

Immigration and Customs Enforcement (ICE) Agency's Spin Cannot Obscure the Truth

About the “Secure Communities” Program:

*Rights Groups' Advocacy Leads to Critical ICE Admissions and Breakthroughs
Related to the Flawed Program*

In a document dated August 17, 2010, ICE purports to “set the record straight” on the Secure Communities (S-Comm) program.¹ But ICE's spin cannot alter the reality and, in fact, this new document contains critical admissions and breakthroughs prompted by community advocacy and federal litigation.

- **ICE has finally admitted that the majority of persons targeted and deported through S-Comm will never be dangerous criminals.**
- **ICE has finally announced a procedure for local jurisdictions to request to opt-out of the problematic S-Comm program.**

ISSUE: Has ICE launched S-Comm in line with principles of transparency by providing the public with timely, honest and accurate information?

ICE SPIN: ICE makes information available and is committed to accountable and transparent immigration enforcement.

TRUTH: ICE's disclosures are largely a result of advocates' Freedom of Information Act (FOIA) requests and litigation. Before the lawsuit, very little information about the program was publicly available.

- Nearly all documents on the ICE FOIA website were only posted after litigation and community pressure.
- ICE limits the right of states and localities to release information and statistics about S-Comm, requiring states to coordinate the release of information about the program with the ICE public affairs office.² ICE also does not disclose S-Comm agreements to the media until *after* they are signed. This raises questions about ICE's commitment to accountability and transparency

¹ ICE, “Secure Communities: Setting the Record Straight,” Aug. 17, 2010, *available at* http://www.ice.gov/doclib/secure_communities/pdf/sc-setting_the_record_straight.pdf.

² Template for Memorandum of Agreement between U.S. Department of Homeland Security, Immigration and Customs Enforcement, and State Identification Bureau, *available at* http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesmoatemplate.pdf.

ISSUE: ICE misrepresents the scope and burden of S-Comm in order to convince states and local jurisdictions to participate in immigration enforcement.

ICE SPIN: As part of the S-Comm activation process, jurisdictions have the opportunity to inquire about the program and are briefed about its implementation. S-Comm places little burden on local police to assist ICE in enforcing immigration laws.

TRUTH: ICE has consistently understated the burden that S-Comm places on local jurisdictions. There are good reasons for localities to be wary of S-Comm.

- **Community Policing & Public Safety Cost:** S-Comm jeopardizes our safety by destroying relationships between law enforcement agencies and communities. When local law enforcement is the gateway into detention and deportation, as in S-Comm jurisdictions, community members are less likely to report crimes or cooperate as witnesses, making us all less safe.
- **Financial and Administrative Burdens:** S-Comm imposes significant costs and demands on local law enforcement agencies, which must bear the financial and administrative burdens of delays in booking and processing arrestees, increased communications with ICE, and processing and enforcing immigration detainees. Localities also expose themselves to the risk of civil liability if officers conduct illegal arrests or hold individuals on immigration detainees longer than the law authorizes. In general, forcing localities to assume the burden of federal immigration enforcement leaves fewer resources available for traditional crime fighting.
- **Implicates Localities in the Federal Immigration Detention and Deportation System:** S-Comm funnels people into an unjust immigration system where they are stripped of their right to a government-appointed lawyer, held in remote detention centers thousands of miles from their homes, and denied a "fair day in court."
- **Destroys Local Families by Deporting Valuable Members of Our Communities:** The program primarily impacts persons with no criminal records or with minor offenses, without regard to their critical ties to local families. In April, Maryland resident Florinda Lorenzo-Desimilian, a 26-year-old married mother of three U.S. Citizen children was arrested in her home by local police on a misdemeanor charge of selling \$2 phone cards without a license. During booking at the county jail, local police sent her prints to ICE under S-Comm. She is now in deportation proceedings.³

³ "Maryland Mom Might Face Deportation," <http://voices.washingtonpost.com/local-breaking-news/md-mom-may-be-deported-followi.html?hpid=newswell>.

ISSUE: S-Comm raises serious concerns about racial profiling and constitutional violations.

ICE SPIN: Advocates were relying on outdated data. New data shows no indicia of racial profiling. ICE claims the more recent data undermines advocates' prior analysis showing vastly disparate rates of non-criminal deportations occurring in various S-Comm jurisdictions.

TRUTH: Advocates' previous analysis of ICE data demonstrated that there are serious concerns that officers in some S-Comm jurisdictions are making pre-textual racial profiling arrests, knowing that even if the criminal charges do not stick, the individual will be deported. Advocates' prior statistics regarding potential racial profiling were based on the most current ICE data available at the time – cumulative data through April 2010.⁴ ICE does not dispute the accuracy of that data or the fact that it raises serious concerns about racial profiling. The new data upon which ICE now relies – cumulative data through July 2010, made available only after advocates' prior release – also raises questions about the reliability of ICE's record keeping.

- **Questionable ICE Data:** The new data, which is purportedly cumulative from the inception of the program through July 31, 2010, inexplicably shows dramatic decreases in the actual number of non-criminals deported in many S-Comm jurisdictions between April and July 2010. In **Maricopa County, Arizona**, for example, 40 percent (1731 individuals) of the non-criminal S-Comm deportees vanished from ICE's records between April and July 2010. Other jurisdictions, showed similar unexplained decreases in the cumulative number of non-criminal deportees from April to July:
 - **In San Diego, California** the number of non-criminal S-Comm deportees dropped by 57 percent (1374 individuals).
 - **In Travis, Texas** the number of non-criminal S-Comm deportees dropped by 47 percent (279 individuals).
 - **In Dallas, Texas** the number of non-criminal S-Comm deportees dropped by 32 percent (357 individuals).
 - **In Los Angeles, California** the number of non-criminal S-Comm deportees dropped by 21 percent (401 individuals).

These are just a few samples of high volume S-Comm jurisdictions with significant decreases in non-criminal deportations. ICE has not explained how cumulative numbers can decrease.

- **Continued Indicia of Racial Profiling:** While the disparate rates of non-criminal deportees in S-Comm jurisdictions have decreased between April and July 2010, the

⁴ See 'Briefing Guide to "Secure Communities" ICE's Controversial Immigration Enforcement Program- New Statistics and Information Reveal Disturbing Trends and Leave Crucial Questions Unanswered,' available at <http://ccrjustice.org/files/Secure%20Communities%20Fact%20Sheet%20Briefing%20guide%20%208-2-2010%20Production.pdf.pdf>.

disparities remain alarming and continue to raise serious questions about whether some S-Comm jurisdictions are engaged in racial profiling. Even assuming the accuracy of ICE’s questionable July statistics, many S-Comm jurisdictions still have more the twice the national rate of non-criminal S-Comm deportees. The July statistics claim that nationally 26 percent of S-Comm deportations were of non-criminals.⁵ Each of the following jurisdictions showed at least twice that average:

- **Jefferson Parish, LA** 68.38 percent of S-Comm deportees were non-criminals
- **Fresno, CA** 67.14 percent of S-Comm deportees were non-criminals
- **Bernalillo, NM** 58.73 percent of S-Comm deportees were non-criminals
- **San Joaquin, CA** 57.56 percent of S-Comm deportees were non-criminals
- **Wayne, MI** 54.84 percent of S-Comm deportees were non-criminals
- **Suffolk, MA** 54.35 percent of S-Comm deportees were non-criminals
- **Broward, FL** 53.85 percent of S-Comm deportees were non-criminals
- **Oklahoma, OK** 53.04 percent of S-Comm deportees were non-criminals
- **Webb, TX** 52.97 percent of S-Comm deportees were non-criminals
- **Contra Costa, CA** 52.85 percent of S-Comm deportees were non-criminals
- **Monterey, CA** 52.67 percent of S-Comm deportees were non-criminals⁶

- **We Still Lack the Data Necessary to Get to the Heart of the Racial Profiling Issues:** Until complete and accurate information is released, the public cannot fully understand and assess the extent of the racial profiling concerns.

ISSUE: S-Comm is an immigration dragnet, not a program focused on “high-threat” individuals as ICE has told local police departments.

ICE SPIN: ICE now concedes that S-Comm is not tailored to identifying and apprehending high-risk or dangerous criminal offenders, admitting that under S-Comm “there will always be more Level 2 and 3 criminal aliens identified and removed” than Level 1 offenders.⁷

TRUTH:

- ICE has always marketed its S-Comm program to states, localities, and the public, to “focus[] first and foremost on the most dangerous criminal aliens currently charged with, or previously convicted of, the most serious criminal offenses [such as] crimes involving national security, homicide, [and] kidnapping.”⁸ The public is finally getting to the truth about ICE’s real priorities. “Dangerous criminals” are a very small percentage of the people affected by S-Comm. ICE uses S-Comm to target non-criminal and non-dangerous individuals.

⁵ “Immigration and Customs Enforcement, Nationwide Interoperability by Conviction Report,” prepared on 8/17/2010, available at http://ccrjustice.org/files/nationwide_interoperability_conviction-july.pdf.

⁶ *Id.*

⁷ ICE, “Secure Communities: Setting the Record Straight,” at p. 5, Aug. 17, 2010, available at http://www.ice.gov/doclib/secure_communities/pdf/sc-setting_the_record_straight.pdf.

⁸ ICE, “Secure Communities Fact Sheet,” Sept. 1, 2009, http://www.ice.gov/doclib/pi/news/factsheets/secure_communities.pdf.

- The “Level 1” high-threat designation is misleading. Even the 10,866 S-Comm deportees categorized as Level 1 offenders may not be as “dangerous” as ICE claims. Many Level I offenses are non-violent and may include minor crimes such as shoplifting and some misdemeanor controlled substance offenses.

ISSUE: Local jurisdictions have no clear guidance on how to opt-out of the S-Comm program.

ICE SPIN: If jurisdictions formally notify ICE and state bureau of information services that they do not wish to participate in S-Comm, ICE works to “come to a resolution” which “*may* include . . . removing the jurisdiction from the deployment plan.”⁹

TRUTH: This is the first time that ICE has articulated a mechanism to opt-out of S-Comm. Local police that have previously tried to opt-out have been unable to do so.

- Nearly two years after S-Comm’s deployment, ICE has articulated a mechanism for local jurisdictions to make a request to opt-out. ICE still has not publicly stated that it will allow local jurisdictions final decision-making authority on whether or not to participate in S-Comm.
- Local jurisdictions, such as San Francisco, remain unable to opt-out.¹⁰

⁹ ICE, “Secure Communities: Setting the Record Straight,” at p. 6, Aug. 17, 2010, *available at* http://www.ice.gov/doclib/secure_communities/pdf/sc-setting_the_record_straight.pdf.

¹⁰ Sarah Phelan, *Sheriff: ICE referrals will leap from 2,000 to 40,000*, San Francisco Bay Guardian, May 18, 2010, *available at* <http://www.sfbayguardian.com/politics/2010/05/18/sheriff-ice-referrals-will-leap-2000-40000>.