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# Secure Communities

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**Secure Communities** (SComm) is an American deportation program that relies on partnership between federal, state, and local law enforcement agencies.<sup>[1]</sup> U.S. Immigration and Customs Enforcement (ICE), the interior immigration enforcement agency within the Department of Homeland Security, is the program manager.

John Morton of ICE called Secure Communities “the future of immigration enforcement” because it “focuses our resources on identifying and removing the most serious criminal offenders first and foremost.”<sup>[2]</sup>

SComm relies on integrated databases and partnerships with local and state jailers to build domestic deportation capacity. The goals, as outlined in a 2009 report to Congress, are to: “1. IDENTIFY criminal aliens through modernized information sharing; 2. PRIORITIZE enforcement actions to ensure apprehension and removal of dangerous criminal aliens; and 3. TRANSFORM criminal alien enforcement processes and systems to achieve lasting results.”<sup>[3]</sup>

The program has come under controversy, however, for misrepresenting who is being picked up and what is expected of law enforcement partners. SComm was created administratively, not by congressional mandate, and to date, no regulations have been promulgated to govern the program’s implementation.

## Overview

Secure Communities was piloted in 2008.<sup>[4]</sup> Under the administration of George W. Bush, ICE recruited a total of 14 jurisdictions. The first program partner was Harris County Sheriff’s Office (Texas).<sup>[5]</sup>

By March 2011, under President Barack Obama, the program was expanded to over 1,210 jurisdictions.<sup>[6]</sup> ICE seeks to have all 3,141 jurisdictions (state, county, and local jails and prisons) participating by 2013.<sup>[7]</sup>

From Secure Communities’ activation through March 2011, 140,396 convicted criminal aliens have been booked into ICE custody resulting in 72,445 deportations.<sup>[8]</sup> Each year, law enforcement officers arrest approximately one million noncitizens accused of crimes.<sup>[9]</sup>

The costs of the program are unclear. The *Houston Chronicle* reported in 2008 that, according to ICE officials, “cost [is] between \$930 million and \$1 billion. Congress dedicated \$200 million for the program in 2008 and set aside \$150 million for fiscal year 2009.”<sup>[10]</sup> Currently SComm does not provide for reimbursement to states and localities for the costs of participation.

A New York Times editorial called SComm “misguided,” in part for how it “[strains] local resources.”<sup>[11]</sup> Meanwhile, a Washington Post editorial praised the program, asserting that it “has neither inclination nor resources to deport suspects with otherwise clean records who have been arrested for low-level infractions.”<sup>[12]</sup>

## Operation

### Biometric database

SComm relies on partnerships and biometric technology to build deportation capacity. “ICE and the FBI are working together to take advantage of the strong relationships already forged between the FBI and state and local law enforcement necessary to assist ICE in achieving their goals,” said FBI Criminal Justice Information Services (CJIS) Assistant Director Tom Bush in 2009.<sup>[13]</sup>

For every person booked into jail, local authorities run fingerprints against federal immigration and criminal databases. IDENT is an DHS-owned database that keeps biometric records of immigration applicants, certain criminals, and those suspected of or known to be terrorists. IAFIS is an FBI-owned database of biometric criminal records. Ordinarily, the fingerprints of county and state arrestees are submitted to the FBI only. Under SComm, the prints go to ICE too. If an individual's fingerprints match those of a non U.S. citizen (including legal resident), an

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automated process notifies the Law Enforcement Support Center (LESC) of ICE. Officials then evaluate the case, based on immigration status and criminal history.

The net effect, according to former ICE Secretary Julie L. Myers, is to “create a virtual ICE presence at every local jail.”<sup>[14]</sup>

### **Secure Communities Program: Submissions to ICE (2009, 2010, YTD 2011)<sup>[15]</sup>**

Year	Total Submissions to ICE
<b>2009</b>	<b>828,119</b>
<b>2010</b>	<b>3,376,753</b>
<b>2011 (first five months)</b>	<b>2,414,079</b>

### **Detainer**

When there is a match, ICE may choose to place a “detainer” on the individual. This is a request for the jail to hold that person for up to 48 hours beyond the scheduled release date, so that ICE can take custody and initiate deportation proceedings.<sup>[16]</sup> Legal immigrants convicted of certain crimes are subject to deportation. Undocumented immigrants can be deported even if they have committed no crime. ICE officials told the New York Times that, because of flaws in the database system, about 5,880 people identified through SComm turned out to be United States citizens by 2009.<sup>[17]</sup> The New Mexico Sentencing Commission is preparing to survey the costs to jails of holding prisoners under ICE detainees.

### **Offense levels**

ICE has divided immigrant prisoners into three risk levels:<sup>[18]</sup> <sup>[19]</sup>

- Level 1: those convicted of serious crimes, such as homicide, kidnapping, robbery, major drug offenses with sentences greater than one year, and offenses involving threats to national security.
- Level 2: all other felonies; and
- Level 3: misdemeanors and lesser crimes.

SComm Executive Director David Venturella testified to Congress: “We have adopted a risk-based strategy that focuses, first, on criminal aliens who pose the greatest threat to our communities. To manage this increased workload and prudently scale the system capabilities, we are classifying all criminal aliens based on the severity of the crimes they have been convicted of.” According to the agency, SComm prioritizes illegal immigrants who have been accused or convicted of “crimes involving national security, homicide, kidnapping, assault, robbery, sex offenses, and narcotics violations carrying sentences of more than one year.”<sup>[20]</sup>

However, ICE statistics show that in February 2011, only 22 percent of the six thousand expelled through the program were high-level offenders.<sup>[21]</sup> Meanwhile 28 percent had no criminal record at all.<sup>[22]</sup> The release of annual figures has triggered controversy over whether SComm is identifying, detaining and expelling the right criminals.

The fact that the majority of those removed/deported by ICE are either non-criminals or Level 3 offenders has raised concern among activist and civil rights organizations.<sup>[23]</sup> <sup>[24]</sup> <sup>[25]</sup>

Others assert that the number of non-criminal detainees is overstated for political reasons. In June 2010, the AFL-CIO office that represents 7,000 ICE officers issued a no-confidence vote for the current ICE director alleging, among other things, that the number of non-criminal ICE deportees is over-stated due to the fact that many offenders have agreed to be deported if all charges against them are dropped and are being re-categorized as non-criminal. The report cites as proof that although ICE internally reports that 90% of all ICE detainees in its custody were arrested by local authorities, it publicly publishes otherwise.<sup>[26]</sup> <sup>[27]</sup>

**Secure Communities Program: Aliens Identified as in Custody by ICE by Level of Crime (2009, 2010, 5 months 2011)<sup>[28]</sup>**

Year	Total	Level 1 Crimes	% of Total	Level 2/3 Crimes	% of Total	% of Submissions Identified as Aliens by ICE
<b>2009</b>	<b>95,664</b>	<b>12,785</b>	<b>13.37%</b>	<b>82,879</b>	<b>86.64%</b>	<b>11.56%</b>
<b>2010</b>	<b>248,166</b>	<b>40,216</b>	<b>16.21%</b>	<b>207,950</b>	<b>83.80%</b>	<b>7.35%</b>
<b>2011(5 months)</b>	<b>133,205</b>	<b>18,196</b>	<b>13.66%</b>	<b>115,009</b>	<b>86.34%</b>	<b>5.52%</b>

- SComm targets jurisdictions with high concentrations of immigrant populations. Participating jurisdictions as of February 2011 include roughly 70% of the foreign-born population in the US. The percentage of arrestees who are non-US citizens is in decline as new jurisdictions are added. It dropped from 11.56% in 2009 to 5.52% in the first five months of 2011.

**Secure Communities Program: Aliens Administratively Arrested or Booked into ICE Custody by Level of Crime (2009, 2010, 5 months 2011)<sup>[29]</sup>**

Year	Total	Level 1 Crimes	% of Total	Level 2 Crimes	% of Total	Level 3 Crimes	% of Total	Non-criminal	% of Total	% of identified Aliens detained by ICE
<b>2009</b>	<b>37,908</b>	<b>13,170</b>	<b>34.75%</b>	<b>4,345</b>	<b>11.47%</b>	<b>12,343</b>	<b>32.56%</b>	<b>8,050</b>	<b>21.24%</b>	<b>39.63%</b>
<b>2010</b>	<b>100,500</b>	<b>32,727</b>	<b>32.57%</b>	<b>13,788</b>	<b>13.72%</b>	<b>26,757</b>	<b>26.63%</b>	<b>27,228</b>	<b>27.10%</b>	<b>40.50%</b>
<b>2011 (5 months)</b>	<b>43,983</b>	<b>9,988</b>	<b>22.71%</b>	<b>6,751</b>	<b>15.35%</b>	<b>9,919</b>	<b>22.56%</b>	<b>17,325</b>	<b>39.39%</b>	<b>38.24%</b>

- Roughly 40% of non-US citizens arrested in participating jurisdictions have been placed under an ICE detainer.
- The percentage of non-criminals who receives detainers has increased substantially from 21% in 2008 to nearly 40% in the first 5 months of 2011.

**Secure Communities Program: Aliens Removed and Returned by ICE by Level of Crime (2009, 2010, 5 months 2011)<sup>[30]</sup>**

Year	Total	Level 1 Crimes	% of Total	Level 2 Crimes	% of Total	Level 3 Crimes	% of Total	Non-criminal	% of Total	% of Aliens detained by ICE and deported
<b>2009</b>	<b>14,476</b>	<b>3,352</b>	<b>23.16%</b>	<b>1,515</b>	<b>10.47%</b>	<b>5,865</b>	<b>40.52%</b>	<b>3,744</b>	<b>25.87%</b>	<b>38.19%</b>
<b>2010</b>	<b>49,839</b>	<b>13,971</b>	<b>28.04%</b>	<b>6,015</b>	<b>12.07%</b>	<b>16,059</b>	<b>32.23%</b>	<b>13,794</b>	<b>27.68%</b>	<b>49.60%</b>
<b>2011 (5 months)</b>	<b>29,903</b>	<b>7,348</b>	<b>24.58%</b>	<b>5,229</b>	<b>17.49%</b>	<b>7,817</b>	<b>26.15%</b>	<b>9,509</b>	<b>31.80%</b>	<b>67.99%</b>

- The proportion of ICE detainees that lead to deportation has increased from 38% in 2008 to 68% in the first five months of 2011. NB: The amounts per offense level can be skewed as some higher-level offenders await deportation after the completion of their prison sentences, while lower-level offenders are removed more quickly.
- Non-criminal detainees (mostly the undocumented, visa violators and/or asylum seekers) make up 32% of those who were removed in the first 5 months of 2011.

## Lawsuit

Significant data disclosures on SComm's performance became publicly available after a non-profit advocacy groups sued for disclosure.

In July 2009, DHS issued new regulations that asserted all information regarding an SComm sister program "shall not be considered public records."<sup>[31]</sup> New contracts prohibited local officials from communicating with media or constituents about the program without ICE approval.

Citing transparency concerns, the National Day Laborer Organizing Network (NDLON), the Center for Constitutional Rights (CCR) and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law filed a request under the Freedom of Information Act for information on SComm.<sup>[32]</sup>

The groups charged in a press release: "Although ICE presents Secure Communities as an innocuous information sharing program, it seems designed to function as a dragnet to funnel even more people into the already mismanaged ICE detention and removal system... no regulations have been promulgated and little information is available about the program in the public domain. The limited information that has been released is vague and seems to indicate that ICE is not executing its stated enforcement priorities."<sup>[33]</sup>

Federal authorities released an initial batch of 15,000 internal documents in February 2011.<sup>[34]</sup> The non-profits started a blog entitled "Uncover the Truth" to catalogue the newly obtained government documents and media coverage of the program.<sup>[35]</sup>

## Policy reversal

Some jurisdictions have tried to "opt out" from the program believing that participation was not mandatory.<sup>[36]</sup> Homeland Security officials have contradicted each other about whether SComm is mandatory or voluntary.

An August 2010 DHS memo entitled "Secure Communities: Setting the Record Straight" suggests that counties have the ability to opt out of the program, even when their respective states have joined: "If a jurisdiction does not wish to activate on its scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing (email, letter of facsimile). Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date in or removing the jurisdiction from the deployment plan."<sup>[37]</sup>

On Sept. 7, 2010, DHS Secretary Janet Napolitano said in a letter to Congresswoman Zoe Lofgren that jurisdictions that wished to withdraw from the program could do so. Yet an October 2010 Washington Post article quoted an anonymous senior ICE official asserting: "Secure Communities is not based on state or local cooperation in federal law enforcement...State and local law enforcement agencies are going to continue to fingerprint people and those fingerprints are forwarded to FBI for criminal checks. ICE will take immigration action appropriately."<sup>[38]</sup>

At a press conference days later, Napolitano modified her position: "What my letter said was that we would work with them on the implementation in terms of timing and the like...But we do not view this as an opt-in, opt-out program."<sup>[39]</sup> She did not provide legal justification. Meanwhile, in Arlington, VA, the County Board unanimously passed a resolution to opt out of SComm.<sup>[40]</sup>

Venturella stated at a policy conference: "Have we created some of the confusion out there? Absolutely we have."<sup>[41]</sup> In a January 2009 letter to the California Department of Justice, Venturella indicated that ICE would obtain a Statement of Intent for every county-level participant in SComm.<sup>[42]</sup> Yet a procedure to do so never materialized.

In California, three counties unsuccessfully petitioned outgoing Attorney General Jerry Brown to withdraw their jurisdictions from the program. San Mateo's sheriff and Board of Supervisors feared the chilling effect that integration of state and ICE databases would have on immigrants as volunteers in public programs.<sup>[43]</sup>

Santa Clara Supervisor George Shirakawa, criticizing SComm as an unfunded mandate, said, "We are not in a position to do ICE's work."<sup>[44]</sup> Deputy Counsel Anjali Bhargava is investigating whether the county can limit participation "the extent [ICE requests] are subject to reimbursement or required by law."

San Francisco Sheriff Michael Hennessey, supported by a supermajority of the Board of Supervisors, requested three times in writing to opt out of SComm.<sup>[45]</sup> His jail already has a policy of reporting to ICE anyone booked for a felony and not US-born. He feared that fingerprint sharing for all prisoners, including those acquitted of charges, violates the local sanctuary ordinance without serving public safety.<sup>[46]</sup> "The lack of clarity," Hennessey wrote in a lawsuit against ICE, "makes it difficult for me to explain my attempts to opt-out to my colleagues and to be accountable to my constituents."<sup>[47]</sup>

In a surprise move, Massachusetts Governor Deval Patrick signed up for SComm soon after winning re-election.<sup>[48]</sup> He had rejected participation months earlier because a pilot run of the program in Boston was still unproven. Public Safety Secretary Mary Beth Heffernan explained the reversal in position: "It has become clear now that this program is going to be mandatory for all communities in the near future." Patrick reversed this decision on June 7th, 2011, saying he was "dubious about [Massachusetts] taking on the federal role of immigration enforcement... and even more skeptical of the potential impact Secure Communities could have."<sup>[49]</sup>

Washington, D.C., and the states of New York and Illinois have also tried to opt out of the program.<sup>[50]</sup>

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