT/IAFIS Interoperability, a single query by a participating local law enforcement agency (LEA) checks both systems and confirms the identity and immigration status of a subject being processed during incarceration booking.

This Standard Operating Procedures (SOP) document details SC processes that enable response messages to be routed to the FBI CJIS Division and individual State Identification Bureaus (SIBs). The SOP also documents ICE's roles and responsibilities as an SC partner.

Participation in SC at the state level is predicated on a Memorandum of Agreement (MOA), signed by ICE and the participating SIB or other state authorized agency. SC is separate from the ICE 287(g) program and, as such, participation in SC will not adversely affect local agency participation in ICE 287(g) activities.<sup>1</sup>

Use of IDENT/IAFIS for the purposes of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity. ICE reserves the right to take appropriate remedial action if necessary.

## **2.0 STANDARD OPERATING PROCEDURES**

### **2.1 The Secure Communities Process**

The SC process leverages existing FBI CJIS Division business practices to identify aliens convicted of a serious criminal offense. At the time of each booking, participating LEAs submit fingerprints to their SIB. The SIB electronically transmits the fingerprints to the FBI CJIS Division. However, National Fingerprint File (NFF) states send fingerprints to the FBI CJIS Division only at the time of the subject's initial arrest. Thereafter, criminal bookings occurring subsequent to an initial arrest in NFF states result in transmission of a Criminal Print IDENT (CPI) file maintenance message to the FBI CJIS Division. The following sub-

---

<sup>1</sup> If future clarification becomes necessary, SC may make enhancements to this SOP.

sections of the SOP describe the process used to confirm the identities of aliens convicted of a serious criminal offense who are subject to removal.

**2.1.1 Local LEA submits fingerprints to the FBI CJIS Division through their SIB:**

As appropriate, the local LEA will submit a Criminal Ten-Print Submission (Answer Required) (CAR) transaction, in accordance with FBI CJIS Division procedures, to its SIB. SIB will electronically send the fingerprints to the FBI CJIS Division. FBI CJIS' receipt of the CAR will initiate both IAFIS and IDENT searches. There is no change in IAFIS processing.

**2.1.2 National Fingerprint File (NFF):** The FBI maintains only one criminal fingerprint card per individual per NFF state in which there has been an arrest. Subsequent arrest fingerprint cards from a state where the individual was previously arrested are retained at the state level. When there is a subsequent arrest of a subject in an NFF state, rather than forwarding a CAR, SIB will send a CPI file maintenance message to FBI CJIS. FBI CJIS' receipt of the CPI file maintenance message will initiate an IDENT.

**2.1.2.1** The process for an initial arrest in an NFF state is described in 2.1.1 above.

**2.1.2.2** The process for the CPI message is as follows:

- FBI CJIS receives CPI notification via National Crime Information Center (NCIC)/Interstate Identification Index (III). The CPI message contains the instant charge(s) for which the subject is being booked
- FBI CJIS utilizes the FBI number included in the CPI message to retrieve fingerprint images from the master record
- FBI CJIS forwards the fingerprint images to the IDENT repository

**2.1.3 FBI CJIS Division returns IAFIS search results on fingerprint submissions:**

SC's IDENT/IAFIS Interoperability component will not interfere with the current processes used by FBI CJIS to return IAFIS' Submissions Results-Electronic (SRE) responses to the requesting state. The originating local LEA will continue to receive FBI IAFIS responses to fingerprint submissions through its SIB.

**2.1.4 FBI CJIS Division returns a second response to the SIB:**

If there is a positive fingerprint match in IDENT, FBI CJIS will send an automatic Immigration Alien Query (IAQ) to the ICE Law Enforcement Support Center (LESC). LESC then makes an immigration status determination on the subject and simultaneously sends that status determination, known as an Immigration Alien Response (IAR), to FBI CJIS Division and to the ICE Field Office responsible for the contributing LEA. FBI CJIS will then return the IAR, along with an IDENT Data Response (IDR), to the SIB via the CJIS Wide Area Network (WAN) using the same channel as the current IAFIS SRE. This response is known as the "match IDR/IAR" message. If the state employs message routing, the SIB will route this additional message to the local LEA.

The first portion of the match IDR/IAR message contains biographic information on up to five DHS encounters with that individual, and may include: full name, date of birth (DOB), place of birth (POB), gender, system record locator, and photograph (if



available). The second portion of the IDR/IAR message is the IAR. The IAR is the LESC status determination regarding the subject's alienage as well as the subject's possible removability.

If there has been a fingerprint match, and the state has implemented message routing to local LEAs, and IDR/IAR message will be sent to the SIB within four hours of FBI CJIS receiving the subject's fingerprints. If there is no fingerprint match, no IAQ is generated by the FBI CJIS Division, and if the state has implemented message routing, a no match IFR will automatically be sent to the originating local LEA through the SIB within 24 hours of the fingerprint submission.

Initial CAR transactions from NFF states will receive an additional SRE from FBI CJIS through the same channel as the current IAFIS SRE. If there is a match, the SRE will consist of the joint IDR/IAR. If there is no match, the SRE will consist of a "no match" IDR. **Note:** NFF states will also receive an additional SRE response to CPI messages. Ordinarily, CPI messages submitted by NFF states would not result in an SRE from the FBI CJIS Division.

#### **2.1.5 ICE issues Immigration Detainer:**

For SC purposes, Level 1 offenses include the following state or federal crimes: national security violations, homicide, kidnapping, sexual assault, robbery, aggravated assault, threats of bodily harm, extortion or threat to injure a person, sex offenses, cruelty toward child or spouse, resisting an officer, weapons violations, hit and run involving injury or death, and drug offenses involving a sentencing to a term of imprisonment greater than one year. Level 2 offenses are primarily property crimes and Level 3 offenses are other crimes, primarily misdemeanors. Offenses that comprise Levels 1, 2 and 3 are included in Appendix A.

When ICE determines an alien has been charged or convicted of a Level 1 offense that could result in removal, or when an alien who is already subject to removal is charged with a Level 1 offense, ICE will file an Immigration Detainer (Form I-247) at the time of booking with the local LEA that has custody of the alien. Appendix C contains a sample Form I-247. ICE recognizes the arrested alien may be released before the detainer is issued. In such instances, ICE may request the local LEA's provide information on the alien's identification and location.

## **2.2 Requested Local LEA Cooperative Actions**

The local LEAs cooperation is vital to completing the processes of identifying, detaining and removing aliens convicted of serious criminal offenses. The LEAs cooperative actions will help ensure the identification, detention and removal process is effective and efficient. ICE requests that the LEAs:

### **2.2.1 Abide by Immigration Detainer conditions:**

The local LEA will abide by the conditions stated in the Immigration Detainer, Form I-247.

### **2.2.2 Place detainer in subject's file/record:**

The local LEA will ensure the detainer is placed in the alien's file/record.

### **2.2.3 Inform ICE if subject is transferred or released:**

The local LEA will notify ICE when an alien's release or transfer to another location is imminent. This notification should occur thirty days in advance of any release or transfer, or as soon as known, if less than thirty days.

### **2.2.4 Allow access to detainees:**

The local LEA will allow ICE Agents and Officers access to detainees to conduct interviews and serve documents.

### **2.2.5 Assist ICE in acquiring information about detainees:**

The local LEA will locate and identify the booking and/or detention information on any alien against whom ICE has lodged a detainer.

### **2.2.6 Process IDR/IARs according to FBI CJIS and US-VISIT policy:**

The local LEA will comply with FBI CJIS and US-VISIT rules and regulations when processing IDR/IAR message transmissions.

### **2.2.7 If authorized, discontinue automated IAQ transmissions:**

In some jurisdictions, an automated IAQ message is transmitted to LESC when a subject's POB is entered as "unknown" or "other than United States" during the booking process. Where the local LEA has the authority and discretion to do so, upon deployment of IDENT-IAFIS Interoperability, the local LEA will discontinue such automated IAQ processing. IDENT-IAFIS Interoperability automatically performs a function similar to the automated process, making blind booking an unnecessary duplication. However, if a "no match" IDR is received, the LEA has the option of initiating a name-based query to the LESC through the National Law Enforcement Telecommunications System (NLETS).

### **2.2.8 Outreach to Community:**

Participating LEAs are encouraged to include SC in community policing and other citizen outreach activities. Where possible, LEAs, in coordination with the local ICE DRO office, are encouraged to explain this initiative to civic and other non-governmental organizations through departmental engagement channels.

### **3.0 SECURE COMMUNITIES IDENTIFICATION PROCESS**

#### **3.1 Fingerprint Submission and Response Details**

This section of the SOP describes the process ICE will use to confirm the identities of removable aliens who have been charged with, or convicted of, serious criminal offenses.

##### **3.1.1 Preferred method for submitting fingerprints by the local LEA:**

Fingerprints from the LEA are electronically submitted to IAFIS. This fingerprint submission should occur at the earliest possible point in the booking process.

##### **3.1.2 FBI CJIS receives fingerprints and sends a copy to DHS US-VISIT:**

When FBI CJIS receives fingerprints submitted by the local LEA, and a copy is automatically forwarded to US-VISIT. CAR and CPI file maintenance messages will be forwarded to US-VISIT for fingerprint searches in IDENT.

##### **3.1.3 Fingerprints are searched against the FBI IAFIS and the DHS IDENT fingerprint systems:**

Fingerprints are simultaneously searched against IAFIS and IDENT fingerprint repositories. The process for routing IAFIS fingerprint submissions and responses remains unchanged, and the same process will continue under SC.

##### **3.1.4 IAFIS and IDENT search results are processed:**

If there is a positive fingerprint match in IDENT, FBI CJIS generates an IAQ that is sent to the LESC. In states where the SIB has implemented message routing to local LEAs, a “no match” in IDENT will result in FBI CJIS sending of a “No Match” IDR message to the originating local LEA through its SIB. No IAQ will be generated or sent to the LESC in the case of an IDENT “no match” response. Please refer to Section 2.2.7 to initiate an IAQ if a “no match” IDR response is received.

##### **3.1.5 LESC receives IAQ and conducts status determination:**

The LESC receives the IAQ from FBI CJIS and initiates an immigration check to determine both the alien’s immigration status and criminal history.

##### **3.1.6 LESC sends an IAR to FBI CJIS Division and the ICE Detention and Removal Operations (DRO) Field Office:**

LESC creates an IAR denoting the alien’s immigration status, criminal conviction history and pending criminal charges. In case of a fingerprint match in IDENT, within four hours of submitting fingerprints to IAFIS and IDENT, LESC returns the IAR to FBI CJIS. The LESC concurrently sends an IAR to the local ICE DRO Office.

##### **3.1.7 ICE DRO Field Office issues Detainer (Form I-247):**

Upon receipt of the IAR from the LESC, ICE will determine whether a detainer (Form I-247) should be lodged against the alien. If a detainer is determined to be appropriate, the ICE Field Office will lodge the detainer with the local LEA.

### **3.2 ICE Actions upon Receipt of IAR**

Actions described in this section are the steps ICE will take after a determination is made regarding the alien's immigration status and criminal charge.

#### **3.2.1 Determine subject's alienage and removability:**

ICE alone will determine the subject's alienage and removability. When necessary, ICE will interview the subject to determine or validate alienage, criminal history and removability.

#### **3.2.2 Interview subject (if necessary):**

Subject interviews may be conducted in person, telephonically, or through video conferencing (VTC).

#### **3.2.3 Issue detainer if subject is charged with a Level 1 offense:**

Once ICE determines the subject has previous serious criminal convictions, or is currently charged with a serious criminal offense considered to be a Level 1 offense and is removable, ICE will lodge an Immigration Detainer (Form I-247).

#### **3.2.4 Take custody of subject:**

In accordance with the language in the ICE Immigration Detainer (Form I-247), ICE will assume custody of the alien within 48 hours (not counting Saturdays, Sundays, or federal holidays) of notification of the subject's release. Upon taking an alien convicted of a serious criminal offense into custody, ICE will take immediate action to remove such aliens.

#### **3.2.5 Removal of subject with pending charges:**

Normally, ICE will not remove an alien until pending criminal charges are adjudicated. If ICE desires to remove an alien whose charges have not been adjudicated, ICE will make all efforts to inform the local LEA, the prosecutor and the court with jurisdiction over the criminal offense on the status of the subject's removal proceedings.

## 4.0 APPENDIX A

### Secure Communities Levels and Offense Categories by NCIC Code

Level 1 Crimes (NCIC Code)	Level 2 Crimes (NCIC Code)	Level 3 Crimes (NCIC Code)
National Security* (0101-0199, 1602, 5204-5299)	Arson (2001-2099)	Military (0201, 0299)
Homicide (0901-0999)	Burglary (2201-2299)	Immigration (0301-0399)
Kidnapping (1001-1099)	Larceny (2301-2399)	Extortion (2102-2199)
Sexual Assault (1101-1199)	Stolen Vehicles (2401-2411, 2499)	Damage Property (2901-2903)
Robbery (1201-1299)	Forgery (2501-2599)	Family Offenses (3801, 3804-3899)
Aggravated Assault (1301-1399)	Fraud (2601-2699)	Gambling (3901-3999)
Threats (1601)	Embezzlement (2701-2799)	Commercialized Sex Offenses (4001-4099)
Extortion –Threat to Injure Person (2101)	Stolen Property (2801-2899)	Liquor (4101-4199)
Sex Offenses (3601-3699)	Damage Property w/Explosive (2904-2906)	Obstructing the Police (4802-4899)
Cruelty Toward Child, Wife (3802,3803)	Traffic Offenses (5402-5499)	Bribery (5101-5199)
Resisting an Officer (4801)	Smuggling (5801-5899)	Health and Safety (5501-5599)
Weapon (5201-5203)	Money Laundering (6300)	Civil Rights (5699)
Hit and Run (5401)	Property Crimes (7199)	Invasion of Privacy (5701-5799)
Drugs (Sentence >1 year)	Drugs (Sentence < 1 year)	Elections Laws (5999)
		Conservation (6201-6299)
		Public Order Crimes (7399)

\***National Security** violations include the NCIC coded offenses of Sabotage, Sedition, Espionage, and Treason (0101-0199); Terrorist Threats (1602); and Weapons, Arson/Incendiary Devices, and Bombing offenses (5204-5299).

## 5.0 APPENDIX B

### Acronyms and Abbreviations

Acronym/Abbreviation	Definition
CAR	Criminal Answer Required
CJIS	Criminal Justice Information Services
CPI	Criminal Print Identification
DHS	Department of Homeland Security
DOJ	Department of Justice
DRO	Detention and Removal Operations
FBI	Federal Bureau of Investigation
IAFIS	Integrated Automated Fingerprint Identification System
IAQ	Immigration Alien Query
IAR	Immigration Alien Response
ICE	Immigration and Customs Enforcement
IDENT	US-VISIT Automated Biometric Identification System
IDR	IDENT Data Response
III	Interstate Identification Index
LEA	Law Enforcement Agency
LESC	Law Enforcement Support Center
MOA	Memorandum of Agreement
NCIC	National Crime Information Center
NLETS	National Law Enforcement Telecommunications System
SC	Secure Communities
SIB	State Identification Bureau
SOP	Standard Operating Procedures
SRE	Submission Results Electronic
US-VISIT	United States Visitor and Immigrant Status Indicator Technology

U.S. Department of Homeland Security		Immigration Detainer – Notice of Action	
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> Subject ID :  Event No :  File No. A  Date: September 4, 2005 </div>			
<b>TO: (Name and title of institution)</b> <div style="text-align: center;"><b>JAIL</b></div>	<b>From: (Office address)</b> WASHINGTON, DC, [HQ] DOCKET CONTROL OFFICE DOCKET CONTROL OFFICE HEADQUARTERS 425 I STREET NW WASHINGTON, DC 20535		
<b>Name of alien:</b> _____			
<b>Date of birth:</b> _____ <b>Nationality:</b> _____ <b>Sex:</b> _____			
<b>You are advised that the action noted below has been taken by the U.S. Department of Homeland Security concerning the above-named inmate of your institution:</b>			
<input type="checkbox"/> Investigation has been initiated to determine whether this person is subject to removal from the United States. <input type="checkbox"/> A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on _____ <div style="text-align: center;">(Date)</div> <input type="checkbox"/> A warrant of arrest in removal proceedings, a copy of which is attached, was served on _____ <div style="text-align: center;">(Date)</div> <input type="checkbox"/> Deportation or removal from the United States has been ordered.			
<b>It is requested that you:</b> Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work, and quarters assignments, or other treatment which he or she would otherwise receive.			
<input type="checkbox"/> Federal regulations (8 CFR 237.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sunday's and Federal holidays) to provide adequate time for DHS to assume custody of the alien. You may notify DHS by calling _____ during business hours or _____ after hours in an emergency.			
<input type="checkbox"/> Please complete and sign the bottom block of the duplicate of this form and return it to this office. <input type="checkbox"/> A self-addressed stamped envelope is enclosed for your convenience. <input type="checkbox"/> Please return a signed copy via facsimile to _____ <div style="text-align: right;">(Area code and facsimile number)</div>			
Return fax to the attention of _____, at _____ <div style="display: flex; justify-content: space-between;"> <span>(Name of officer handling case)</span> <span>(Area code and phone number)</span> </div>			
<input type="checkbox"/> Notify this office of the time of release at least 30 days prior to release or as far in advance as possible. <input type="checkbox"/> Notify this office in the event of the inmate's death or transfer to another institution. <input type="checkbox"/> Please cancel the detainer previously placed by this Office on _____			
<b>BRAND L. BYERS</b> <div style="text-align: center;">(Signature of Immigration Officer)</div>		<b>DETENTION AND DEPORTATION OFFICER</b> <div style="text-align: center;">(Title of Immigration Officer)</div>	
<b>Receipt acknowledged:</b>			
<b>Date of last conviction:</b> _____ <b>Latest conviction charge:</b> _____			
<b>Estimated release date:</b> _____			
<b>Signature and title of official:</b> _____			

Form I-247 (Rev. 08/01/97)





# U.S. Immigration and Customs Enforcement

Enforcement & Removal » Secure Communities ([http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/))

## Secure Communities

SHARE   

The highest priority of any law enforcement agency is to protect the communities it serves. When it comes to enforcing our nation's immigration laws, U.S. Immigration and Customs Enforcement (ICE) focuses its limited resources on those who have been arrested for breaking criminal laws.

ICE prioritizes the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators.

Secure Communities is a simple and common sense way to carry out ICE's priorities. It uses an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) that helps to identify criminal aliens 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 see if they have a criminal record. Under Secure Communities, the FBI automatically sends the fingerprints to ICE to check against its 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 takes enforcement action – prioritizing the removal of 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 the federal government, not the state or local law enforcement agency, determines what immigration enforcement action, if any, is appropriate.

Only federal DHS officers make immigration enforcement decisions, and they do so only after an individual is arrested for a criminal violation of state law, separate and apart from any violations of immigration law.



### The Basics

DHS has expanded Secure Communities from 14 jurisdictions in 2008 to more than 1,700 today, including all jurisdictions along the Southwest border. DHS is on track to expand this program to all law enforcement jurisdictions nationwide by 2013.

Through Oct. 31, 2011, more than 110,000 immigrants convicted of crimes, including more than 39,000 convicted of aggravated felony (level 1) offenses like murder, rape and the sexual abuse of children were removed from the United States after identification through Secure Communities. These removals significantly contributed to a 89 percent increase in the overall percentage of convicted criminals removed by ICE, with 102,000 more criminal removals in FY 2011 than in FY 2008. As a result of the increased focus on criminals, this period also included a 29 percent reduction or 74,000 fewer non-criminal removals.

#### How does Secure Communities work?

U.S. Immigration and Customs Enforcement (ICE) receives annual appropriations from Congress sufficient to remove a limited number of the more than 10 million individuals estimated to be in the U.S. who lack lawful status or are removable because of a criminal conviction. Given this reality, ICE must set sensible priorities.

Under the Obama administration, ICE has set clear and common-sense priorities for immigration enforcement focused on identifying and removing those aliens with criminal convictions. In addition to criminal aliens, ICE focuses on recent illegal entrants, repeat violators who game the immigration system, those who fail to appear at immigration hearings, and fugitives who have already been ordered removed by an immigration judge.

These priorities have led to significant results. Between fiscal years 2008 and 2011, ICE removed more convicted criminal aliens from our country than ever before, with the number of convicted criminals that ICE removed from the United States increasing by 89 percent, while the number of non-criminals removed dropped by 29 percent.

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### What's New

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:



- **Limited Removal Resources:** Currently, ICE receives an annual appropriation from Congress sufficient to remove a limited number of the more than 10 million individuals estimated to be in the United States unlawfully. As Secure Communities is continuing to grow each year, and is currently on track to be implemented nationwide by 2013, refining the program will enable ICE to focus its limited resources on the most serious criminals across the country.
- **Community Policing:** Some law enforcement agencies have expressed concerns about whether Secure Communities could have an impact on witnesses and victims of crimes coming forward to report criminal activities in their communities. Given the importance of community policing, ICE is instituting additional training to ensure that law enforcement officers understand the goals and priorities of the program.
- **Civil Rights:** As with all enforcement programs, there is a need to ensure that the civil rights of those who interact with law enforcement are protected. As Secure Communities matures into a national program, ICE is taking additional steps to ensure that it can execute its mission while continuing to respond to any potential civil rights concerns.

These additional safeguards will further protect the program from those who may undermine ICE's enforcement priorities or engage in racial or ethnic profiling:

- **Advisory Committee & Minor Traffic Offenses:** ICE is creating a new advisory committee 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 will be composed of chiefs of police, sheriffs, state and local prosecutors, court officials, ICE agents from the field, and community and immigration advocates. The first report of this advisory committee will be delivered to the Director within 45 days and will provide recommendations on how ICE can adjust the Secure Communities program to mitigate potential impacts on community policing practices, including whether and how to implement policy regarding the removals of individuals charged with, but not convicted of, minor traffic offenses who have no other criminal history.
- **Prosecutorial Discretion:** ICE Director Morton has issued [a new memo providing guidance for ICE law enforcement personnel and attorneys](http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf) (<http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>) regarding their authority to exercise discretion when appropriate – authority designed to help ICE better focus on meeting the priorities of both the agency and the Secure Communities program to use limited resources to target criminals and those that put public safety at risk. This memo also directs the exercise of prosecutorial discretion to ensure that victims of and witnesses to crimes are properly protected. The memo clarifies that the exercise of discretion is inappropriate in cases involving threats to public safety, national security and other agency priorities.
- **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 for state and local law enforcement about how Secure Communities works and how it relates to laws governing civil rights. [The first set of training materials can be accessed here.](http://www.ice.gov/secure_communities/crcl.htm) ([http://www.ice.gov/secure\\_communities/crcl.htm](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](#)

(<http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>) and to ensure these crimes continue to be reported and prosecuted. This policy directs ICE officers to exercise appropriate discretion to ensure victims 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 a victim, witness, or member of a vulnerable class so officers can exercise appropriate discretion.

- Detainer Policy: ICE has [revised the detainer form \(http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf\)](http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf) ICE sends to local jurisdictions to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours. The form also requires local law enforcement to provide arrestees with a copy, which has a number to call if they believe their civil rights have been violated.
- Data Collection:
  - ICE and CRCL have created a [new complaint system \(http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf\)](http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf) 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 activated, and DHS will take steps to ensure that bias or other abuses do not affect immigration enforcement.
  - 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.

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## The Secure Communities Process

### Secure Communities: From Arrest to Release or Removal

When state and local law enforcement arrest and book someone into a jail for a violation of a state criminal offense, they generally fingerprint the person. After fingerprints are taken at the jail, the state and local authorities electronically submit the fingerprints to the Federal Bureau of Investigation (FBI). This data is then stored in the FBI's criminal databases. After running the fingerprints against those databases, the FBI sends the state and local authorities a record of the person's criminal history.

With the Secure Communities program, once the FBI checks the fingerprints, the FBI automatically sends them to DHS, so that U.S. Immigration and Customs Enforcement (ICE) can determine if that person is also subject to removal (deportation). This change, whereby the fingerprints are sent to DHS in addition to the FBI, fulfills a 2002 Congressional mandate for the FBI to share information with ICE, and is consistent with a 2008 federal law that instructs ICE to identify criminal aliens for removal. Secure Communities does not require any changes in the procedures of local law enforcement agencies or jails.

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 generally issues a detainer on the person, requesting that the state or local jail facility hold the individual up to an extra 48 hours (excluding weekends) 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. In many instances involving lower-level criminals or people who are not convicts, re-entrants, or fugitives, ICE offers the person the option of voluntary return. A voluntary return allows the person to enter the U.S. lawfully in the future.

When someone goes into immigration proceedings, the court process is run independent of the state criminal justice system. As a result, illegal immigrants can be removed before the criminal case is complete. There are a variety of reasons that the local arrest may not result in a criminal conviction. However, all of those removed are guilty of an immigration violation, and removed pursuant to the Immigration and Nationality Act.

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### Advancing ICE'S Priorities

Enforcing America's immigration laws is a federal responsibility. Under the Homeland Security Act of 2002, this responsibility falls to DHS, specifically U.S. Immigration and Customs Enforcement (ICE).

Since 2008, Congress has expanded ICE's immigration enforcement obligations – directing ICE to create a program to identify criminal aliens and prioritize them for removal.

In light of this direction and the fact that ICE receives limited resources, ICE must prioritize which of the estimated 10 million illegal immigrants in the United States and other removable aliens to pursue. In a memo issued by ICE Director John Morton in June 2010, ICE outlined the way it prioritizes removals. Specifically, ICE prioritizes the removal of those who pose a danger to national security or public safety, repeat violators who game the immigration system, those who fail to appear at immigration hearings, and fugitives who have already been ordered removed by an immigration judge. Because the Administration is committed to using immigration enforcement resources in the way most beneficial to public safety, the primary focus is on convicted criminals, with a priority on aggravated felons.

As a result, record numbers of criminal aliens have been removed, with Secure Communities playing a key role in ICE's ability to fulfill this public safety priority. Between October 2008 and October 2011, the number of convicted criminals that ICE removed from the United States increased 89 percent, while the number of aliens removed without criminal convictions dropped by 29 percent. These trends are due in significant part to the implementation and expansion of Secure Communities. While Secure Communities is only responsible for a limited percentage of ICE's total removals and returns, it has helped ICE identify a more significant percentage of the convicted criminals that ICE removes or returns.

Over time, the percentage of serious offenders removed through Secure Communities will continue to increase, as those convicted of misdemeanors will decrease. This reflects the fact that people who commit more serious crimes serve longer sentences and consequently take longer to come into ICE custody. Since Secure Communities was first activated in October 2008, the percentage of misdemeanor removals has decreased from 40 percent of all removals in fiscal year 2009 to 29 percent of all removals following identification through Secure Communities in fiscal year 2011.

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### Removal Statistics

Learn more about ICE's [removal statistics \(http://www.ice.gov/removal-statistics/\)](http://www.ice.gov/removal-statistics/) and the [methodology \(http://www.ice.gov/removal-statistics/\)](http://www.ice.gov/removal-statistics/) used for calculating those statistics.

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### Civil Rights and Civil Liberties

Secure Communities reduces opportunities for racial or ethnic profiling because all people booked into jails are fingerprinted. U.S. Immigration and Customs Enforcement (ICE) and DHS' [Office for Civil Rights and Civil Liberties](#) (CRCL) are currently implementing additional safeguards to further protect the program from those who may seek to use it improperly.

Several initiatives to achieve these goals are underway:

- 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 activated, comparing data for aliens identified by the program to relevant arrest-rate data, and identifying any indications of racial profiling. Statistical outliers will be subject to an in-depth analysis. This analysis will take place four times per year to ensure consistent monitoring, and the assessments will be shared quarterly with the Department of Justice. 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. View the [Overview of Quarterly Statistical Monitoring](#) (<http://www.ice.gov/doclib/secure-communities/pdf/statisticalmonitoring.pdf>) (PDF | 260 KB).

- To prevent and address possible abuses of Secure Communities, ICE and CRCL are working together to develop a new training program for state and local law enforcement agencies in jurisdictions where Secure Communities is activated. These training materials are designed to reduce confusion regarding Secure Communities and help ensure that the program is not misused. [The first set of training materials can be accessed here.](#) ([http://www.ice.gov/secure\\_communities/crcl.htm](http://www.ice.gov/secure_communities/crcl.htm))
- ICE has revised the [detainer form ICE submits to local jurisdictions](#) (<http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>) to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours. The form also requires local law enforcement to provide arrestees with a copy, which has a number to call if they believe their civil rights have been violated.
- 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 ([Civil Rights and Civil Liberties Complaint Form in English](#) (<http://www.ice.gov/doclib/secure-communities/pdf/crcl-complaint-submission-form-english.pdf>) (PDF | 7 pages - 214 KB) and [Spanish](#) (<http://www.ice.gov/doclib/secure-communities/pdf/crcl-complaint-form-spanish.pdf>) (PDF | 7 pages - 219 KB) and in [seven other languages](#)). CRCL notifies the Department of Justice, which has jurisdiction to investigate violations of civil rights by state and local officers of all investigations undertaken. ICE fully supports all Department of Justice or CRCL investigations, including by taking action to ensure witnesses and complainants are able to remain in the United States. View the [Secure Communities Complaints Protocol](#) (PDF | 273 KB | 5 pages).

To contact the Office for Civil Rights and Civil Liberties, please email [crcl@dhs.gov](mailto:crcl@dhs.gov), or call 1-866-644-8360 (toll free) or 1-866-644-8361 (toll free TTY).

To report allegations of racial profiling, due process violations, or other possible violations of civil rights or civil liberties related to Secure Communities, all complaints should be filed with the DHS Office for Civil Rights and Civil Liberties complaint intake website.

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## Briefings for State and Local Law Enforcement

Concerns about the civil rights and civil liberties of individuals in communities where there is significant immigration enforcement activity are not unique to the Secure Communities initiative. The Office for Civil Rights and Civil Liberties (CRCL) and U.S. Immigration and Customs Enforcement (ICE) are creating a series of training /awareness briefings designed primarily for use by front line state and local law enforcement agency personnel during daily muster/roll call briefings. The videos and other tools will address eight categories of civil rights and civil liberties issues and topics of importance.

Project Goals:

- To provide actionable information to state and local law enforcement about the civil rights and civil liberties issues that may arise when ICE begins using a federal information sharing capability through Secure Communities in their jurisdictions.
- To increase the transparency of the Department's active commitment to protecting the civil rights and civil liberties of all persons affected by DHS activities and programs.

The [training /briefing materials](#) ([http://www.ice.gov/secure\\_communities/crcl.htm](http://www.ice.gov/secure_communities/crcl.htm)) are offered as a series of short videos, discussion guides with references to web-based resources for additional information (when available), and job aids.

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## Leadership



Gregory J. Archambeault  
Assistant Director for Secure Communities and Enforcement

Gregory J. Archambeault is the assistant director (AD) for the Secure Communities and Enforcement Division of U.S. Immigration and Customs Enforcement (ICE), within the Department of Homeland Security (DHS), in Washington, DC. He is responsible for several major ICE initiatives, including the National Fugitive Operations Program, Criminal Alien Program, the 287(g) Program and the Secure Communities Program.

Mr. Archambeault has more than 23 years of law enforcement experience. In 1987, he began his law enforcement career in San Diego, first working as a co-op student with the former U.S. Immigration & Naturalization Service (INS); and in 1988, becoming a special agent. In the late 1990s and early 2000s, Mr. Archambeault served in the INS attaché offices in Athens, Greece, and New Delhi, India, where he served as a liaison to law enforcement agencies and conducted training. He also managed immigration related enforcement activities in cooperation with foreign government officials.

Prior to joining the headquarters (HQ) ICE Office of Detention & Removal Operations (DRO), Mr. Archambeault was a member of the ICE Office of Investigations (OI), where he served as a senior special agent, supervisory special agent and as resident agent in charge. During his time at OI he was responsible for the management oversight of many complex criminal investigations related to violations of immigration and customs laws. Investigations ranged from alien smuggling and worksite enforcement to child exploitation and arms and strategy technology cases.

Mr. Archambeault joined HQ ICE DRO (currently, the Office Enforcement and Removal Operations) as the unit chief for the National Fugitive Operations Program in 2008. He was then appointed to the Senior Executive Service as the deputy assistant director for the Criminal Alien Division, where he was responsible for strategic planning, policy development and the deployment of resources to effectively identify, arrest and remove criminal aliens found at-large in the United States and incarcerated in federal, state and local jails and prisons.

Mr. Archambeault received a Bachelor of Science degree in Criminal Justice Administration from San Diego State University.

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## Contact

To contact the Secure Communities program office, please call (202) 732-3900. For media inquiries about Secure Communities, contact ICE's Office of Public Affairs at (202) 732-4242.

To report allegations of racial profiling, due process violations, or other possible violations of civil rights or civil liberties related to Secure Communities, all complaints should be filed with the [DHS Office for Civil Rights and Civil Liberties complaint intake website](#).

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# Exhibit F

# **HOMELAND SECURITY ADVISORY COUNCIL**



## **TASK FORCE ON SECURE COMMUNITIES FINDINGS AND RECOMMENDATIONS**

**SEPTEMBER 2011**

## **Task Force on Secure Communities**

**Chuck Wexler** (Chair), Executive Director, Police Executive Research Forum

**Bo Cooper**, Partner, Berry Appleman & Leiden L.L.P.

**Adrian Garcia**, Sheriff, Harris County, Texas

**Douglas Gillespie**, Sheriff, Las Vegas Metropolitan Police Department

**Robert Graves**, Executive Director, The Chicago Bar Foundation

**Benjamin Johnson**, Executive Director, American Immigration Council

**Andrew Lauland**, Homeland Security Advisor to Maryland Gov. Martin O'Malley

**Laura Lichter**, Partner, Lichter & Associates, P.C.

**David A. Martin**, Professor of Law, University of Virginia

**Charles Ramsey**, Commissioner of Police, Philadelphia

**Lupe Valdez**, Sheriff, Dallas County, Texas

**Roberto Villaseñor**, Chief of Police, Tucson, Arizona

**Wendy Wayne**, Director, Immigration Impact Unit, Committee for Public Counsel Services

**Sister Rosemary Welsh**, Executive Director, Casa de Misericordia and Director, Mercy Ministries Outreach



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## INTRODUCTION

The Task Force on Secure Communities is a subcommittee of the Homeland Security Advisory Council (HSAC) and was created in June 2011 at the request of DHS Secretary Janet Napolitano. HSAC, which is comprised of leaders from state and local government, first responder agencies, the private sector, and academia, provides advice and recommendations to the Secretary on matters related to homeland security. The Task Force was asked to consider how Immigration and Customs Enforcement (ICE) may improve the Secure Communities Program, including how to address some of the concerns about the program that “relate to [its] impact on community policing and the possibility of racial profiling,”<sup>1</sup> and “how to best focus on individuals who pose a true public safety or national security threat.”<sup>2</sup> In addition, the Task Force was specifically charged with making recommendations “on how ICE can adjust the Secure Communities program to mitigate potential impacts on community policing practices, including whether and how to implement policy regarding the removals of individuals charged with, but not convicted of, minor traffic offenses who have no other criminal history.”<sup>3</sup>

The Task Force is a broad-based panel made up of local and state law enforcement and homeland security officials, attorneys with expertise in immigration practice and criminal law, labor union officials who represent federal immigration enforcement workers, academics, social service agency leaders, and others. Task Force members donated their time to serve on this panel.

Under Secure Communities, fingerprints of persons arrested by state and local law enforcement agencies, which those agencies routinely submit to the FBI for criminal justice database checks, are automatically shared with DHS. ICE then checks the local arrestee information against the Department of Homeland Security (DHS) immigration databases. If ICE determines that it has an interest in an individual arrestee, the agency then determines what enforcement action to take. In most cases, the people determined to be of interest to ICE are subject to ICE enforcement action for reasons independent of the arrest or conviction. That is, the check of databases may indicate, for example, that the person is removable because he or she entered the country without inspection or overstayed a visa.

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<sup>1</sup> Homeland Security Advisory Council, Task Force on Secure Communities: Tasking (attached as Appendix A to this report).

<sup>2</sup> From the ICE website (Sept. 9, 2011), [http://www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities), click on “What’s New.”

<sup>3</sup> *Ibid.*

DHS officials maintain that Secure Communities is not a program that was established solely on the basis of executive branch authority, but rather that it has been mandated by Congress in appropriations legislation for DHS and other laws. However, several Task Force members noted that whether the program is mandatory is subject to different interpretations. DHS cites 8 U.S.C. § 1722(a)(2) and (5), which requires the executive branch to develop “an interoperable electronic data system to provide current and immediate access to information in databases of Federal law enforcement agencies . . . that is relevant to determine . . . the inadmissibility or deportability of an alien . . . . [This information] shall be readily and easily accessible . . . to any Federal official responsible for determining an alien’s admissibility to or deportability from the United States.” Other legislative language focuses specifically on persons who have been convicted, with a priority on those guilty of serious crimes. For example, the FY 2010 DHS appropriations legislation requires ICE to obligate at least \$1.5 billion “to identify aliens convicted of a crime who may be deportable, and to remove them from the United States once they are judged deportable . . . [and to] prioritize the identification and removal of aliens convicted of a crime by the severity of that crime.”

Secure Communities is not yet a nationwide program. Launched in 2008, Secure Communities has been activated in approximately half of jurisdictions nationwide, according to ICE.<sup>4</sup> DHS plans nationwide activation of Secure Communities by 2013.

To complete its mission, the Task Force met three times in Washington, D.C. and held numerous conference calls to discuss issues related to Secure Communities and to review several drafts of this report. At its meetings, the Task Force also heard from a broad range of subject matter experts, state officials, and other stakeholders via conference calls and in-person presentations, and it considered statements submitted to the Task Force via a public email mailbox. Many of the experts, community leaders, and law enforcement officials who spoke conveyed a variety of strong criticisms of Secure Communities. Others were more supportive, seeing the program as an appropriate way for DHS to cooperate with local and state law enforcement to carry out the Department’s overall priorities.

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<sup>4</sup> As of August 2, 2011, Secure Communities has been activated in 1,508 out of an estimated 3,181 jurisdictions (47%). <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>. It is important to note that these numbers do not reflect the total number of participating agencies, because a single jurisdiction with a regional jail, for example, may send fingerprints to the FBI based on arrests by numerous other law enforcement agencies.

The Task Force also convened four information-gathering sessions to solicit feedback from individuals who are familiar with the Secure Communities program. These sessions were held on August 9, 2011 in Dallas; August 15, 2011 in Los Angeles; August 17, 2011 in Chicago; and August 24, 2011 in Arlington, VA. Attendance at the sessions ranged from approximately 200 people in Dallas to 300-400 in Los Angeles and Arlington and over 500 in Chicago. Participants in these public hearings represented a wide variety of organizations, including immigrants' rights groups, faith-based organizations, and local government agencies. Other speakers did not represent any organizations but spoke of their own experiences with immigration enforcement. By a very significant margin, most speakers at these sessions criticized or expressed concerns about Secure Communities. Many speakers commented that the program is resulting in deportation of persons arrested only for minor offenses as well as victims of crime, that such deportations split families apart, and that Secure Communities makes people afraid to call their local police when they are victims of or witnesses to crime. A few speakers stated that the program has had a positive impact, particularly in identifying and removing serious criminals or providing information useful to local law enforcement that would not always be available from the FBI database alone. For members of the Task Force, the meetings provided an opportunity to see how Secure Communities is perceived in some communities.

The members of the Task Force on Secure Communities have a wide variety of perspectives regarding the program, due to their different roles as law enforcement officials, immigration lawyers, law professors, and other stakeholders. The Task Force's internal discussions were spirited, but the considerable expertise of Task Force members and the diversity of their backgrounds resulted in findings and recommendations that the Task Force hopes will receive widespread acceptance and support.

With a few exceptions that are noted, this report reflects a consensus view of the Task Force. It should be noted that individual Task Force members see some of the issues covered in this report differently. The report is the result of a good deal of "give and take" and an effort to find common ground.

While the Task Force was conducting its deliberations, the Obama Administration announced two major developments regarding immigration enforcement that have implications for Secure Communities.

First, on August 5, ICE Director John Morton announced that ICE had decided to terminate all existing Memoranda of Agreement (MOA) that it had entered into with the states regarding the operation of Secure Communities. In his letter to Governors, Mr.

Morton said that the MOA had resulted in “substantial confusion” regarding whether a state was required to enter into such an agreement in order for Secure Communities to operate in that state. “ICE has determined that an MOA is not required to activate or operate Secure Communities for any jurisdiction,” Morton wrote. “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.”

The second development was that on August 18, DHS and the White House announced that the executive branch is undertaking a large-scale review of existing deportation caseloads in order to focus resources more effectively on the removal of persons who are considered high-priority under DHS guidelines. The goal of the review, the White House statement said, will be to strengthen DHS’s ability “to target criminals even further by making sure [DHS is] not focusing our resources on deporting people who are low priorities for deportation. This includes individuals such as young people who were brought to this country as small children, and who know no other home. It also includes individuals such as military veterans and the spouses of active-duty military personnel. It makes no sense to spend our enforcement resources on these low-priority cases when they could be used with more impact on others, including individuals who have been convicted of serious crimes.”<sup>5</sup> The Department further explained the objectives and operations of the review process on its website: “DHS must ensure its immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose a threat to public safety such as criminal aliens and national security threats, as well as repeat immigration law violators and recent border entrants. In fact, the expenditure of resources on cases that fall outside our enforcement priorities hinders our public safety mission by clogging immigration court dockets and diverting resources . . . .”<sup>6</sup>

Accordingly, DHS, along with the Justice Department, “will be reviewing the current deportation caseload to clear out low-priority cases on a case-by-case basis and make more room to deport people who have been convicted of crimes or pose a security risk,” the White House said. “And they will take steps to keep low-priority cases out of the deportation pipeline in the first place.”

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<sup>5</sup> <http://www.whitehouse.gov/blog/2011/08/18/immigration-update-maximizing-public-safety-and-better-focusing-resources>.

<sup>6</sup> <http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf>.

**Specific findings and recommendations are offered below. There is a strong consensus view, within the Task Force and in communities across the nation, that it is appropriate for ICE to continue to take enforcement action against serious criminal offenders who are subject to deportation. But because there are circumstances in which Secure Communities results in the removal of persons who are minor offenders or who have never been convicted of a crime, and because statements by ICE have left much confusion about the full reach of its enforcement priorities, many jurisdictions are concerned about the impact of Secure Communities on community policing. We recommend specific steps on which there is Task Force consensus that would help build trust in the program.**

**Many Task Force members would go further, including recommending suspension of the program until major changes are made, or even recommending termination of what they believe is a fundamentally flawed program. Other members believe that reforms are necessary but the program nonetheless must continue to function. Those differences of view are reflected in the discussion below.**

**ICE must recognize that it does not work in a vacuum and that its enforcement actions impact other agencies and the relationships with their communities in what some may conclude is a negative way. The following pages contain recommendations for ICE to revise the program while working with state and local police, elected officials, and other stakeholders, taking their concerns seriously and working in partnership to find appropriate solutions.**

## **FINDINGS AND RECOMMENDATIONS**

This report includes the major findings of the Task Force and its recommendations to ICE. Both findings and recommendations are organized into the following categories that reflect the primary concerns of implementing Secure Communities:

- I.** Misunderstandings Regarding the Secure Communities Program and the Role of Local Law Enforcement Agencies
- II.** Perceived Inconsistencies between Secure Communities' Stated Goals and Outcomes
- III.** Minor Traffic Offenses and Misdemeanors
- IV.** Unintended Consequences of Secure Communities on Community Policing and Community Impact
- V.** The Question of Whether to Suspend Secure Communities

### **Our overall recommendations are:**

- ICE must clarify the goals and objectives of the Secure Communities program, as well as the parameters and functioning of the program, and accurately relay this information to participating jurisdictions, future participating jurisdictions, and the communities they serve. Regardless of whether ICE has legal authority to operate Secure Communities without local agreement, ICE must work to develop good working relationships with states, cities, and communities.
- ICE must improve the transparency of the program.
- There is broad consensus in the nation that persons convicted of serious crimes who are in the United States illegally should be subject to deportation. ICE must build on that consensus by implementing systematic mechanisms to ensure that Secure Communities adheres to its stated enforcement objective of prioritizing those who pose a risk to public safety or national security.
- ICE should clarify that civil immigration law violators and individuals who are convicted of or charged with misdemeanors or other minor offenses are not top

enforcement priorities unless there are other indicia that they pose a serious risk to public safety or national security.

- DHS must exercise its prosecutorial discretion, in all its immigration enforcement endeavors, in line with stated enforcement priorities, and take systematic steps to train and monitor field officers and attorneys as they implement Departmental policies on prosecutorial discretion.
- DHS must strengthen accountability mechanisms, including remedies for and prevention of civil rights and civil liberties violations.

## **I. Misunderstandings Regarding the Secure Communities Program and the Role of Local Law Enforcement Agencies**

### **Findings**

**1. Confusion about the Secure Communities program – what it is, and what it isn't.** There has been much confusion about the Secure Communities program and the role of state and local police and sheriffs' departments, caused in part by brochures and other documents issued by DHS in the past that advertised Secure Communities as a program designed to remove serious violent offenders from the streets. ICE currently describes Secure Communities as "interoperability" between FBI and DHS databases. In practice, in activated jurisdictions, when an individual is arrested and booked in a police station or jail by a law enforcement agency (prior to any adjudication), his or her fingerprints and booking information are sent to the FBI, which shares the fingerprints and information with DHS. DHS checks the data against the Automated Biometric Identification System (IDENT), which is part of the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT), in addition to the other criminal databases that are generally checked through the FBI following an arrest.

If there is a database "hit," meaning that the arrested person is matched to an immigration record in the DHS system, ICE and the law enforcement agency are notified. ICE then determines the individual's immigration status and whether any action is necessary or appropriate based on agency priorities. If the person appears to have violated the immigration laws, ICE decides whether to issue a detainer for the arrested individual. A detainer is a request from ICE to the law enforcement agency to



notify ICE before it releases an individual so that ICE has the opportunity to transfer the individual to federal custody.<sup>7</sup>

According to ICE, Secure Communities only entails the sharing of information—“interoperability”—between local law enforcement, the FBI, and DHS. Any subsequent immigration enforcement action that is taken is not part of Secure Communities, but instead is the result of an independent determination by ICE Enforcement and Removal Operations (ERO). Similarly, any action taken by the local law enforcement agency prior to booking and submission of fingerprints to the federal databases is not part of Secure Communities.

However, much of the criticism of the program relates to enforcement activities before and after the information sharing which defines the process. While ICE might distinguish between Secure Communities’ “interoperability” function and the subsequent detention and/or removal of an individual, the distinction is lost on stakeholders. In reality, most believe that Secure Communities is more than simple information sharing between databases, and that interoperability is only one of the stages in the process that begins with an arresting police agency and ends with ICE enforcement action.

Secure Communities is commonly perceived as this entire process, which begins with an arrest by the local law enforcement agency and ends in deportation. To the community at large--especially immigrant communities--local law enforcement agencies cooperating with ICE or participating in Secure Communities may be viewed as immigration agents, regardless of the actual role they play in the process. Some local law enforcement agencies and state government officials are uncomfortable with being perceived as a “pass-through” to ICE via Secure Communities.

Furthermore, from a practical standpoint, local police have no choice but to take the first step of forwarding arrestees’ fingerprints *to the FBI* in order to obtain information that is critically important for crime-fighting purposes, such as data on outstanding arrest warrants in another jurisdiction. The sharing of information between local law enforcement agencies and the FBI is essential to effective policing.

**2. Secure Communities was presented as a program that targets serious criminals, but that has been called into question.** Based on what they were told, many state and local officials believed they were joining a program targeting serious offenders. ICE has stated that it prioritizes the removal of criminal aliens, as well as

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<sup>7</sup> 8 CFR 287.7(a) and 8 CFR 287.7(d). Federal law provides that an individual cannot be held on a detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the detainer expires.

those who pose a threat to public safety and repeat immigration violators.<sup>8</sup> A March 2011 memo on “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens” states that “ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency’s highest enforcement priorities, namely national security, public safety, and border security.”<sup>9</sup> In addition, the House Report accompanying the 2010 appropriations bill stated that ICE’s highest priority should be the removal of aliens “convicted of serious crimes.”<sup>10</sup>

Some Secure Communities documents and presentations further state that Secure Communities would focus on “the worst of the worst,”<sup>11</sup> and “the most dangerous and violent offenders.”<sup>12</sup> Memoranda of Agreement (MOAs) entered into by ICE and various state and local jurisdictions state that Secure Communities “is a comprehensive ICE initiative that focuses on the identification and removal of aliens who are convicted of a serious criminal offense and are subject to removal.” They also state that “ICE will employ a risk-based approach to identify aliens charged with or convicted of a serious criminal offense and incarcerated in jails and prisons throughout the United States who are eligible for removal based on the severity of their offenses.”

However, as will be discussed in detail below, the impact of Secure Communities has not been limited to convicted criminals, dangerous and violent offenders, or threats to public safety and national security. Moreover, the program has raised real concerns for some law enforcement agencies because of the adverse impact it has on community policing and the perception that law enforcement agencies are participating in immigration enforcement.

### **3. Early and continuing missteps in launching and expanding Secure**

**Communities:** Much of the confusion surrounding Secure Communities is due to inaccurate or incomplete information presented by ICE to states and localities regarding the program. DHS/ICE has acknowledged that a poorly managed rollout of Secure

<sup>8</sup> From ICE’s Secure Communities website, [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/).

<sup>9</sup> Memorandum from John Morton, Assistant Secretary, ICE, on *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (March 2, 2011). This memo was originally issued on June 30, 2010, then updated and re-issued. It is available at: <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

<sup>10</sup> H.R. Report 111-157 (2009).

<sup>11</sup> U.S. Immigration and Customs Enforcement, ICE Fiscal Year 2008 Annual Report 5 (2008).

<sup>12</sup> U.S. Immigration and Customs Enforcement, *Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens*. January 2010. Available at [www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf](http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf).

Communities, coupled with incorrect statements from DHS/ICE representatives and unilateral policy changes, has created confusion among state and local government and law enforcement officials. This is particularly true of information provided by ICE regarding whether the program is mandatory or optional, the program's goals and procedures, and the implementation of the program at the local level.

**4. The Memoranda of Agreement signed by ICE and state identification bureaus have created additional confusion:** There has been much confusion regarding whether state and local jurisdictions have the power to decline, suspend or terminate participation in Secure Communities. While the MOAs included a termination and modification clause, ICE has not complied with localities' request to exercise this option. Instead, DHS recently changed its position, stating that state and local jurisdictions cannot terminate their participation in Secure Communities because it is essentially an information-sharing program between two federal agencies (the FBI and DHS). As a result, on August 5, 2011, DHS announced that it was unilaterally terminating all of the 42 previously signed MOAs, on the basis that they are not needed for the operation of Secure Communities. However, several Task Force members noted that the legal authority on which DHS relies in asserting that the program is mandatory continues to be subject to differing interpretations.<sup>13</sup>

DHS's current position is that a state or locality may only "opt-out" of whether to receive the information from ICE that is generated by the processing of arrestees' fingerprints through DHS's biometric system. Concerns have been raised that the information that ICE sends to law enforcement agencies may inappropriately influence the actions of local law enforcement officials, who may believe that all persons flagged by ICE are serious offenders or high-priority cases for ICE. However, even if a law enforcement agency chooses not to receive immigration information from ICE, this does not prevent the transmission of that individual's information to the local ICE field office to determine whether to take enforcement action. In other words, if a law enforcement agency chooses to "opt out" of receiving ICE information about arrestees, that decision will have no impact on ICE's ability to receive fingerprints, review the information, or take enforcement action against an individual. According to the legal interpretation under which DHS and the FBI now operate, once a law enforcement agency transmits fingerprints and booking information to the FBI for a criminal background check, it does not have any ability to halt the transmission of the fingerprints or information to ICE, or to prohibit the use of such information by ICE.

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<sup>13</sup> Related issues are being addressed in ongoing FOIA litigation. See *NDLON et.al. v. ICE et. al*, 10 Civ. 3488 (SAS).

ICE stated that its August 5 announcement was intended to clarify the role of state and local jurisdictions in the operation of Secure Communities. However, jurisdictions may perceive this as a significant change in the program rather than merely a clarification of existing procedures.

**5. Secure Communities is just one of several DHS enforcement programs that may be operating in a jurisdiction:** Secure Communities is one of several DHS enforcement and removal programs, including 287(g)<sup>14</sup> and the Criminal Alien Program,<sup>15</sup> through which ICE partners with law enforcement agencies or operates in state and local jails. In some localities, ICE operates Secure Communities and other programs simultaneously. In addition, other DHS enforcement programs, including those operated by the Border Patrol, often result in placing persons in removal proceedings. The general public and local law enforcement agencies may not always be aware that DHS is operating these different programs in their communities, and local agencies and the public may not fully understand the similarities and differences among these programs. Without this full understanding, local officials as well as community members are likely to be confused about which of these programs are being used to make enforcement and removal decisions by DHS personnel.

When a particular case involving a deportation is highlighted in the media or becomes a concern to a community, it may not be clear whether the enforcement actions originated with Secure Communities, the 287(g) program, the Criminal Alien Program, the Border Patrol, or some other mechanism. **In many jurisdictions, the Task Force's hearings revealed, any immigration enforcement action that is seen as disproportionate or unwarranted, such as steps to remove a young traffic law violator who has lived in this country since infancy, is likely to be attributed to Secure Communities. From the standpoint of immigrant communities, the general public, local law enforcement executives and other local officials, it does not matter which particular DHS program may have resulted in the deportation of a person who is apparently innocent of any criminal violations or is a minor offender.** This can be especially true in some immigrant communities, where people may be unaware of any distinction between their local police and federal enforcement agents, and where some

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<sup>14</sup> The 287(g) program "allows a state and local law enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement (MOA). The state or local entity receives delegated authority for immigration enforcement within their jurisdictions." See <http://www.ice.gov/287g/>.

<sup>15</sup> The Criminal Alien Program identifies, processes and removes criminal aliens incarcerated in federal, state and local prisons and jails throughout the U.S. See <http://www.ice.gov/criminal-alien-program/>.

residents may have come from nations that have a history of undemocratic institutions, as well as police corruption and oppression.

## **Recommendations**

**1. Increase transparency and clarify what the Secure Communities program is and how it works.** ICE must clarify the parameters and goals of the Secure Communities program, as well as the rights and responsibilities of the state and local law enforcement agencies that participate in the program (and are expected to provide accurate information about implementing the program at the local level).

**2. Clarify the role of states and local jurisdictions in Secure Communities.** This includes a frank and open discussion of any agreements between ICE and the FBI, the agreements between states and the FBI, and whether it is technologically possible and legally permissible to prevent fingerprints or other information submitted to the FBI from being sent to ICE. DHS should clarify the statutory authority it relies upon to assert that local participation in Secure Communities is mandatory. DHS should work collaboratively with states and local jurisdictions to address their concerns about participating in Secure Communities.

**3. Increase consistency among immigration enforcement programs:** DHS should develop consistent principles and procedures so that all immigration enforcement and removal programs, particularly those involving state and local law enforcement, are implemented consistently across the U.S. This must include enforcement actions taken not only by ICE but also by the other immigration components of the Department of Homeland Security that have the authority to initiate removal proceedings: Customs and Border Protection, and US Citizenship and Immigration Services. The thrust of the recommendations in this report should apply not only to Secure Communities, but to all DHS enforcement initiatives, including the 287(g) program, the Criminal Alien Program, and any other enforcement programs that involve local law enforcement agencies.

**4. Work with state and local officials to develop trust in Secure Communities:** Secure Communities has been sharply criticized in some state and local communities in recent months, and DHS has announced several new initiatives regarding Secure Communities, including policy statements by ICE Director Morton to ICE employees, a new system for handling complaints of biased enforcement or misconduct by enforcement officials, plans for training of state and local police by DHS regarding Secure Communities, and a large-scale review of cases already in the deportation “pipeline” to focus on high-priority cases and suspend or close the cases of persons

categorized as low priority for deportation. All of this has created an impression that Secure Communities is currently a program in a great deal of flux.

Thus, the Task Force believes that this is a good time for DHS to consider several steps aimed at rebuilding trust in Secure Communities, so that it will receive stronger support from the public, from the ICE employees who implement it on a daily basis, and from the local governments and local officials who are seen, fairly or unfairly, as the “gateway” to immigration enforcement. These steps include:

- Devising oversight and management mechanisms to ensure that DHS’s stated priorities are adhered to in the field, and that prosecutorial discretion produces the appropriate focus on serious offenders, not only in Secure Communities but in all DHS enforcement programs;
- Establishing a more comprehensive system for monitoring the implementation of Secure Communities;
- Consolidating existing policy documents into a single document that defines Secure Communities and other DHS enforcement programs in clear, understandable language aimed at the general public as well as the state, local, and federal officials who have a role in implementing Secure Communities;
- Conducting a nationwide educational campaign, in a number of different languages, to bring that information to the public, including the use of radio, television, newspapers, and social media used by immigrant communities and the general public;
- Providing state and local communities with useful statistics, consistently presented, on a monthly basis regarding the persons identified through Secure Communities and other DHS enforcement programs who are being subjected to removal from the United States or lesser enforcement actions, and the reasons why those persons were chosen for enforcement actions.

## **II. Perceived Inconsistencies Between Secure Communities’ Stated Goals and Outcomes**

### **Findings**

**1. Secure Communities has resulted in the arrest and deportation of minor offenders and non-criminals.** Secure Communities has sometimes been presented



as a program intended to focus on “the worst of the worst,”<sup>16</sup> and “the most dangerous and violent offenders.”<sup>17</sup>

The Task Force’s public hearings, other hearings, and news media accounts have produced many stories of deportations of persons who had violated no law other than a civil immigration violation and who did not apparently fall into ICE’s other categories of priorities for enforcement. The apparent “disconnect” between the DHS documents describing a tight focus on dangerous criminal offenders and the actual operation of Secure Communities has led to criticism of the program and is a key reason for opposition to the program in a number of cities, counties, and states.

**2. Among some members of state and local law enforcement, as well as the general public, there is confusion about how ICE enforces its stated priorities:**

ICE’s most recent and complete statement of its removal priorities is found in a memorandum from ICE Director John Morton of March 2, 2011. It sets forth the following priorities:

- **Priority 1. Aliens who pose a danger to national security or a risk to public safety.**

Under Priority 1, ICE defines 3 levels of crimes to gauge the risk to public safety or national security. The highest priority for enforcement, “Level 1 Offenders,” consists of persons who have been convicted of at least one aggravated felony, or two or more felonies. “Level 2 Offenders” are those who have been convicted of any felony, or three or more misdemeanors. The lowest subcategory within this priority for enforcement actions, “Level 3 Offenders,” covers those convicted of fewer than three misdemeanors. Furthermore, the March 2 memorandum by Director Morton to ICE employees notes that “some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.”

- **Priority 2. Recent illegal entrants**

ICE describes this category as persons “who have recently violated immigration controls at the border, at ports of entry, or through knowing abuse of the visa and visa waiver programs.” ICE’s explanation of Priority 2 is that recent illegal entrants deserve a high level of priority “in order to maintain control at the border

<sup>16</sup> U.S. Immigration and Customs Enforcement, ICE Fiscal year 2008 Annual Report 5 (2008).

<sup>17</sup> U.S. Immigration and Customs Enforcement, *Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens*. January 2010. Available at [www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf](http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf).

and ports of entry,” and to avoid a return to the practice known as “catch and release.”

- **Priority 3. Aliens who are fugitives or who have otherwise flouted immigration controls**

Fugitives, as the term is used by ICE, are persons who have received a final and enforceable order of removal but who did not surrender to ICE for actual removal or otherwise depart from the country. ICE elaborates on Priority 3 by listing categories of fugitive aliens, in descending order of priority, including: fugitives who pose a danger to national security; fugitives who have been convicted of violent crimes; fugitives who have convictions for other crimes; etc. This priority also covers persons who reenter the country illegally after removal, whether or not they are federally prosecuted for that act.

This memorandum was intended as an authoritative statement of ICE’s removal priorities by the Director, but it stands in tension with statements in earlier Secure Communities documents and MOAs, summarized above, that speak of focusing on violent offenders or the “worst of the worst.”

### **3. Local police practices vary greatly regarding information submitted**

**electronically upon booking.** Not all law enforcement agencies submit the fingerprints of everyone they arrest to the FBI; some jurisdictions have categories of minor offenses that result in the issuance of citations or summonses, rather than a full-custody arrest. Some observers have questioned why local agencies that are concerned about Secure Communities do not simply adjust their own policies, limiting the amount of information they send to the FBI regarding persons arrested at the local level for minor offenses. Essentially, if these low-priority arrestees’ fingerprints are not sent to the FBI, they could not be forwarded to ICE through Secure Communities for immigration enforcement purposes. However, a number of law enforcement experts have explained that that is not a realistic option. Failing to submit fingerprints would negatively impact crime control at the local level, because some individuals arrested for low-level offenses may have serious criminal histories or outstanding warrants for serious crimes that would not come to the attention of law enforcement officials if their fingerprints and information were never sent to the FBI. Thus, withholding fingerprints and forgoing FBI criminal background checks would hurt public safety and would subject law enforcement agencies to public criticism. The same experts noted that information from immigration databases that pertains to identity and past criminal activity and criminal warrants can be valuable for public safety and crime control.



## Recommendations

### 1. ICE must reaffirm its enforcement priorities and ensure that Secure

**Communities adheres to these stated goals:** ICE should reaffirm that the Secure Communities program's highest priority is to identify and remove aliens "who pose a danger to national security or a risk to public safety."<sup>18</sup> Mere fingerprinting by a local law enforcement agency is not sufficient indication in itself that a person poses such a threat.

**2. "Prosecutorial discretion": DHS must ensure systematic exercise of prosecutorial discretion in all cases by its enforcement personnel.** DHS policy is clear that agency employees have the authority to determine on a case-by-case basis whether or not to initiate a specific enforcement action, even if the person appears to have violated federal immigration law. On June 17, 2011 ICE issued two memos regarding the use of prosecutorial discretion.<sup>19</sup> The Morton Memo on Prosecutorial Discretion calls on ICE attorneys and employees to "regularly exercise" prosecutorial discretion in order to prioritize ICE's overall enforcement efforts and expend the agency's limited resources on persons who are higher enforcement priorities. It notes as generally positive factors that should "prompt particular care and consideration" before taking enforcement action: veterans and members of the armed forces, long-time lawful permanent residents, minors and the elderly, and individuals present in the United States since childhood, among others. Morton's second memo focuses on exercising discretion in cases involving victims, witnesses to crimes, and plaintiffs in good faith civil rights lawsuits. In a letter to Senate Majority Leader Harry Reid dated August 18, 2011, Secretary Napolitano made it clear that the June 17 standards are Department-wide priorities "that govern how DHS uses its immigration enforcement resources." That letter went on to describe the launch of an interagency process that will "clear out low-priority cases" in the current deportation caseload.

**In accordance with the March 2011 Morton memo on agency priorities, the June 17, 2011 Morton memo on prosecutorial discretion, and the August 18, 2011 announcement by Secretary Napolitano, DHS should consider the totality of the circumstances in reviewing individual cases and in deciding whether to take**

<sup>18</sup> Morton March 2, 2011 memorandum.

<sup>19</sup> See John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, U.S. Immigration and Customs Enforcement (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>; and *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, U.S. Immigration and Customs Enforcement (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.

**enforcement actions, including whether to issue detainers, take individuals into custody, initiate removal proceedings or proceed to deportation.**

Another factor that should be taken into consideration is whether an individual is indigent and deportable as a result of a guilty plea or conviction for which he or she had no appointed counsel. The Task Force heard testimony that immigrants often plead guilty to minor offenses without understanding that those guilty pleas may result in deportation.

It should be noted that there is nothing unusual about DHS's use of prosecutorial discretion in immigration enforcement. Such discretion is a normal and essential part of the everyday activities of law enforcement agencies and prosecutors' offices at the local, state, and federal levels across the nation. Exercising prosecutorial discretion, case by case, in a systematic and professional way, as envisioned in the June 17, 2011, memorandum from Director Morton and the August 18, 2011, letter from Secretary Napolitano, does not amount to administrative amnesty. Instead it helps to make sure that resources are focused in ways that best promote the overall enforcement mission.

**3. DHS must train and support its own personnel in exercising discretion, and should consult with the field and ICE's own subject matter experts in developing future policies:** The March 2011 and June 17, 2011 Morton memos and the August 18, 2011, announcement should be the basis for developing training for DHS personnel. DHS should take additional steps to assure effective implementation in all field offices with authority to initiate enforcement action, not only for ICE but also for CBP and USCIS. DHS should fully engage and coordinate with its personnel to assist in operationalizing policies and implementing recommendations and other changes. Specifically, DHS should:

- Issue more detailed guidance, checklists or worksheets for use by front-line officers in deciding what is appropriate enforcement action, including issuing detainers, setting bond, and making similar decisions. This guidance should be supported by technology where possible to promote consistency and uniformity and to reduce time spent on paperwork;
- Develop detailed training for officers and attorneys on the prosecutorial discretion process and criteria;
- Establish monitoring and quality control procedures and mechanisms;
- Take steps to assure that officers and attorneys who reasonably exercise their prosecutorial discretion in accordance with agency guidance will be supported by their supervisors and DHS leadership if the decision becomes controversial; and

- Consult with ICE personnel in the field and other agency subject matter experts in developing future policies and guidance.

**4. ICE must improve data collection and be more transparent:** To promote transparency and alleviate confusion, ICE should strengthen the comprehensiveness of its data and continue to distribute information that allows the public to track the implementation and adherence to the stated goals of Secure Communities, including those described in the memos of March 2011 and June 17, 2011 and the August 18, 2011 letter from Secretary Napolitano to Senate Majority Leader Reid. ICE should consider revising the current statistical categories to more accurately capture ICE enforcement and removal activity.

ICE should consider expanding to all states the practice it employs in Colorado, where a panel of state officials, under the direction of the Governor, crafted an agreement to help the state monitor actions under Secure Communities and their impact on state priorities under state law. Under the agreement, which ICE accepted, ICE provides the state with quarterly reports detailing whether identified individuals have been convicted of crimes or are in a noncriminal category of other ICE enforcement priorities. ICE also committed to ensuring that illegal immigrants who come to the attention of police because they are victims of domestic violence or other crimes will be protected.<sup>20</sup>

### III. Minor Traffic Offenses and Misdemeanors

#### Findings

Secure Communities must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement agencies. Immigration enforcement against traffic offenders and others arrested only for minor offenses poses the greatest risks of undermining community policing. Some members of the Task Force see an equal risk in all misdemeanor-based enforcement. In that light, the Task Force carefully considered a variety of issues regarding Secure Communities' treatment of persons arrested for traffic violations or

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<sup>20</sup> "Colorado's pact with ICE becoming national template." *Denver Post*, August 13, 2011. [http://www.denverpost.com/news/ci\\_18673491](http://www.denverpost.com/news/ci_18673491)

other misdemeanors. Some members believe that fairly extensive restrictions on immigration enforcement against such categories are necessary to salvage the integrity of the program, while other members are keenly aware of the difficult trade-offs involved in the curbing of immigration enforcement against any immigration law violators identified through Secure Communities. As there remain differences of view among members regarding the full range of changes that should be undertaken, the recommendations below include both those that had consensus among the Task Force members and one that did not, with the differences noted.

### **Recommendations:**

#### **1. Withhold ICE enforcement action based solely on minor traffic offenses, and consider alterations, including conditional detainers, for other minor offenses:**

- Absent information that an individual falls into a higher category of enforcement priorities set forth in the March 2, 2011 memorandum, or poses a national security or public safety risk, ICE should not issue detainers or initiate removal proceedings on persons identified through Secure Communities based on arrests for minor traffic offenses. Importantly, the category of minor traffic offenses should *not* include driving under the influence, hit-and-run, or reckless driving resulting in injury to persons, or other violations that have the potential of causing serious injury or harm to the public.
- ICE should consider extending such treatment to include other minor misdemeanors.<sup>21</sup> If ICE decides not to accept this recommendation, it should issue conditional detainers on persons who are arrested for such misdemeanors. The conditional detainer would become fully operational only if the person is actually convicted of the offense. (In this sense, it would amount to a “post-conviction model.”) Such a policy would discourage minor arrests undertaken only to channel noncitizens into the ICE system, when the local jurisdiction has no real intention to expend its own prosecutorial and judicial resources on such a case. It would therefore reduce the risk of racial profiling or other distortions of standard arrest practices followed by arresting or correctional officers. ICE should further consider other exercises of prosecutorial discretion for such individuals, such as deferred action in accordance with existing memoranda or under the new procedures being

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<sup>21</sup> The Task Force’s tasking document, Appendix A to this report, specifically mentions loitering as just one example of a minor misdemeanor that is not a traffic offense.

developed to implement the August 18, 2011 announcement of a more systematic exercise of prosecutorial discretion.<sup>22</sup>

- A significant percentage of Task Force members further believe that ICE should not issue detainers or initiate removal proceedings on persons identified through Secure Communities based on arrests for *any* misdemeanors that do not pose a public safety or national security risk. If ICE does not accept this recommendation, those members believe that it should consider issuing conditional detainers and other exercises of prosecutorial discretion as discussed above. Other Task Force members believe that this proposal goes too far, in part because of variations in local laws that can result in significant offenses being classified as misdemeanors.
- Several Task Force members are concerned that many individuals are identified by Secure Communities for enforcement action based on past civil immigration offenses. This means that communities will continue to perceive Secure Communities as a program that targets traffic violators or low-level offenders if any arrest for even a minor offense may result in deportation. Several other Task Force members, however, believe that it is appropriate for ICE to engage in enforcement in these circumstances, in accordance with the March 2011 priorities.

## **2. Continue fingerprint checks:**

If a law enforcement agency chooses to send the fingerprints of persons arrested for minor traffic offenses or minor misdemeanors to the FBI, those fingerprints should continue to be checked against immigration databases. The purpose of these checks is to reveal aliases and also to identify persons who have prior criminal convictions or other factors that indicate the person poses a serious risk to public safety or national security, or who come within the higher immigration enforcement priorities, such as persons who returned to the United States without permission after a prior removal.

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<sup>22</sup> See memorandum on prosecutorial discretion by ICE's then principal legal advisor William J. Howard on October 24, 2005; Available online at <http://www.scribd.com/doc/22092975/ICE-Guidance-Memo-Prosecutorial-Discretion-William-J-Howard-10-24-05>.

## IV. Unintended Consequences of Secure Communities on Community Policing and Community Impact

### Findings

**1. Secure Communities has had unintended local impacts.** Secure Communities and other federal enforcement and removal programs do not operate in a vacuum. In many localities, police leaders have said that immigration enforcement policies are disrupting police-community relationships that are important to public safety and national security. Law enforcement experts have stated that the trust that exists between police and immigrant communities can take years to develop and can remain tenuous despite the hard work of local law enforcement agencies. When communities perceive that police are enforcing federal immigration laws, especially if there is a perception that such enforcement is targeting minor offenders, that trust is broken in some communities, and victims, witnesses and other residents may become fearful of reporting crime or approaching the police to exchange information. This may have a harmful impact on the ability of the police to build strong relationships with immigrant communities and engage in community policing, thereby negatively impacting public safety and possibly national security. To the extent that Secure Communities may damage community policing, the result can be greater levels of crime. If residents do not trust their local police, they are less willing to step forward as witnesses to or victims of crime. As a result, some Task Force members believe that decisions by local jurisdictions regarding participation in Secure Communities should be honored.

**2. Ensure that protections exist for crime victims and witnesses, and victims of domestic violence.** Much of the fear within immigrant communities stems from concerns that immigrants are putting themselves or their family members in danger of deportation if they contact authorities to report crimes as victims or witnesses. The Task Force notes that Secure Communities was designed to minimize any such fear, because it obtains information only on persons arrested and fingerprinted, not on others who may have contact with police. ICE's June 17 memorandum regarding victims and witnesses to crime provides valuable guidance to help reduce the impact of ICE enforcement programs on the willingness of crime victims and witnesses to call the police and cooperate in criminal investigations. Secure Communities also operates in the context of other important protections for victims and witnesses developed in recent years through statutes, regulations, and guidance—including the Violence Against Women Act, and the provisions for T and U visas for victims of trafficking or criminal abuse helping with investigations or prosecutions.

**3. Make certain that local police receive timely information.** It is important for state and local law enforcement to continue to be able to identify arrestees and to determine their criminal histories by submitting their fingerprints to the FBI. It may also be important for state and local law enforcement to receive back from ICE some information about the arrestees—for example, information that an arrestee is on a terrorist watch list, information on aliases used by the arrestee, or information that may be helpful in determining whether the arrestee is a member of a certain gang. However, some law enforcement experts indicated that not all types of information about an individual's immigration status are relevant to a law enforcement agency's mission of ensuring public safety.

**4. Current complaint procedures are inadequate.** Individuals in jurisdictions with Secure Communities who feel they have been inappropriately profiled or subjected to other civil rights violations or abuse need to be able to report these complaints to the proper authorities. In order for ICE's existing protections to have integrity, community members also need to believe that complaints will be taken seriously—that they will be investigated within a reasonable timeframe, that any investigation will be transparent, and that there will be significant consequences for civil rights violations. The Secure Communities complaint procedure requires individuals to file complaints with the DHS Office for Civil Rights and Civil Liberties (OCRCL).<sup>23</sup> However, the complaint procedure has not been well publicized, and individuals may not be aware that they were identified through the Secure Communities program and may not have access to complaint forms or the internet. Furthermore, OCRCL's jurisdiction, authority, and capacity to respond to complaints are limited, yielding uncertain results.

## Recommendations

**1. Secure Communities must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement agencies.** One critical element is ensuring that the program adheres to its stated priorities and goals, as discussed above. Another critical element is recognizing that the goals of civil immigration enforcement and those of law enforcement agencies are not always aligned and may sometimes be contradictory. DHS must be flexible in its implementation of any program involving law enforcement agencies to minimize the risk that its goals might undermine those of local law enforcement or work against community safety.

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<sup>23</sup> See June 14, 2011 memo from Margo Schlanger to ICE and CRCL personnel regarding Secure Communities complaints. <http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf>.



Furthermore, ICE should develop training programs and written materials for law enforcement agencies and local communities that explain and clarify the Secure Communities and other DHS enforcement programs and the role of law enforcement agencies. DHS should enhance its transparency and credibility by strengthening education and outreach to state and local law enforcement and communities to help them better understand all DHS enforcement and removal programs. DHS must also be willing to adjust its enforcement programs to minimize the risk that they will adversely impact local law enforcement efforts.

**2. Victims and witnesses to crime and victims of domestic violence must not be subject to immigration enforcement actions:** Every effort must be made to ensure that crime victims and witnesses, particularly in domestic violence cases, are protected against unwarranted immigration enforcement actions, as outlined in Director Morton's June 17, 2011 memo. DHS should further establish systematic mechanisms to ensure that the instructions set forth in the June 17, 2011 prosecutorial discretion memo are adhered to by all DHS enforcement personnel.

**3. Tailoring the information provided to local police:** In terminating the MOAs on August 4, 2011, ICE stated that local jurisdictions still have an option with regard to the information they receive back on the basis of the DHS database checks. ICE personnel should work closely with participating law enforcement agencies to tailor the immigration information it returns to law enforcement agencies to transmit only relevant information. Law enforcement agencies will then be able to define the information that they consider relevant to their criminal law enforcement objectives. Furthermore, ICE should not send law enforcement agencies any immigration database "hit" information on persons who are naturalized U.S. citizens.

**4. The complaint process must be meaningful and accessible:** DHS enforcement programs should include a meaningful, confidential, and accessible complaint process for individuals who feel they have received unfair treatment. DHS should consider the role of the Department of Justice (DOJ) in investigating complaints of improper policing tied to Secure Communities.

**5. Remedial measures to prevent abuse:** ICE should monitor the impact of immigration enforcement policy at the state and local levels, with regard to unconstitutional arrests and unlawful detention past 48 hours on expired detainers. ICE should enhance mechanisms, including data collection and analysis, for detecting inappropriate use of ICE enforcement and removal programs to support or engage in biased policing, and should establish effective remedial measures to stop any such



misuses and avoid becoming a conduit for unlawful practices.

**6. ICE should consider establishing, as a pilot initiative in a selected jurisdiction, an independent, multi-disciplinary panel to review specific cases:** ICE should consider implementing a process that would allow for an independent, multidisciplinary group of law enforcement and community members to routinely review a random sampling of cases that were initiated through the Secure Communities program to ensure that these cases represent ICE's stated enforcement priorities. The panel should reflect the makeup of its jurisdiction, and panel members should have credibility with the stakeholders they represent. This panel should have the authority to initiate reviews of any cases that are brought to the panel's attention that raise questions or concerns about how ICE is implementing prosecutorial discretion. The findings from these reviews should be made public, and the panel should be able to make specific case recommendations to ICE. ICE should report on whether the panel's recommendations were implemented or not. This type of local monitoring could help ensure the transparency of Secure Communities and rebuild trust in the program.

## **V. The Question of Whether to Suspend Secure Communities**

The Task Force reached agreement on the large majority of issues pertaining to Secure Communities. **However, there was one significant area in which agreement was not reached, namely, whether the Secure Communities program should be immediately suspended until DHS has had an opportunity to consider and implement reforms, or even terminated. The Task Force was split on this question, with roughly half of the members in favor of some degree of suspension or termination of Secure Communities, and the other half believing that reforms are necessary but that the program out of necessity must continue to function.**

More specifically, many Task Force members believe that DHS should suspend the expansion of Secure Communities to any new jurisdictions until DHS can consider the reforms recommended in this report, and implement the recommendations it accepts. Those Task Force members believe that it makes little sense to expand a program that many community leaders and elected officials consider deeply flawed, especially as to its impact on community policing and civil rights. In addition, a number of Task Force members believe that DHS should suspend immigration enforcement

actions against low-level offenders, pending consideration and/or implementation of reforms. Those members believe that by suspending the program, DHS would acknowledge that significant reforms must be made, and that until that is accomplished, Secure Communities will lack credibility. Finally, some Task Force members believe that the credibility of Secure Communities has been so severely damaged that it cannot be repaired and therefore should be terminated.

On the other hand, Task Force members who oppose any suspension or termination of Secure Communities adhered to a different view, that “DHS needs to fix this airplane while it is still flying,” as one member expressed it. A number of members noted that DHS has limited resources and must have some strategy for focusing immigration enforcement on certain immigration violators. Considering that other strategies such as workplace enforcement actions may result in greater levels of arbitrariness, Secure Communities offers a way to focus resources on those who have run afoul of the criminal justice system, and is thus a sensible approach, those members said. Because of the above reasons, and because Secure Communities has resulted in the deportation of many dangerous offenders who were in the United States illegally, many state and local law enforcement agencies and elected officials support Secure Communities. Others agree with the DHS legal position that the information-sharing facilitated by Secure Communities’ interoperability is mandated by Congress, and therefore, suspension or termination may be legally impossible. Several members noted that there is a risk that any suspension of Secure Communities might result in the failure to detain or deport a person who later would commit a serious crime.

## **CONCLUSION**

**Although Secure Communities has resulted in the identification and removal of many individuals posing a risk to public safety, serious concerns have been raised about the program, including its design, activation, implementation and unintended negative impact on local communities. The findings and recommendations set forth in this report are intended to identify and remedy those concerns. The Task Force believes that ICE must take a more comprehensive approach to ensuring that Secure Communities is well understood by local law enforcement agencies and communities. In order to achieve that, ICE must take a less technical approach to Secure Communities and recognize that the entire process – from arrest to deportation – is inherently associated with the data sharing component of the program. There is strong consensus within the Task Force—and across the nation—that it is important that ICE continue to take enforcement action against serious criminal offenders. At**

**the same time, mixing individuals who have no criminal convictions or who have only low-level convictions with serious offenders is having the unintended consequence of undercutting the credibility of the entire Secure Communities program. The systematic and professional use of prosecutorial discretion is the key to regaining public support and to making the best use of limited resources. In order for the Secure Communities program to regain public trust and confidence, DHS must review these recommendations and reintroduce the program in close cooperation with local communities and police leaders.**

The Task Force recognizes DHS Secretary Janet Napolitano for taking the initiative to form the Task Force, and thanks Mr. Morton and the other DHS officials who made presentations to us and provided information we requested. The Task Force urges DHS and ICE to continue soliciting views about Secure Communities from a wide range of stakeholders, especially from the state and local government officials who play a key role in Secure Communities.

We urge DHS and ICE to give serious consideration to these findings and develop a plan to implement the recommendations. Specifically, the Task Force requests that DHS and ICE prepare a written response to the Task Force that addresses the extent to which the recommendations in this report will be implemented, and the reasons why specific recommendations may not be acted upon. Moreover, the DHS Office of Inspector General and the Government Accountability Office (GAO) are currently engaged in a review of Secure Communities. Their findings will provide additional recommendations to ICE and should be carefully considered and incorporated into the program.

## Appendix A

### Homeland Security Advisory Council Task Force on Secure Communities: Tasking Document

Secure Communities is one of the Department's most important tools to ensure that the federal government's limited immigration enforcement resources are used in the most effective way possible to improve public safety.

As a matter of policy, Secure Communities should **advance** U.S. Immigration and Customs Enforcement (ICE) priorities, **namely protecting public safety and national security, border security, and the integrity of the immigration system.**

Concerns have been expressed regarding the identification and removal, **through Secure Communities**, of aliens charged with, but not convicted of, minor traffic offenses who have no other criminal history or history of immigration violations. Some of these concerns relate to the impact on community policing and the possibility of racial profiling. One possible avenue for potentially addressing some of these concerns could be a policy that would await conviction prior to removal for those charged with low level traffic offenses (excluding driving under the influence, hit and run, and other traffic offenses affecting public safety) or other minor misdemeanor offenses who have no outstanding orders of removal or history of immigration violations.

The Task Force on Secure Communities (TFSC) will review the extent to which those concerns are borne out in the field and provide substantive, actionable recommendations to the Homeland Security Advisory Council (HSAC) on how substantive contours of Secure Communities policy could be formulated to address valid concerns, including recommendations on policy changes and the best procedural way to implement any policy changes.

Specifically, the Task Force will address the following questions:

- How should Secure Communities address those arrested for minor traffic offenses?
- What traffic offenses should be considered minor?
- Does the identification of minor traffic offenders through Secure Communities influence community policing or the reporting of crimes?
- Are there other misdemeanor offenses such as loitering that should be treated as a minor offense?
- How should the implementation of **any** policy with regard to minor traffic offenders or other minor criminal offenders be announced to and coordinated with state and local law enforcement agencies?

## Appendix B

### Subject Matter Experts

<b><u>Name</u></b>	<b><u>Title, Organization</u></b>
<b>Gaby Benitez</b>	Tennessee Immigrant & Refugee Rights Coalition
<b>Miguel Carpizo</b>	Tennessee Immigrant & Refugee Rights Coalition
<b>Alphonso David</b>	Deputy Secretary for Civil Rights, Office of the Governor, New York
<b>Ed Davis</b>	Commissioner, Boston Police
<b>Elizabeth Glazer</b>	Deputy Secretary for Public Safety, Office of the Governor, New York
<b>Enid Gonzalez</b>	Attorney, CASA de Maryland
<b>Seth Grossman</b>	Chief of Staff, Office of the General Counsel, DHS
<b>Jon Gurule</b>	Acting Chief for the Secure Communities Unit, ICE, DHS
<b>Greg Hamilton</b>	Sheriff, Travis County, Texas
<b>Mary Beth Heffernan</b>	Secretary of Public Safety and Security, Massachusetts
<b>Aarti Kohli</b>	Director of Immigration Policy, Warren Institute, Berkeley School of Law
<b>Scott C. Kroeber</b>	Commander, Los Angeles Police Department
<b>Gary Mead</b>	Executive Associate Director for Enforcement and Removal Operations, ICE, DHS
<b>Marc Rapp</b>	Acting Assistant Director, Secure Communities Program, ICE, DHS
<b>John Morton</b>	Director, Immigration and Customs Enforcement
<b>Lynn Neugebauer</b>	Supervising Attorney of the Safe Horizon Immigration Law Project
<b>John Sandweg</b>	Counselor to the Secretary of Homeland Security

<b>Margo Schlanger</b>	Officer for Civil Rights and Civil Liberties, DHS
<b>John Schomberg</b>	Governor's General Counsel, Illinois
<b>Peter H. Schuck</b>	Simeon E. Baldwin Professor Emeritus of Law and Professor (Adjunct) of Law at Yale Law School
<b>Donald B. Smith</b>	Sheriff, Putnam County, New York
<b>Jerry Stermer</b>	Governor's Senior Advisor, Illinois
<b>Fred Tsao</b>	Illinois Coalition for Immigrant and Refugee Rights
<b>Jessica M. Vaughan</b>	Director of Policy Studies for the Center for Immigration Studies

#### **HSAC STAFF**

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Becca Sharp

##### **Acting Deputy Executive Director**

Mike Miron

##### **Interns:**

Sarah Martin

Sarah Weiner

Jack Wisnefske

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##### **Director of Homeland Security**

Gerard Murphy

##### **Chief of Staff**

Andrea Luna

##### **Director of Communications**

Craig Fischer

## **Appendix C**

### **Task Force Field Meetings: Information Gathering Sessions**

**Tuesday, August 9, 2011**

Dallas County Community College  
Bill J. Priest Campus, Hoblitzelle Auditorium  
1402 Corinth Street  
Dallas, Texas 75215  
6:00 p.m. to 8:00 p.m.

**Monday, August 15, 2011**

St. Anne's Residential Facility  
155 North Occidental Boulevard  
Los Angeles, California 90026  
6:00 p.m. to 8:00 p.m.

**Wednesday, August 17, 2011**

IBEW Hall  
600 W. Washington Boulevard  
Chicago, Illinois 60661  
6:00 p.m. to 8:00 p.m.

**Wednesday, August 24, 2011**

George Mason University  
Founder's Hall  
3351 Fairfax Drive  
Arlington, Virginia 22201  
6:00 p.m. to 8:00 p.m.

# Exhibit G





## DEPARTMENT OF CORRECTION

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Inmate Number:	[REDACTED]
Inmate Name:	BRIZUELA, SERGIO A
Date of Birth:	[REDACTED]
Latest Admission Date:	11/21/2011
Current Location:	NEW HAVEN CC
Status:	UNSENTENCED
Bond Amount:	25000
Controlling Offense:	STRANGULATION 2ND DEGREE DF
Date of Sentence:	Not Applicable
Maximum Sentence:	0 Year(s) 0 Month(s) 0 Day(s)
Maximum Release Date:	Not Applicable
Estimated Release Date:	Not Applicable
Special Parole End Date:	Not Applicable
Detainer:	IMMIGRATION

Due to possible changes in the application of Risk Reduction Earned Credits, release dates may be subject to change.

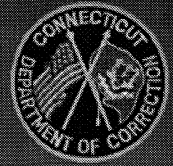
2/15/12

Department of Correction Inmate Information Search

CT.gov State of Connecticut



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## Inmate Information

Inmate Number:	[REDACTED]
Inmate Name:	HERRERA, JUAN
Date of Birth:	[REDACTED]
Latest Admission Date:	2/14/2012
Current Location:	HARTFORD CC
Status:	OTHER
Bond Amount:	1000
Controlling Offense:	ALLOWING PERSON UNDER 16 TO OPERATE MV M
Date of Sentence:	Not Applicable
Maximum Sentence:	0 Year(s) 0 Month(s) 0 Day(s)
Maximum Release Date:	Not Applicable
Estimated Release Date:	Not Applicable
Special Parole End Date:	Not Applicable
Detainer:	IMMIGRATION

Due to possible changes in the application of Risk Reduction Earned Credits, release dates may be subject to change.



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### Inmate Information

Inmate Number:	
Inmate Name:	REYES,CESAR
Date of Birth:	
Latest Admission Date:	10/21/2011
Current Location:	HARTFORD CC
Status:	UNSENTENCED
Bond Amount:	25000
Controlling Offense:	CRIM VIOL OF PROTECTIVE ORDER AM
Date of Sentence:	Not Applicable
Maximum Sentence:	0 Year(s) 0 Month(s) 0 Day(s)
Maximum Release Date:	Not Applicable
Estimated Release Date:	Not Applicable
Special Parole End Date:	Not Applicable
Detainer:	IMMIGRATION

Due to possible changes in the application of Risk Reduction Earned Credits, release dates may be subject to change.

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## Inmate Information

<b>Inmate Number:</b>	
<b>Inmate Name:</b>	VELAZQUEZ,ESQUIVELGABRIEL
<b>Date of Birth:</b>	
<b>Latest Admission Date:</b>	5/16/2011
<b>Current Location:</b>	OSBORN CI
<b>Status:</b>	UNSENTENCED
<b>Bond Amount:</b>	5000
<b>Controlling Offense:</b>	FORGERY, SECOND DEGREE DF
<b>Date of Sentence:</b>	Not Applicable
<b>Maximum Sentence:</b>	0 Year(s) 0 Month(s) 0 Day(s)
<b>Maximum Release Date:</b>	Not Applicable
<b>Estimated Release Date:</b>	Not Applicable
<b>Special Parole End Date:</b>	Not Applicable
<b>Detainer:</b>	IMMIGRATION

# Exhibit H

DEPARTMENT OF HOMELAND SECURITY  
**IMMIGRATION DETAINER - NOTICE OF ACTION**Subject ID:  
Event #:File No:  
Date:TO: (Name and Title of Institution - OR Any Subsequent Law  
Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

**MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS**

Name of Alien: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Sex: \_\_\_\_\_

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION  
RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

- ☐ Initiated an investigation to determine whether this person is subject to removal from the United States.
- ☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on \_\_\_\_\_.  
(Date)
- ☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on \_\_\_\_\_.  
(Date)
- ☐ Obtained an order of deportation or removal from the United States for this person.

***This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.***

**IT IS REQUESTED THAT YOU:**

- ☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify the Department by calling \_\_\_\_\_ during business hours or \_\_\_\_\_ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (ICE) Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- ☐ Provide a copy to the subject of this detainer.
- ☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- ☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- ☐ Consider this request for a detainer operative only upon the subject's conviction.
- ☐ Cancel the detainer previously placed by this Office on \_\_\_\_\_.  
(Date)

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF  
THIS NOTICE:**

Please provide the information below, sign, and return to the Department using the envelope enclosed for your convenience or by faxing a copy to \_\_\_\_\_. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking or Inmate # \_\_\_\_\_ Date of latest criminal charge/conviction: \_\_\_\_\_

Last criminal charge/conviction: \_\_\_\_\_

Estimated release date: \_\_\_\_\_

**Notice:** Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)



**NOTICE TO THE DETAINEE**

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).** If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

**NOTIFICACIÓN A LA PERSONA DETENIDA**

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253).** Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).

**Avis au détenu**

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253).** Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.

**AVISO AO DETENTO**

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253.** Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903.

**THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ**

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

**对被拘留者的通告**

美国国土安全部 ( DHS ) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据对你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 ( 星期六、星期天和假日除外 )。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 ( 现在拘留你的执法当局或其他单位 ), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 ( ICE Joint Intake Center ), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 ( ICE Law Enforcement Support Center ), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。