



New Developments in Secure Communities and Next Generation Identification August 2, 2012

On June 6 & 7, 2012, the FBI's Criminal Justice Information Service Advisory Policy Board (APB) held its biannual meeting in Buffalo, New York. The APB advises the FBI director on how to manage the FBI's civil and criminal databases. Representatives from the National Day Laborer Organizing Network, the Criminal Defense Immigration Project of the New York State Defenders Association, and the Cardozo Immigration Justice Clinic, and NYU doctoral candidate Travis Hall attended the June 2012 meeting and obtained updates about the following FBI initiatives. To review copies of the materials distributed for the June 2012 APB meeting, go to www.uncoverthetruth.org. Key developments are noted in the bullets below.

Secure Communities ("S-Comm")

Secure Communities is a highly controversial deportation program championed by Immigration and Customs Enforcement (ICE). The FBI is an essential partner in the program. The FBI makes S-Comm possible by taking fingerprints submitted to it by state and local police for criminal background checks, and forwarding those prints to ICE for immigration background checks—without permission from the state or locality that submitted the prints. Over 190,000 people have been deported through S-Comm since it began in 2008.

- As of June 2012, almost the entire country has been activated in S-Comm. The only exceptions are parts of Alabama and Illinois.
- The FBI now alerts ICE's Law Enforcement Support Center whenever it encounters a "foreign born no match." These are individuals who have a foreign or unknown place of birth but do not appear in the Department of Homeland Security's (DHS's) IDENT database. (IDENT contains records of, among other things, immigrant and non-immigrant visas.) This means that individuals with no prior contact with immigration officials may end up in deportation proceedings through S-Comm. This process was formalized in July 2011.
- Only a small portion of states and localities participating in S-Comm actually possess the technical capacity to receive information through the program. When fingerprints are run through S-Comm, a report is produced containing information about the individual's identity and immigration status. This report is known as the IDENT Response. The IDENT Response is sent to ICE's Law Enforcement Support Center, with a copy to the state or local agency that submitted the prints. However, most states don't have the technical capability to receive the IDENT Response. The only states that are currently receiving the IAR are: California, Colorado, Delaware, Florida, Michigan, North Carolina, Texas, Virginia, Utah and Wyoming. Idaho, Arizona, and Georgia are expected to be able to receive the IDENT Response shortly.
- DHS is currently undertaking a policy review to decide whether fingerprints submitted at non-arrest stages in the criminal justice process

should be run through S-Comm. At issue is whether individuals fingerprinted by probation officers, district attorneys, and courts will be subject to immigration status checks.

Next Generation Identification (“NGI”)

The Next Generation Identification initiative is a massive expansion of the FBI’s civil and criminal databases. Through NGI, the FBI is expanding the types of biometric information it collects and stores to include iris scans, palm prints, and facial-recognition-ready photos. The FBI is also expanding the types of individuals about whom it maintains data, as well as the number and types of agencies with whom its data is shared.

- The FBI launched a facial recognition pilot program in Michigan, Maryland, and Hawaii in December 2011. Through the pilot, participating agencies have access to a database of 12 million photographs consisting of mug shots from around the country. The agencies can submit photographs to be searched against this database, and will receive a ranked list of possible matches.
- A “Rap Back” pilot was launched in May 2012. Through Rap Back, the FBI stores fingerprints that were submitted as part of a background check for a civil purpose, such as an employment background check or a background check of a visa applicant. The FBI then provides an automatic alert regarding any future arrest of the subject of the background check. Questions remain regarding the FBI’s authority to maintain and use fingerprints submitted for employment background checks in this manner.
- The FBI is beginning to build up its repository of iris scans. It will likely begin its collection with individuals subject to corrections and supervised release.
- Federal, state and local police can now submit fingerprints that have been collected at crime scenes or elsewhere—known as “latent” prints—to be run against the FBI’s criminal databases in search of a match. The accuracy of latent fingerprint searches is in the “mid 80s.” In other words, around one out of five latent searches result in an error.
- DHS is expanding its collection of biometric data from “suspect individuals” abroad. These individuals include “special interest aliens,” “gangs,” and “persons of interest.” Once collected, the biometrics are included in IDENT, DHS’s immigration database, which is searched through S-Comm.
- Through NGI, the FBI is making its civil fingerprint database—which contains over 30 million prints—searchable. This is a concern because it is not clear what purpose is served by maintaining a massive, searchable database of people who have, at one point been required to undergo a background check.
- Within the next 4-7 years, the FBI Biometrics Center of Excellence hopes to have rapid DNA scanners at local booking offices.

Mobile Searches

Increasingly, law enforcement agencies are gaining the capacity to collect fingerprints from individuals *in the field*. As a result, individuals may be subject to immigration background checks even without ever being arrested or booked.

- The FBI has mobile devices that permit searches of the entire IDENT database in the field. These devices were approved for domestic use in 2009, and in 2010, mobile users started to receive full identification responses from IDENT. It is not clear what agencies aside from the FBI have access to mobile IDENT searches.
- As of April 2012, the “Immigration Violators File” has been added to the Repository for Individuals of Special Concern—a database which local police can access in the field to do mobile fingerprint checks. The Immigration Violators File contains records for: (1) individuals who have been deported following a felony conviction; (2) individuals with outstanding removal orders; (3) individuals who failed to comply with national security registration requirements (NSEERS).

Law Enforcement National Data Exchange (“N-DEx”)

N-DEx is a national criminal justice information-sharing database used by federal, state and local law enforcement and criminal justice agencies. N-DEx combines a dizzying array of data—including “suspicious incident” reports made by civilians—and attempts to identify patterns, trends, and threat levels.

- As of November 2011, N-DEx contained over 124 million searchable records including information on more than 780 million entities (persons, places, things, and events); had over 24,000 total users; and received data from over 4,100 submitting agencies.
- The FBI has expanded access to N-DEx to include criminal justice agencies such as probation, parole, corrections, courts, prosecutors, and dispatchers.
- The FBI has not contributed any data to N-DEx since 2009, a point of contention for many state and local agencies. The agency is working towards beginning to submit both current and historical data but as yet has no process to review submissions.
- CJIS has also been concerned about users’ compliance with its security policy and data sharing rules remain under development.
- N-DEx will include a DHS datasource, meaning that N-DEx users will be able to query DHS through the database.
- The APB has endorsed the use of N-DEx for criminal justice employment background checks.
- The FBI plans to institutionalize the use of the N-DEx system within Fusion Centers. (Fusion centers are defined as “collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their abilities to detect, prevent, investigate, and respond to criminal and terrorist activities.”)