

April 2012

**OFFICE OF INSPECTOR GENERAL REPORTS ON SECURE COMMUNITIES PROGRAM
Questions and Answers**

In April 2012, the Department of Homeland Security (DHS) Office of Inspector General (OIG) released two long-awaited reports on the Secure Communities Program:¹ *Operations of United States Immigration and Customs Enforcement's Secure Communities* and *Communication Regarding Participation in Secure Communities*.

Q: Why did the DHS OIG issue these reports?

A: The reports were issued at the request of Congresswoman Zoe Lofgren (D-CA) in April 2011 due to concerns about the implementation of Secure Communities, as well as concerns that DHS misled the public and local officials regarding whether the program was mandatory or voluntary.²

Q: What was the scope of the OIG reports?

A: *Operations of United States Immigration and Customs Enforcement's Secure Communities* looked at the concerns surrounding the implementation of Secure Communities, addressing whether it has effectively met its stated goals of identifying and removing "criminal aliens," in accordance with ICE's defined enforcement priorities.³ It also examined whether local jurisdictions incur costs related to Secure Communities. *Communication Regarding Participation in Secure Communities* investigated whether DHS intentionally provided false or confusing information about whether the program was voluntary or mandatory.

Q: Do the reports cover all of the problems with Secure Communities?

A: No. The two reports are not comprehensive and are limited to issues within the scope of the OIG. However, many critics believe that the OIG unnecessarily restricted its findings. Consequently, the reports inadequately address the range of questions and concerns that have been raised by immigrant advocates, law-enforcement officials, immigration attorneys, advocates for victims of domestic violence, and others. The OIG reports did not address:

- Actions taken by local police that resulted in an individual being booked into jail and subject to Secure Communities information sharing.
- Charges of racial profiling and pretextual arrests by local police officers intending to target suspected immigrants for immigration enforcement.
- The impact of Secure Communities on community policing and crime reporting by immigrant communities.
- ICE's detainer policies and how detainees are handled by local jurisdictions.

Q: What did the OIG conclude about Secure Communities effectively meeting its goals?

A: The OIG determined that Secure Communities is working well and enhances ICE’s ability to enforce U.S. immigration laws by expanding its coverage to jurisdictions where it did not previously have a presence.”⁴ The report concluded that Secure Communities allows ICE to “identify aliens who it normally would not encounter in the criminal justice process,”⁵ and “identify removable aliens earlier in the criminal justice process.”

The OIG also found that “Secure Communities was effective in identifying criminal aliens, and in most cases, ICE officers took enforcement actions according to agency enforcement policy.” After a review of 723 Secure Communities cases from Fiscal Year (FY) 2011, the OIG found that “officers generally took enforcement actions consistent with ICE’s enforcement policy.”⁶

Q: What is wrong with this conclusion?

A: Multiple reports have raised concerns that Secure Communities is not targeting serious criminals and that many immigrants with minor or no criminal histories have been deported.⁷ This “disconnect” between DHS’ stated goal of targeting dangerous criminal offenders and the actual operation of Secure Communities is a key reason for opposition to the program in a number of cities, counties, and states.⁸

- According to DHS data, in FY 2011, 26% of all Secure Communities deportations were immigrants with Level 1 convictions; 19% of those deported had Level 2 convictions; and 29% were individuals convicted of Level 3 crimes (minor crimes resulting in sentences of less than one year). Twenty-six percent of those deported had immigration violations and no criminal convictions.⁹
- ICE statistics show that some jurisdictions’ numbers for low-level offenders and non-criminal deportations are well above the national average. Between October 2008 and September 2011, for example, the share of deportations involving persons with Level 3 convictions and non-criminals was 60% in Maricopa County, Arizona; 64% in Alameda County, California; 66% in Gwinnett County, Georgia; and 87% in Jefferson Parish, Louisiana.¹⁰

We do not know if the 723 cases examined by the OIG are representative of the full universe of cases. The report does not include a breakdown of the crimes for which the immigrants were detained or removed. Furthermore, the OIG did not address why some jurisdictions have higher levels of noncriminal “hits” and deportations than others.

Another problem is that ICE’s priorities are extremely broad, making it easy for the OIG to conclude that ICE officers worked within agency priorities. Many immigrants are counted as “criminal aliens” regardless of the seriousness of their crime. Others—such as recent border crossers and “absconders”—are included in the priorities, even if they have no criminal convictions. Because the priorities are so broad, the OIG concluded that Secure Communities is operating in line with its priorities, even though many immigrants with minor or no criminal convictions are being identified for removal.

Q: What did the OIG conclude about costs incurred by local jurisdictions?

A: The OIG found that the program “was implemented at little or no additional cost to local law enforcement jurisdictions.” After interviewing law-enforcement officials in 37 activated

jurisdictions, the OIG found that 84% reported that they incurred no incarceration costs, and 16% incurred minimal costs.¹¹

Q: What is wrong with this conclusion?

A: Multiple reports have pointed to potentially high costs associated with Secure Communities incurred by localities. These costs may include the purchase of digital electronic scanners and costs associated with the detention of immigrants. Some jails may get funding for some immigrant detainees from the federal government through the SCAAP program¹² or through Intergovernmental Service Agreements, but this only covers immigrants in federal custody, not immigrants held on local charges. In addition to costs for equipment and detention, there may be additional costs associated with the officers' time spent on immigration matters.¹³

The report contains no discussion of the potential costs, and it is impossible to know whether local officials were questioned with regard to all possible costs and consequences. For example, the report does not state how many jurisdictions had to purchase new equipment, how much they spent on detention costs, whether they have been fully reimbursed for detention costs, or how much time personnel spend on Secure Communities.

Q: What did the OIG conclude about DHS's communications?

A: The OIG found that ICE did not clearly communicate, that its presentations and documents were confusing and could be misinterpreted, and that DHS leadership failed to provide clear responses about the mandatory nature of the program when it had the opportunity to do so. However, the OIG concluded there was no "evidence that ICE intentionally misled the public or States and local jurisdictions during implementation of Secure Communities."

Q: What is wrong with this conclusion?

A: The evidence cited by Rep. Lofgren and the information cited by the OIG clearly show that DHS has been less than transparent about the program. There is a very clear track record of confusing, conflicting, misleading, and obscure statements regarding participation in Secure Communities. Additional documents obtained through a FOIA request show the agency struggling to find a statutory basis for making the program mandatory,¹⁴ and a federal district judge found that "there is ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities."¹⁵ This lack of transparency, coupled with frequent course reversals, has resulted in ICE and Secure Communities losing credibility with the public. Simply recommending that ICE learn from this experience and do better in the future is not an adequate response to the agency's actions.

Q: If DHS follows the OIG's recommendations, will Secure Communities be fit for expansion?

A: DHS cannot rely on these two reports as proof that Secure Communities does not require additional reforms. DHS' response to the OIG's wholly insufficient recommendations will not fix the flawed program. DHS must still respond to the report and recommendations of the Secure Communities Task Force¹⁶ and must be more transparent and responsive to the concerns of stakeholders.

Endnotes

¹ For more information on the Secure Communities Program, see Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns* (Washington, DC: Immigration Policy Center, American Immigration Council, November 2011).

² Letter from Representative Zoe Lofgren to Inspector General Charles K. Edwards and Assistant Director Timothy Moynihan, April 28, 2011. Text of letter available in Department of Homeland Security Office of Inspector General, *Communication Regarding Participation in Secure Communities*, OIG-12-66, March 2012, p. 24.

³ John Morton, “[Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens](#),” June 30, 2010.

⁴ Department of Homeland Security Office of Inspector General, *Operations of United States Immigration and Customs Enforcement’s Secure Communities*, OIG-12-64, April 2012, p. 5.

⁵ *Ibid.*, p. 5.

⁶ *Ibid.*, p. 8.

⁷ For example, see American Immigration Lawyers Association, *Immigration Enforcement Off Target: Minor Offenses With Major Consequences* (Washington, DC: August 2011).

⁸ Homeland Security Advisory Council Task Force on Secure Communities, *Findings and Recommendations*, September 2011, p. 16.

⁹ Secure Communities Nationwide Interoperability Statistics, “[Monthly Statistics through September 30, 2011](#),” prepared October 14, 2011 (last checked November 16, 2011).

¹⁰ *Ibid.*

¹¹ Department of Homeland Security Office of Inspector General, *Operations of United States Immigration and Customs Enforcement’s Secure Communities*, OIG-12-64, April 2012, p. 11. Cook County, IL, which has since reported incurring significant incarceration costs, had not been activated at the time and was therefore not included in the study.

¹² SCAAP is a limited program that reimburses jurisdictions for certain immigrant detainees who are jailed for four or more consecutive days and have been convicted of a felony or a second misdemeanor, and often there is not enough SCAAP funding available to fully reimburse all jurisdictions requesting reimbursement. See <http://www.ojp.usdoj.gov/BJA/grant/scaap.html>.

¹³ See responsibilities of local jurisdictions in U.S. Immigration and Customs Enforcement, “[Secure Communities Standard Operating Procedures](#).” Also see [Memorandum from Lt. Michael Barry, Martin County, FL, Sheriff’s Office to Mayor Steve Chase](#), February 28, 2008.

¹⁴ See Center for Constitutional Rights, et al., “[A Briefing Guide to the Secure Communities October 2, 2010 ‘Mandatory Memo.’](#)”

¹⁵ *NDLON, et al. v. ICE, et al.*, 10-cv-3488 (SAS), Opinion and Order, July 11, 2011 at 32.

¹⁶ Homeland Security Advisory Council Task Force on Secure Communities, *Findings and Recommendations*, September 2011, p. 4.