

**BUILDING A SECURE COMMUNITY: HOW CAN
DHS BETTER LEVERAGE STATE AND LOCAL
PARTNERSHIPS?**

HEARING

BEFORE THE

**SUBCOMMITTEE ON BORDER AND
MARITIME SECURITY**

OF THE

**COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES**

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BUILDING A SECURE COMMUNITY: HOW CAN DHS BETTER LEVERAGE STATE AND LOCAL PARTNERSHIPS?

Tuesday, July 10, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY,
Washington, DC.

The subcommittee met, pursuant to call, at 10:03 a.m., in Room 311, Cannon House Office Building, Hon. Candice S. Miller [Chairwoman of the subcommittee] presiding.

Present: Representatives Miller, Rogers, McCaul, Quayle, Duncan, Cuellar, Jackson Lee, and Thompson (ex officio).

Mrs. MILLER. The Committee on Homeland Security, our Subcommittee on Border and Maritime Security will come to order. The subcommittee is meeting today to examine how the Department of Homeland Security can better leverage State and local partnerships through programs like Secure Communities. Our witness today is John Morton, who is the Director of Immigration and Customs Enforcement.

I would just begin my opening statement by welcoming the director. We are sincerely appreciative of his participation today.

We also want to, of course, extend our condolences on the recent shooting of ICE Agent Kelton Harrison, which certainly demonstrates the risks that our agents, brave men and women on the front lines, are facing each and every day. We certainly pray for his speedy recovery as well.

Again, I want to thank the director and the men and women of Immigration and Customs Enforcement, who do a magnificent job.

I think all of us here on this subcommittee want to do everything in our power to make sure that we give ICE the tools and the resources and the support that they need to get the job done.

Tangible border security requires that we take a layered approach, and not just solely focus on the line in the sand that separates the United States from Mexico. We have the long, often-liquid border that we share with Canada, or of course the thousands of miles of coastline. Because the truth is, despite our best efforts and the billions we spend on personnel, on infrastructure, technology, drug and human smugglers and others will inevitably try to find a way through. Not only do hardworking people come across the border in search of a better life, but human smugglers and drug cartels and drug mules also come into this country with less than pure motivations, and often prey on the innocent.

I think it is important to note that when we discuss border security, visa security cannot be overlooked. Estimates vary, but the core truth is that many who enter the country illegally walk in through the front door, and they never leave following the expiration of their visas. We saw that with several of the 9/11 terrorists and even the recent case of the attempted Capitol bomber who were all here on extended overstays, visa overstays. Tracking down visa overstays and removing dangerous criminals and recent border crossers is perhaps the most critical enforcement layer when we think about what a secure border and safer communities actually look like.

I would remind my colleagues as well that every single person who crosses the border illegally, of course, has committed a crime. We can't ignore the fact or sweep it under the rug. Sending the message that unless you commit a serious crime, that we are not going to bother with the efforts to deport you, is I think a dangerous signal to be sending. It threatens the safety of our country. Prioritization of limited resources toward the most dangerous criminals certainly makes sense. But ICE as well can't ignore low-level criminals because of the very real potential that they will go on to commit more serious crimes aside from entering the country illegally, which I say is still a violation of the law.

When we think about what is the best use of our limited resources, we should be fully cognizant of the fact that although ICE is a large organization with more than 20,000 agents, the scope of the immigration and border security problem is very large for them to tackle alone. We can certainly debate the merits and wisdom of tough State immigration laws, but ICE also needs to be cultivating and leveraging partnerships with State and local governments who are more often than not willing to share that burden. I am sure the director is going to be talking about that today.

We have seen some delays in the roll-out of the Secure Communities in Alabama because of the disagreement with the tough State law. We have also seen a go-slow approach to the roll-out in Illinois, in Cook County in particular, which refuses to honor ICE detainers on even the most dangerous criminals, putting citizens and the Nation at risk. I am sure we will have some questions for the director about those two incidents as well.

Immigration enforcement is certainly a Federal responsibility, and the Congress has authorized as well State and local law enforcement to provide support in certain circumstances. Secure Communities and the 287(g) program and others are critical components in the last line of defense. Congress created Secure Communities in fiscal year 2008 as a pilot program to establish the capability to identify all criminal aliens or potential criminal aliens at the time of arrest. In activated jurisdictions, which is now about 97 percent of the entire country, all of those arrested have their fingerprints run against databases to determine if they are in the country legally or not.

The program, now a permanent program, is in operation, as I say, in all of these jurisdictions Nation-wide, with the goal of having the program on-line Nation-wide by the end of this year. Since the program was activated, it has helped lead to the removal of

more than 141,000 convicted criminals who were unlawfully present in this country.

So I find it amazing, really, that there was so much opposition to this program. Fully 94 percent of the aliens deported by this very valuable program are either convicted criminals or recent border crossers or visa overstays. This begs a very simple question: How can you oppose a program with those results unless you are not really vested in this Nation securing our borders?

However, this is precisely the position several open-border groups have advocated and formalized in the Secure Communities task force report, ultimately resulting in ICE's adoption of a policy to halt deportations until actual convictions for low-level traffic violations.

My only concern with the Secure Communities program is that we have heard some reports about aliens who have been convicted of lower-level offenses who have generally been ignored with little law enforcement action taken against that group.

Without taking enforcement actions against all criminal aliens, programs such as Secure Communities may result in large numbers of identified criminal aliens being released back into society, which of course is an unacceptable outcome for our communities. The purpose of today's hearing is to examine the work that ICE is doing to leverage local and State resources.

Congress is eager and willing to facilitate cooperative efforts to secure the border, to remove dangerous criminal aliens from our streets and to help the Department of Homeland Security secure our Nation's homeland. Again, that is the purpose of this hearing.

[The statement of Chairwoman Miller follows:]

STATEMENT OF CHAIRWOMAN CANDICE S. MILLER

First, I would like to thank the Director and the men and women of Immigration and Customs Enforcement, who do a magnificent job, and I think that all of us here on the subcommittee want to do everything in our power to give ICE the tools, resources, and support they need to get the job done.

The recent shooting of Special Agent Kelton Harrison while he was conducting surveillance near McAllen, Texas demonstrates the risk that our agents face on a daily basis. We certainly hope and pray for his speedy recovery.

Tangible border security requires we take a layered approach and should not focus solely on the line in the sand that separates the United States and Mexico, the long, often liquid, border we share with Canada, or the thousands of miles of coastline.

Because if we are honest, the truth is, despite our best efforts, and the billions spent on personnel, infrastructure, and technology, drug and human smugglers and others will inevitably find a way get through.

Not only do hard-working people come across the border in search of a better life, but human smugglers, drug cartels, and drug mules also come to this country with less-than-pure motivations, and often prey on the innocent.

I think it is important to note that when we discuss border security, visa security cannot be overlooked. Estimates vary, but the core truth is that many who enter the country illegally walk in through the front door and never leave following the expiration of their visa, as we saw with several of the 9/11 hijackers and even the recent case of the attempted Capitol bomber.

In my mind, tracking down visa overstays, removing dangerous criminals, and recent border-crossers is perhaps the most critical enforcement layer as we think about what a secure border and safer communities look like.

I would like to remind my colleagues that every single person who crosses the border illegally has committed a crime, and we cannot ignore that fact or sweep it under the rug. Sending the message that unless you commit serious crimes, we will not bother with the effort to deport you, is dangerous and threatens the safety of our country.

Prioritization of limited resources toward the most dangerous criminals makes sense, but ICE should not ignore low-level criminals because of the very real potential that they will go on to commit more serious crimes, aside from entering the country illegally, which is still a violation of the law.

As we think about the best use of our limited resources, we should be fully cognizant of the fact that although ICE is a large organization, with more than 20,000 agents, the scope of the immigration and border security problem is too large to tackle alone.

We can certainly debate the merits and wisdom of tough State immigration laws, but ICE should be cultivating, and leveraging, partnerships with State and local governments, who are more often than not willing to share the burden.

Instead, we've seen delays with the roll-out of Secure Communities in Alabama, because of this administration's disagreement with a tough State law, and a go-slow approach to the roll-out in Illinois. In fact, Cook County refuses to honor ICE detainees on even the most dangerous criminals—putting their citizens and this Nation at risk.

However, whereas the administration has taken legal action against certain States such as Arizona, it refuses to confront Cook County—the President's hometown.

On the surface, it appears ICE and this administration want to tackle the interior enforcement issue largely without the help of State and locals, or at least only on their terms—a tragic error of judgment in my view. While immigration enforcement is certainly a Federal responsibility, Congress has authorized State and local law enforcement to provide support in certain circumstances.

Secure Communities, the 287(g) program and others are critical components of what I call the last line of defense as we work to secure the border.

Congress created Secure Communities in fiscal year 2008 as a pilot program to establish the capability to identify all criminal aliens or potential criminal aliens at the time of arrest. In activated jurisdictions, all those arrested have their fingerprints run against databases to determine if they are in the country legally.

The program, now permanent, is operational in 97% of jurisdictions Nation-wide, with the goal of having the program on-line Nation-wide by the end of this year. Since the program was activated, it has helped lead to the removal of more than 141,000 convicted criminals who were unlawfully present in this country, so it is really beyond comprehension why there is so much opposition to this program.

Fully 94% of the aliens deported by this valuable program are either convicted criminals or recent border-crossers, or visa overstayers.

This begs a simple question: How can you oppose a program with those results unless you're not really vested in this Nation securing its borders?

However, this is precisely the position several open-borders groups have advocated and formalized in the Secure Communities Task Force report, ultimately resulting in ICE's adoption of a policy to halt deportations until actual convictions for lower-level traffic violations.

My only concern with the Secure Communities program is that we have heard troubling reports about aliens who have been convicted of lower-level offenses have generally been ignored, with little enforcement action taken against that group.

Without taking enforcement actions against all criminal aliens, programs such as Secure Communities may result in large numbers of identified criminal aliens being released back into society—an unacceptable outcome for our communities.

The purpose of today's hearing is to examine the work that ICE is doing to leverage local and State resources.

Congress is eager and willing to facilitate cooperative efforts to secure the border, remove dangerous criminal aliens from our streets, and help DHS secure the Nation's homeland.

Mrs. MILLER. The Chairwoman now recognizes the Ranking Minority Member of the subcommittee, the gentleman from Texas, Mr. Cuellar, for his opening statement.

Mr. CUELLAR. Thank you, Madam Chairwoman.

Thank you for holding this hearing today.

I would like to thank also Director Morton for joining us today, and I look forward to his testimony.

Before we begin, I would like to express my condolences to the family of the Border Patrol agent, Leopoldo Cavazos, Jr., who died in the line of duty on July 6 after an accident near Fort Hancock in west Texas.

I would also like to wish a quick recovery to HSI Special Agent Kelton Harrison, who was shot in the line of duty near Hargill, Texas.

I believe, Director, you are heading over there to go visit the family and him also. I think he was shot there last week. Again, thank you for showing there in my county, one of the counties that I represent. These terrible incidents are a stark reminder that the men and women at DHS law enforcement put their lives on the line every day to make our country more secure. We greatly appreciate their service and sacrifice. The purpose of today's hearing is to examine the status of ICE Secure Communities program, along with the agency's plan for the future of the program. Removing criminal aliens from the United States has been a Congressional priority since 1986, with the passage of the Immigration Reform Control Act.

The Department of Homeland Security and its predecessor agency have operated programs targeting criminal aliens for removal since 1988. Today, under the Secure Communities program, when participating law enforcement agencies submit the fingerprints of arrestees to the FBI for criminal background checks, the fingerprints are also now automatically sent to DHS for ICE to check against them for DHS databases.

I know when I was traveling in my Congressional district, because I wanted to have all of my Congressional district, I travel with ICE, and we told the folks that it was just a very simple thing. When they put the fingerprint, you used to just go check the criminal background. But once in and in jail and they give their fingerprint, now they send off for the immigration status. I think it is just a very common-sense approach. Of course, you all are in all 254 counties in Texas and all across I think there is a couple States that we want to talk about in a few minutes.

The ICE reports show that through March 31, 2012, more than 135,000 immigrants convicted of crimes, including more than 49,000 convicted of aggravated felony offenses, like murder and rape, were removed from the United States after identification through Secure Communities. My brother, who is a border sheriff, was giving an example of they stopped somebody, they had somebody in jail, and it turned out that he was there for murder in another State. So Secure Communities does work and it does help the local border law enforcement.

Given ICE's relative limited enforcement resources compared to the number of individuals unlawfully presented in the United States, prioritizing criminals, and particularly the serious criminals, for removal keeps our communities safer and is the best use of taxpayers' dollars.

The Secure Communities program has not been without controversy. I do understand that. I am pleased to say that ICE, under Director Morton's leadership, has taken steps to make enhancements to the program. For example, I was in Houston. I was there with Sheriff Garcia. He was telling me about the task force that they put together to make sure that ICE was working to improve its communication with State and local jurisdictions and Secure Communities not only there in Houston and Harris County, with Sheriff Garcia, but of course in other parts. We want to thank you

to make sure that we minimize concerns over the possibility of racial profiling in the program. I hope to hear from Director Morton about ICE progress in this particular effort.

I also hope to hear about how he intends to ensure that the program meets its stated mission of focusing on removing serious criminal aliens from this country. As a Member of Congress, we always want to make sure that the agencies understand: What is your core mission? What is your core mission? And make sure you accomplish those objectives.

As a Member representing a border community, I know how important programs like Secure Communities are in addressing the issue of illegal immigration. Given its importance, I hope we can have a thoughtful, focused discussion on Secure Communities today.

I look forward to having a productive dialogue with you, Director Morton.

Again, I want to thank the Chairwoman and the Ranking Member of the full committee, Mr. Thompson, for all the good work that they are doing, along with the Members.

Thank you, and I yield back the balance of my time.

Mrs. MILLER. The Chairwoman now recognizes the Ranking Member of the full committee, the gentleman from Mississippi, Mr. Thompson, for his statement.

Mr. THOMPSON. Thank you very much, Madam Chairwoman.

Welcome, Director Morton. Good to see you again.

Let me start by saying I strongly support the administration's decision to identify and remove aliens who may pose a threat to National security or public safety. However, I believe it is imperative that programs like Secure Communities be focused first and foremost on removing serious criminal offenders, given ICE's limited enforcement resources. The program must be administered to guard against racial profiling and protect community-police relations. In its September 2011 report, the Homeland Security Advisory Council Task Force on Secure Communities made important recommendations to improve the program. I wholeheartedly agree with its recommendations that ICE develop good working relationships with participating States, cities, and communities, implement mechanisms to ensure the program prioritizes those who pose a risk to public safety or National security, and most importantly, strengthen mechanisms to prevent civil rights and civil liberties violations.

In a response to the report, ICE has made plans to implement several changes to the Secure Communities program to address the task force's recommendations. I look forward to hearing from Director Morton today about the status of these efforts and what additional changes we should expect.

Unfortunately, some of my colleagues on the other side of the aisle continue to describe ICE's practical, risk-based approach to the removal of undocumented aliens, whether they be brought to ICE through Secure Communities or another program, as administrative amnesty.

As I have said before, unless and until Congress appropriates sufficient funds for ICE to apprehend and remove every undocumented alien in the country, we should support the agency's efforts

to focus its limited resources on removing those undocumented aliens who pose the greatest threat to our Nation. It is also worth reiterating that under the current administration, ICE has removed more criminal aliens and more aliens total than under the Bush administration or any other prior administration, Democrat or Republican.

With that, Madam Chairwoman, I would also again like to recognize Director Morton for the job that he is doing. I look forward to hearing from him and am certain he will provide the subcommittee with valuable insights into the complex issues of immigration enforcement.

I yield back.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

Let me start by saying I strongly support the administration's decision to identify and remove aliens who may pose a threat to National security or public safety. However, I believe it is imperative that programs like Secure Communities be focused, first and foremost, on removing serious criminal offenders, given ICE's limited enforcement resources.

The program must be administered to guard against racial profiling and protect community-police relations. In its September 2011 report, the Homeland Security Advisory Council (HSAC) Task Force on Secure Communities made important recommendations to improve the program.

I wholeheartedly agree with its recommendations that ICE develop good working relationships with participating States, cities, and communities; implement mechanisms to ensure the program prioritizes those who pose a risk to public safety or National security; and, most importantly, strengthen mechanisms to prevent civil rights and civil liberties violations.

In its response to the report, ICE has made or plans to implement several changes to the Secure Communities program to address the task force's recommendations.

I look forward to hearing from Director Morton today about the status of these efforts and what additional changes we should expect. Unfortunately, some of my colleagues on the other side of the aisle continue to describe ICE's practical, risk-based approach to the removal of undocumented aliens, whether they be brought to ICE through Secure Communities or another program, as "administrative amnesty."

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It is also worth reiterating that under the current administration, ICE has removed more criminal aliens, and more aliens total, than under the Bush administration or any other prior administration, Democratic or Republican.

With that, Madam Chairwoman, I would like to welcome Director Morton. I look forward to hearing from him and am certain he will provide the Members of this subcommittee valuable insight into the complex issue of immigration enforcement.

Mrs. MILLER. Other Members of the committee are reminded that opening statements might be submitted for the record.

Again, our sole witness today is Mr. John Morton, who is the director of Immigration and Customs Enforcement, ICE, which is the principal investigative arm of the Department of Homeland Security. It is the second-largest investigative agency in the Federal Government. The agency's primary mission is to promote Homeland Security and public safety through the criminal and civil enforcement of Federal laws governing border patrol, customs, trade, and immigration. During his tenure at ICE, Director Morton has strengthened ICE's investigative efforts, with a particular emphasis on border crimes, export controls, intellectual property enforcement, and child exploitation.

The Chairwoman now recognizes Director Morton for his testimony.

Again, we welcome you to the committee, sir.

STATEMENT OF JOHN MORTON, DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. MORTON. Thank you so much, Madam Chairwoman. Mr. Cuellar, Mr. Thompson, Mr. Duncan, thank you for inviting me. It is my honor and pleasure to appear before you today to talk about Secure Communities and our other related initiatives. Let me start, Madam Chairwoman, by saying that I think that Secure Communities is an excellent program. I think it represents one of the most important efforts by the Congress to focus ICE's enforcement on criminal offenders.

As you noted, Secure Communities got its start in 2008 in the Appropriations Act when Congress directed ICE to improve its efforts to identify convicted criminal aliens held in the Nation's jails for removal from the United States. Congress instructed ICE to identify all convicted criminals and to prioritize their identification and removal based on the severity of the aliens' crimes. Congress has since reiterated that direction in every single one of our subsequent appropriations and has consistently focused our detention resources accordingly.

Secure Communities was launched in Harris County, Texas, in October 2008, and we have come a long, long way since that time. Secure Communities is now deployed in every State of the Union and fully deployed in every State, save Alabama and Illinois. Put another way, Secure Communities has been deployed to 3,074 of the 3,181 jurisdictions in the United States, a remarkable achievement in just under 4 years. I am confident we will complete full deployment in the near future, starting with the remaining jurisdictions in Alabama when the 11th Circuit rules on the pending litigation over Alabama's immigration law.

For the first time in our Nation's history, we can uniformly identify individuals who are here unlawfully and are subsequently arrested for a crime provided that their fingerprints are on file with the FBI and DHS. This fingerprint sharing between the FBI and DHS, itself mandated by Congress in 2002, now permits ICE to identify large numbers of criminal offenders subject to removal, as well as individuals who have been previously removed or have an outstanding final order of removal.

The results have been significant, both in terms of immigration enforcement and public safety. ICE has removed 58,297 individuals through Secure Communities so far this year alone, and over 140,000 criminals since the inception of the program, as the Chairwoman notes. This year, 75 percent of the individuals removed had a criminal conviction. Of the remaining quarter, the overwhelming majority were either absconders, that is immigration fugitives, or had illegally reentered the country after having previously been deported one or more times.

Contrary to what critics allege, the single largest category of individuals removed through Secure Communities are aggravated felons, 17,000 to date this year alone.

Madam Chairwoman, that is just good law enforcement.

As the program has expanded, we have also taken care to address concerns raised in certain jurisdictions, as Mr. Cuellar and Mr. Thompson note. In particular, we have made some important improvements, including considering minor traffic offenses only upon conviction, creating a 24-hour hotline for anyone who believes they are a U.S. citizen or otherwise have been improperly served an immigration detainer, ensuring that victims and witnesses of crimes are not inadvertently placed in removal proceedings, and making clear that our detainers are valid for no more than 48 hours, and developing a strong oversight program in coordination with the Department of Homeland Security's Office of Civil Rights and Civil Liberties.

With regard to the 287(g) program, we have 68 active agreements. That number has not changed much over the years. Forty are in a jail setting; 20 involve task forces; and 8 involve both. The jail model continues to be the most productive by far, accounting for a little over 9,000 of the 9,500 287(g) removals to date this year. The task force model has proved much less productive, with just 361 removals to date Nation-wide. We are phasing out most such agreements as a result. For example, of the 7 task force agreements we just ended in Arizona, 6 of the 7 had resulted in no removals of any kind for the last 2 years.

With regard to overall enforcement, I think we will end the fiscal year with similar results to last year, that is about 400,000 removals. Like last year, these removals will focus heavily on our enforcement priorities. Over half will have criminal convictions, and the vast majority of the rest will be recent border violators, illegal re-entrants, and those who have ignored a final order.

Within our criminal removals, I think we will see further emphasis on Level 1 offenders. Indeed, I am cautiously optimistic that this year we will remove the highest number of aggravated felons in our history.

One final note, Madam Chairwoman. I want to thank the committee for its thoughtful, bipartisan approach. I have always found the committee's oversight of ICE to have been firm but fair. The same was true when Mr. Cuellar was Chairman himself. I am happy to answer any questions that you or the committee may have.

[The statement of Mr. Morton follows:]

PREPARED STATEMENT OF JOHN MORTON

JULY 10, 2012

INTRODUCTION

Chairman Miller, Ranking Member Cuellar, and distinguished Members of the subcommittee: Thank you for the opportunity to address you today regarding U.S. Immigration and Customs Enforcement's (ICE) Secure Communities strategy which improves and modernizes the identification and removal of criminal aliens and other high-priority aliens from the United States. ICE is the principal investigative arm of the U.S. Department of Homeland Security (DHS), and our primary mission is to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration. Secure Communities is critical to our success in targeting and removing convicted criminals, those who pose a threat to public safety, and egregious immigration law violators.

The reality of finite resources requires law enforcement—at all levels—to use resources strategically and wisely to accomplish their mission. Over the past 3½ years, ICE has established clear priorities that focus our enforcement resources on aliens that pose a threat to public safety or National security, repeatedly violate our immigration laws or recently crossed our borders. Secure Communities utilizes the interoperability between the DHS Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigations (FBI) Integrated Automated Fingerprint Identification System (IAFIS), as a tool to focus the agency's resources on identifying and apprehending convicted criminals and other high-priority aliens.

At the end of fiscal year 2009, Secure Communities' use of this Federal biometric information-sharing capability was deployed to 88 jurisdictions across the Nation. That year, only 35 percent of ICE's removals were of criminal aliens. At the end of fiscal year 2011, Secure Communities deployed this capability to 1,595 jurisdictions. In fiscal year 2011, 55 percent of all of ICE's removals were of criminal aliens—the highest percentage of criminal aliens removed in decades. These successes are a direct result of Secure Communities' expansion of this Federal biometric information-sharing capability and highlight the effectiveness ICE's overall effort to establish clear priorities and focus agency resources.

SECURE COMMUNITIES

Overview

While the fundamentals of Secure Communities remain sound, ICE is mindful of the concerns raised by some, including State and local law enforcement officials, and is committed to continuing to make operational adjustments to ensure that Secure Communities aligns with our operational priorities. Unfortunately, ICE's initial public statements often caused confusion about how Secure Communities works and who is required to participate. Given that there may remain some confusion surrounding Secure Communities, I want to take a moment to clarify what it is, and more importantly what it is not. Secure Communities focuses on improving and modernizing the identification and removal of criminal aliens and other high-priority aliens from the United States. The cornerstone of Secure Communities relies on the sharing, between the U.S. Department of Justice and DHS, of fingerprints submitted to the FBI by State and local law enforcement agencies for criminal justice purposes. The Federal biometric information sharing that Secure Communities uses typically begins when an individual is arrested and booked on a State or local criminal charges and his or her fingerprints are digitally scanned and transmitted to a State Identification Bureau (SIB). In turn, the SIB submits the fingerprints to the FBI Criminal Justice Information Services Division (CJIS) to check against IAFIS for criminal data.

When fingerprints are submitted to the FBI, they are shared with DHS. If submitted fingerprints match a record in the DHS US-VISIT database, which contains biometrics on individuals who have had prior encounters with immigration officials, ICE Law Enforcement Support Center (LESC) personnel will then query additional DHS databases to determine if the person may be present in violation of U.S. immigration law. LESL personnel also query criminal history databases to compile a more complete criminal history record of current and prior criminal offenses for ICE enforcement personnel to review.

The findings are sent electronically to the local ICE Field Office or a Secure Communities Interoperability Response Center where a determination is made whether to initiate an immigration enforcement action in line with ICE's enforcement priorities. This determination is based on the subject's criminal and immigration history, available ICE resources in the location, and other mitigating circumstances that ICE agents and officers consider when determining whether the individual is an appropriate candidate for prosecutorial discretion. If feasible, based upon the arresting agency's technical capabilities and upon the request of the State, the findings are also made available to the SIB and the law enforcement agency that submitted the fingerprint to aid in clarifying the identity of the subject. Neither the State nor the arresting law enforcement agency, in the absence of formal 287(g)-delegated authority from an agreement with DHS, is authorized to take immigration enforcement action against the person arrested. This authority remains solely with DHS.

Secure Communities' use of this information-sharing capability does not in any way authorize a State or local agency to enforce immigration laws. The determination to make an arrest is at the sole discretion of the State and local law enforcement officer, acting under the criminal law authority of the jurisdiction in which they operate. Not every person arrested will be subject to a Secure Communities' IDENT/IAFIS interoperability query. Only when State or local law or policy prescribes that the fingerprints be taken from an individual in custody for a criminal

charge and then be submitted to the FBI's IAFIS database will that individual's fingerprints be checked against DHS's immigration databases. Even when an individual's fingerprints are submitted, ICE may choose not to take action if the individual does not meet ICE enforcement priorities. While State and local law enforcement officials decide whom to arrest and whether to submit fingerprints to the FBI, when there is a biometric match through Secure Communities' use of this information-sharing capability an ICE official reviews both the criminal record and the immigration history and then determines if an immigration enforcement action is warranted in light of ICE's enforcement priorities.

Only those fingerprints submitted to the FBI in relation to a criminal charge are subject to Secure Communities' use of IDENT/IAFIS interoperability. By comparison, prints submitted to the FBI as part of a background check for employment or other non-criminal purposes are not subject to Secure Communities' use of IDENT/IAFIS interoperability.

Improvements to Secure Communities

In 2011, as part of the administration's continued commitment to smart, effective immigration enforcement, ICE announced key improvements to IDENT/IAFIS interoperability through Secure Communities, including:

Advisory Committee Input.—In light of the confusion about how Secure Communities works and who is required to participate that had been created by certain ICE statements, a Task Force of the Homeland Security Advisory Council examined ways to improve Secure Communities, including providing recommendations on how to best focus on individuals who pose a true threat to public safety or National security and how to address some of the concerns that "relate to [its] impact on community policing and the possibility of racial profiling."

This Task Force issued a report of Findings and Recommendations (Report). ICE appreciates the Task Force's diligent work in preparing their Report, which ICE took seriously. In response to it, ICE then conducted a detailed review of the Report, and in April 2012 issued its response highlighting key improvements to Secure Communities. In this response, ICE adopted a new policy regarding individuals arrested for minor traffic offenses. Under this policy, ICE will only consider issuing detainers for individuals arrested solely for minor traffic offenses who have not been previously convicted of other crimes and do not fall within any other ICE priority category, upon conviction for the minor criminal traffic offense. This new policy will help focus ICE resources on those who pose a threat to public safety or National security, as well as repeat or egregious immigration law violators and recent border-crossers. It is also designed to create a disincentive for local law enforcement from making pretextual arrests of traffic violators.

Issuance of Prosecutorial Discretion Guidance.—On June 17, 2011, I issued a memorandum providing guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise discretion when appropriate. This long-standing authority is designed to help ICE better focus on meeting the priorities of the agency and to use ICE's enforcement resources to target criminals and those that put public safety at risk. The memorandum applies fully to any enforcement action taken with respect to individuals identified through Secure Communities' use of IDENT/IAFIS interoperability.

The memorandum makes clear that the favorable exercise of discretion is not appropriate in cases involving threats to public safety, National security, and other agency priorities. Moreover, to ensure that this agency guidance is implemented consistently, ICE developed an intensive practical training module for its attorneys and field leadership on the proper exercise of prosecutorial discretion. I have also personally visited many of our field offices to speak with both ICE officers and attorneys about the guidance memo and its proper implementation. These proactive measures reflect our firm commitment to effectively prioritizing our immigration cases.

Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs.—At the direction of the Secretary of Homeland Security, ICE, in consultation with the DHS Office for Civil Rights and Civil Liberties (CRCL), has developed a new policy designed specifically to protect victims of domestic violence and other crimes 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 afforded the legal protections for which they may be eligible. ICE is also working to develop additional tools, such as a risk classification assessment tool, to be used during intake into detention, to help identify people who may be victims, witnesses, or members of a vulnerable class so that officers can exercise discretion as appropriate. The memorandum also applies fully to any enforcement action taken with

respect to individuals identified through Secure Communities' use of IDENT/IAFIS interoperability.

Outreach to States.—ICE and CRCL have developed a series of briefing and awareness materials for State and local law enforcement agencies to provide clear information about how Secure Communities works and how it relates to laws governing civil rights. The briefings take the form of a series of videos and supplemental materials, which include input from law enforcement and community groups, to be shown to local law enforcement during daily roll-call and during other trainings. Three of the eight planned modules—those on Secure Communities, immigration detainers, and consular notification—have been released and can be viewed on the ICE website. The remaining modules are expected to roll out through the end of 2012.

Issuance of a Revised Detainer Policy.—ICE has revised the detainer form that ICE sends to local jurisdictions to emphasize the long-standing guidance that upon receipt of a detainer subject to which an alien is to be held, State and local authorities are not to detain an individual for more than 48 hours beyond the time when the individual would have otherwise been released from State or local custody, excluding weekends and holidays. The form also requests that local law enforcement officials provide arrestees with a copy, which includes information in several languages on how to file a complaint if an individual believes their civil rights have been violated or that they have been the victim of a crime, or that they are able to make a claim of U.S. citizenship, which can be directed to a new 24-hour hotline answered by the LESC.

Complaints.—ICE takes seriously complaints raised about civil rights violations related to Secure Communities. As a part of our commitment to ensure that Secure Communities appropriately fulfills its mission, ICE has worked with CRCL to publicly explain, through a series of town halls and on both ICE and CRCL's websites, the protocol for addressing complaints raised about civil rights violations related to Secure Communities, including complaints regarding State and local law enforcement actions. CRCL has opened investigations under that framework. In addition, ICE's Public Advocate, who works directly for the head of ICE's Enforcement and Removal Operations (ERO), is available to assist individuals and community stakeholders in resolving complaints and concerns with agency policies and operations, including concerns with Secure Communities.

Statistical Review.—ICE and CRCL have created an on-going quarterly statistical review of data generated through Secure Communities' use of IDENT/IAFIS interoperability. This review examines data for each jurisdiction where Secure Communities' use of IDENT/IAFIS interoperability is deployed to identify any indications of anomalous arrest patterns that may indicate bias. Statistical outliers in local jurisdictions will be subject to an in-depth analysis, and DHS and ICE will take appropriate steps to resolve any problems. ICE and CRCL have posted both a concise explanation of this project and a technical paper on the data and statistical calculations being employed on the ICE website, http://www.ice.gov/secure_communities/. The page also contains links to the various initiatives associated with Secure Communities.

Enhancing the Effectiveness of Secure Communities

On March 27, 2012, the DHS Office of the Inspector General (OIG) issued two audit reports on Secure Communities: (1) "Effectiveness of U.S. Immigration and Customs Enforcement's Secure Communities" and (2) "Communication Regarding Participation in Secure Communities." Overall, the OIG determined that Secure Communities was effective in identifying criminal aliens and, in most cases, ICE officers initiated enforcement actions according to agency enforcement policy. OIG also found that ICE did not intentionally mislead the public or State and local jurisdictions during implementation of Secure Communities and its use of IDENT/IAFIS interoperability.

In the first report, on effectiveness, OIG determined that ICE expanded its ability to identify criminal aliens in geographical areas not covered by its other programs. In addition, the report found that ICE was able to identify criminal aliens earlier in the justice process, some of whom it would not have identified under other programs. Through use of existing technical capabilities, Secure Communities' use of IDENT/IAFIS interoperability was implemented at little or no additional cost to local law enforcement jurisdictions. In that report, OIG made two recommendations to improve ICE's overall management of Secure Communities. To improve the transparency and thoroughness of its processes under Secure Communities, OIG noted that ICE needs to: (1) Eliminate the duplication of research; and (2) ensure that officers fully document their actions. ICE concurred with both recommendations and is taking action to implement them.

In the second OIG report, regarding communications, OIG indicated that it did not find evidence that ICE intentionally misled the public or State and local jurisdictions during implementation of Secure Communities. OIG did note that ICE did not clearly communicate to stakeholders the intent of Secure Communities and their expected roles and made recommendations to ensure that expected participation is clearly communicated for Secure Communities and future ICE programs and initiatives.

In response to these recommendations, ICE has also addressed the roles and responsibilities of ICE senior leadership and coordination with the Department regarding future immigration enforcement program development and implementation. Additionally, ICE has taken steps to respond to criticism about Secure Communities implementation, and to understand how the lessons learned about the importance of clear, effective communications about enforcement programs, goals, and objectives can guide future immigration enforcement program development and implementation.

CONCLUSION

Secure Communities serves a critical role in ICE's overall effort to focus agency resources on criminal aliens, repeat immigration violators, and recent border crossers. I again thank the committee for its continued support and the opportunity to share with you the good work of U.S. Immigration and Customs Enforcement. I am proud of the work our ICE teams do each and every day all around the world to help strengthen and secure our homeland and make our communities safer. On behalf of the men and women of ICE, I thank you for the opportunity to testify on these efforts. I would now welcome any questions you may have.

Mrs. MILLER. Thank you very much for your testimony, Director.

I guess I would start off talking about Secure Communities. As you mentioned, it has been a successful program. It was one of the reasons we wanted to call this hearing today, to do our Congressional oversight and evaluate the program, how it rolled out, where are some of the hiccups we have encountered along the way, and really I think highlight the successful part of this program.

Everything that we are doing in regards to border security is not as successful as Secure Communities. So I think it is good for us to amplify this message a bit about what a successful program it has been. I do think that a critical component in the makeup of why it has been successful is the engagement, if you will, the force multiplier that you are finding by utilizing the State and local law enforcement. One thing we always talk about on this committee, a very critical element of the 9/11 Commission's report that we never want to forget is where they said we have to go from the need-to-know to the need-to-share, from the need-to-know information to the need-to-share information, amongst all the various agencies. I think that is, again, a critical component of our layered approach to border security and law enforcement, et cetera.

So, as was mentioned, you have pretty good buy-in, excellent buy-in I would say, across the entire Nation. I know in my district, and the Ranking Member and I were just talking about in his district, our local sheriffs are very enthusiastic about this program. It allows for them to utilize technology, sharing the fingerprints and the database, to know that if they pulled somebody over for a routine traffic stop and they are in a database as either a visa overstay or an illegal in the country, et cetera, that they are able then to contact your agents and look for deportation.

However, we have the situation in Alabama, which sounds now like it is going to resolve itself hopefully in the fall here. I guess sort of the big hold-out that we see, although there are some municipalities, small ones in California, the big hold-out is probably

one of the largest counties in the Nation, Cook County, Illinois, which has essentially become a sanctuary city. Yet they are still, the community is still looking for Federal dollars in grants or what have you to pay for detainees that they have in their jails, but they don't want to participate in the Secure Communities. Whether they are releasing these criminal aliens or what have you, I guess I am looking for some response, if you will, both just to clarify the Alabama situation, but particularly with the Cook County situation.

Mr. MORTON. Madam Chairwoman, first with regard to Alabama, I think that will be resolved. I think we will see full deployment in Mr. Rogers' home State. That was excellent timing there. So I expect the 11th Circuit to rule fairly shortly. I think the Supreme Court's decision in Arizona will lead us to a place where the 11th Circuit will rule, and we will be able to fully deploy in the remaining counties of Alabama over the Autumn.

With regard to Illinois, as you note, it is a little more of a difficult situation there. Cook County, which is the largest county and has one of the largest detention systems in the country, has adopted an ordinance that essentially prohibits all cooperation with ICE, even with regard to very serious and violent offenders. I have written a number of public letters to the county. I am very much opposed to their approach. I think it is the wrong way to approach public safety in Cook County. I am quite confident that their approach is ultimately going to lead to additional crimes in Cook County that would have been prevented had we been able to enforce the law as the law is presently written.

Just to give you some sense of it, in very large jurisdictions in the United States, the rate of recidivism for criminal offenders can be as high as 50 percent or more. When ICE can come in and remove offenders from a given community so that they can't re-offend, well, guess what, we take that recidivism rate to zero. So, for example, if you have 100 criminal offenders and we are able to root them, that is 50 crimes that will not happen over the next 3 years as a result of our enforcement efforts. That is ultimately the power of Secure Communities. It is a direct way to support public safety in a very thoughtful manner.

What are we trying to do to resolve the situation in Illinois? We have been working with the county to see if there isn't some solution. I won't sugarcoat it. I don't think that that approach is going to work in full. We are going to need the help of others. We have been exploring, as the Secretary has said, our options under Federal law with the Department of Justice. We will see where that goes. Then with regard to the annual request by Cook County to be reimbursed for the costs of detaining individuals who are here unlawfully and have committed crimes, obviously I find that position to be completely inconsistent with then not allowing us access to and removing those very same individuals, and we will be taking a very hard look at their SCAAP request. That is the part of the law that allows the Federal Government to reimburse for those costs this year. My own position is going to be that if we do not have access to those individuals, we will not be able to verify their request for the year.

Mrs. MILLER. Well, I can't tell you how delighted I am to hear you make that very candid assessment of what is happening in

Cook County, and as you say, exploring your options in regards to financial assistance from the Federal Government. We do want to work with Cook County, but there is reciprocity in all relationships, and they need to work with us as well. They are not immune to Federal law. If they are not going to assist us in removing not only criminal aliens, but those that might go on to commit a terrorist attack or what have you because they want to have their city become a sanctuary, the Federal Government cannot stand by idly and allow that to happen. It is absolutely the wrong message to be sending. So I am very appreciative of what you are saying, really exploring your options. Is there anything further that this subcommittee or the Congress can assist you with in that particular instance? If so, we are certainly all ears, because we do need to resolve that in the correct way. I think Cook County is going to have to recognize that the Federal Government is very serious about Secure Communities. We can't have just one hold-out in the country for such a thing or they really will become a magnet for all kinds of situations there.

Mr. MORTON. I would say that we are going to give it a very good effort to try to resolve the situation directly with Cook County and with Illinois and with the Department of Justice. If we can't do that, I think we would be happy to come back and explore further options with the committee.

From our perspective, Federal law is very clear on the question of cooperation with Federal authorities in immigration. We do think that the ordinance is inconsistent with the terms of Federal law. Ultimately, I think we share the same aims, I would assume, with the authorities in Cook County, and that is public safety for the people that live there. It just does not make sense to release to the streets serious criminal offenders who shouldn't be in the country in the first place given the rate of recidivism.

Mrs. MILLER. I appreciate that. I guess just one other question I have. You were mentioning about the amount of, the percentage of those through the Secure Communities program that have been previously removed that are picked up again. I am looking at my notes here. I was trying to make some notes while you were talking, 16 percent or something that you are picking up had already been previously removed, which I think begs the question about some of the effectiveness that we have along border security. Do you have any comment? Are you surprised by that number? Or what are your thoughts on that?

Mr. MORTON. I think it highlights—so some of the criticism of Secure Communities has been that it identifies and removes certain individuals prior to conviction. The answer is, it does do that, but it does that in circumstances that, frankly, make a lot of sense from an enforcement perspective. When you look at, well: Who are these people that we are identifying removing prior to conviction? They are, in the overwhelming majority of cases, people that have already been removed from the country and have come back again unlawfully, or they are people who have already been through the immigration system, have a final order and ignored that final order. Remember, the only way you get identified by Secure Communities is to have been arrested in the first place for a crime. So we are talking about people who have come into the criminal jus-

tice system and have either a final order of removal or have been previously removed. Congress has been very clear with regard to both of those categories of people that their removal is a priority. So, of course, we focus on those two categories of people, even if they don't have a criminal conviction. It just makes sense. Otherwise, we would be releasing to the streets somebody we had deported before and has come back unlawfully. It is a felony under Federal law to reenter the country after a prior deportation. I just don't think it is the right policy for us not to focus our enforcement resources on those individuals.

Mrs. MILLER. Thank you, Director.

The Chairwoman now recognizes the Ranking Member, Mr. Cuellar.

Mr. CUELLAR. Thank you, Madam Chairwoman.

Again, Director, I certainly want to congratulate you on the great work that you have been doing. I think, Members, if you look at the activated jurisdiction document here, there is a map of it, you can see everything that is green that shows the activated. It is 97 percent. Which means out of 3,181 activated jurisdictions, you have got 3,074, which is pretty amazing, except for the ones that we have been focusing on.

So, again, I want to congratulate you.

I also, Members, I ask you to look at the testimony, the written testimony of the director, because he does talk about the efficiency. There is the transparency part of it on it and of course the safeguards that Sheriff Garcia in Harris County had talked about when we talked about—I think Congressman McCaul is very familiar with—to make sure that they do the work, but at the same time provide—make sure there is no profiling involved in that. So the input is very important on that.

So I certainly want to thank you on that.

Besides Alabama and besides Illinois, I believe there were a couple of jurisdictions out there that have passed ordinances also. I think they were in California, I believe. What is it? San Francisco, Santa Clara, I believe.

Mr. MORTON. Santa Clara.

Mr. CUELLAR. Exactly. Again, to follow up on this, it makes common sense, because I remember when I did the tour to make sure all my 12 counties, at least at the very beginning, the counties that I represent, I was traveling rural areas, urban areas, especially the rural areas, they liked this. Because if you are a small community, it is very important that you get this help. It was seen as tax savers, because at the same time, you are able to remove those folks out there that need to be removed. For a small community, rural community, that means a lot. The other thing is it is just common sense. If you have somebody there and then they are wanted for something else, it is only common sense that we coordinate the Federal, the State, the local partnerships. The communication part of it I think you all are working to make sure there is a lot more communication through the State and Federal—I mean local level. I appreciate that.

But I think you hit something very important. I think sometimes local State politicians have a way of attacking the Federal Government, and then, at the same time, with one fist out there, then the

other hand out there. I don't want to point out my State of Texas, but they point this out, saying, don't do this, don't do this, but then they will wait for the money. Under the SCAAP program, I think you are absolutely right; I think you all need to do, with all due respect to those communities, I don't represent those, but they cannot say, we don't want you to do Secure Communities but then, at the same time, they are requesting Federal dollars for holding those prisoners, those persons in there and asking for Federal dollars for reimbursement. So I would ask you, with all due respect, to look at those communities very, very carefully, because they cannot say, we don't want you here—they cannot be selective in what moneys they are committing. Because as the Chairwoman said, Federal law should preempt what they are doing there, unless it is under Article 10. We understand that. But I would ask you all to just look at those very carefully, because I think it would be unfair to be with a fist out there saying we don't want you, but then, at the same time, hand out there, give us money for reimbursement.

So, again, Director, I don't have any questions to ask you, but I just wanted to just say I think you are doing a great job. Very balanced approach that you and your men are doing out there. I really appreciate it. It is not easy. It can become a little political sometimes. It is not your job to be political. But I think you are doing this in a very transparent, very fair, very focused way to make sure that we get the people who are not supposed to be in the United States and get them out, criminals that are not supposed to be here. So no questions, just a comment. Appreciate your good work and the men and women that work for you all.

Mr. MORTON. Thank you.

Mr. CUELLAR. Yield back the balance of my time.

Mrs. MILLER. The Chairwoman now recognizes the Ranking Member of the full committee, Mr. Thompson of Mississippi.

Mr. THOMPSON. Thank you very much, Madam Chairwoman.

Director Morton, in June 2011, a memorandum between ICE and DHS for Civil Rights and Civil Liberties indicated that statistical monitoring would be used to identify possible anomalies in arrest patterns under Secure Communities, with reports at least once a quarter. What has been the result of the statistical monitoring to date?

Mr. MORTON. You are right, Mr. Thompson. One of the major reforms that we undertook to improve the transparency of the program and to address concerns that somehow Secure Communities might inadvertently have been used to promote racial profiling was to create a statistical analysis. We teamed up with the Office of Civil Rights and Civil Liberties at the Department of Homeland Security so that it wasn't simply something that ICE was doing itself; we had people who were knowledgeable and expert in this area. We actually helped them to hire a statistician.

In direct response to your question, as we have started the statistical analyses, and we are looking at the first couple of instances in which the statistics appear to be anomalous, and we are doing a couple of things there. First and foremost, we are trying to work with the Department of Justice and the Civil Rights Division in particular to come up and use their expertise with some modeling

to understand the statistics. There can be lots of reasons why a particular county has statistical spikes, some of them not necessarily related to civil rights concerns. So we are working with the Civil Rights Division to sort of come up with a cross-departmental approach, because ultimately it would be the Civil Rights Division that would investigate and prosecute anything that we would refer to them. We at ICE don't have civil rights investigative authority.

The second thing that we are doing is, were we to identify any particular jurisdiction that did have a concern, we would work with the Civil Rights Division to engage in a direct investigation in the form of interviews, on-the-ground inspections.

We are doing our own auditing of the program, which isn't a criminal investigation, but we go around to the various jurisdictions and audit the results ourselves. I am happy to say that to date we have not had instance to refer something for direct investigation to the Civil Rights Division, but we have had the first set of results that suggest there are some counties we need do a little deeper digging to determine what is going on. We are doing that with the Office of Civil Rights now.

Mr. THOMPSON. Well, if, at some point, when you have moved along with the program, some of us would be interested in seeing some of those reports for our review.

Mr. MORTON. I think we would be happy to give the committee, or you in particular, a briefing on our results, and share exactly what we found with you.

Mr. THOMPSON. On a local matter, a county south of me, Adams County in Mississippi, Natchez, Mississippi, where some ICE detainees sometimes are housed, there had been a rash of gang-related violence that actually led to the death of one guard and several injured. Explain to me, as well as committee Members, what kind of oversight do you give private contractors who have contracts with ICE? Kind of describe what you expect of those companies like CCA in this particular instance.

Mr. MORTON. Several things. We have detention standards that are worked into our contract with them that they must abide by. In many of the larger facilities that are dedicated or primarily focused on our use, we actually have our employees there in addition to the contractors. Even in those where we don't have a full-time presence, we routinely visit them.

With regard to gang violence, there what we do is, just as in the criminal justice system, for those incarcerated, we screen for gang affiliations at intake. So we classify people based on their criminal convictions first and foremost, but we are looking for gang affiliations as well. We do what we can to separate gang members so that we don't create an undue concentration in a particular facility. Now, as you know, not everybody volunteers that they are a member of a gang. The use of tattoos is less widespread than it was in the past. But we do our very best.

Mr. THOMPSON. Well, I thank you. I see my time has expired. But I would like to get with you just to further this discussion about this particular facility.

Mr. MORTON. Yes.

Mr. THOMPSON. Thank you. I yield back, Madam Chairwoman.

Mrs. MILLER. The Chairwoman now recognizes the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN. Thank you, Madam Chairwoman.

Thank you, Director Morton, for being here today. You know, there is an interesting Constitutional debate raging across this country right now in the wake of the Supreme Court ruling on the Arizona law. I bring that up because South Carolina passed a very similar law. I think there will be future Supreme Court rulings on this. But I want to point to Justice Scalia's dissenting opinion when he talks about the rights of the sovereign States, and that we are a Nation of individual sovereign States, and what rights those States have in enforcement of Federal law, what rights the States have in protecting and securing their own State borders. I would point the Chairwoman and Members of the committee to read that opinion, if you haven't, because I think it is very interesting going forward.

Director Morton, I was reading a memorandum of March 2, 2011, where you point out some priorities for ICE. First off, thank you for what you do and what the agency does. I also want to mention the fallen CBP officer Mr. Cuellar mentioned earlier. Condolences to his family. Tragic. But going back to the priorities in 2011, interesting that you have got recent illegal entrants. So that means that if someone had just entered the country and is apprehended, then they get priority for extradition, taken back to their home country. Then I read in the June 17 memorandum, it goes on to talk about length of presence in the United States. So someone that broke the same law, crossed our border, just because they have been in this country longer than someone else, they are given priority? Can you explain the reasoning behind that, please?

Mr. MORTON. Sure, Mr. Duncan. So we start out, at the beginning of the equation is what can we do with the resources that Congress has provided us? On average, we can remove about 400,000 people a year with the resources that we have. Obviously, our statutory direction is broader than that. To me, the question then is: Well, who are those 400,000 people going to be? Are they the first 400,000 people that walk in the front door? I don't think that that can be the approach. I think in a world of limited resources you have to say, no, it has got to be the 400,000 people that make the most sense for public safety and the administration of the immigration system.

Mr. DUNCAN. I don't mean to interrupt you, but you are having to utilize the resources that you are given. But an apprehension is an apprehension whether that person has been here for 10 years or whether that person just crossed our border. You still have a contact with that person. So, in your priority, if they have been here longer, you are going to let them go; but if they just crossed the border, you are going to send them back.

Mr. MORTON. Not quite. I mean, what we are talking about is it is not a question of apprehension, but really of detention and ultimate removal. We have to get a removal order before we can remove somebody from the United States. By and large, in most instances, that is accomplished through detaining them. We have a limited number of detention beds. So the question is: Do we focus our resources on somebody who just came across the border 2 years

ago as opposed to somebody who came across 10 years, now has two United States citizen children and three cars in the driveway? In those circumstances, we say we are going to focus on the person who violated the law most recently. We are going to focus our resources on those people who have committed a crime. If I have to pick between putting a criminal in a detention space or somebody who has been here a very long time, I am going to pick the criminal every time because I think there is a much greater effect on public safety and immigration enforcement when I do that.

Mr. DUNCAN. Where does, in the prioritization, where do visa overstays come in that hierarchy?

Mr. MORTON. Well, visa overstays, as the Chairwoman noted, are very difficult situations. They would come in recent border entrants if they were here recently. It is a real challenge for us. I don't want to minimize it. Roughly 40 percent of the people who are in the country unlawfully originally came on a visa. But the short answer to your question is that they fall in the second prioritization. The question would be: Have they been here a relatively recent period of time, or have they been here a long period of time? Do they have other equities that mean that they should be a lower priority for removal? For example, do they have United States citizen children? Are they married to a United States citizen? Those are the very real-world decisions that we have to make when using the resources that Congress gives us. We have about 34,000 detention beds on any given day by statute. There are more people than we can put into them.

Mr. DUNCAN. Real quickly, do you have access to the entry-level data if someone came in on a visa? I was reading some of the sharing of information of fingerprint data. Do you all have access to the legal entry data?

Mr. MORTON. We do. As the Chairwoman noted, right after 9/11, Congress mandated information sharing. That not only do we use it for purposes of visa overstays; it is the basis for Secure Communities.

A little bit challenging with visa overstays in that typically the address that we will have on the I-94, let's say somebody is going to Disneyland for a vacation, they put that down, they list their hotel as the address, which was their address for that, and that is the last record that we have to go from. Then we have to do database searches and try to determine where that person lives. So it is a challenging enforcement regime. But again, the short answer to your question is, we do have access to the databases.

Mr. DUNCAN. Thank you, Madam Chairwoman. My time is up. I yield back.

Mrs. MILLER. The Chairwoman now recognizes the gentleman from Arizona, Mr. Quayle.

Mr. QUAYLE. Thank you, Madam Chairwoman.

Thank you, Director Morton. Good to see you again.

Now, on July 10, 2009, you stated that 287(g) program is an essential component of DHS's comprehensive immigration enforcement strategy. Do you still agree with that assessment?

Mr. MORTON. I do, typically for the jail model, where it has proven to be a good use of our resources, a good use of the taxpayer dollars. I don't feel that way with regard to many of the task force

agreements that have largely for economic reasons in the jurisdictions where they are found have become unproductive and have resulted in no removals.

Mr. QUAYLE. Okay. So, on the ICE website and in your statement, there is a lot of very positive statements regarding the 287(g) agreements and how it is great that you can have Federal, State, and local law enforcement agencies working together. You were saying that right now in the prison systems. But I find it a little concerning that you have recently gotten rid of the 287(g) agreement with Arizona State and local law enforcement agencies. What is the reasoning behind it? Why pick Arizona as the sole one right now to actually remove a program that you said was an essential component of DHS's comprehensive immigration enforcement strategy?

Mr. MORTON. A couple of things. First, the agreements that we terminated in Arizona were task force agreements. We did not terminate the jail model agreements. They continue in place. So, and why did we terminate those models? Because they were leading to no removals. We viewed them as unproductive and not a good use of taxpayer resources.

Mr. QUAYLE. Okay. Now let's get to the timing of this. It was within a couple hours after the Supreme Court ruled the main portion of Arizona's State law, SB 1070, Constitutional when Secretary Napolitano made the statement. Did they contact you and talk to you about why they would do it in such close proximity to the Supreme Court ruling? If they would remove the 287(g) task force agreement if the Supreme Court ruled differently? What was the conversation there? I am just trying to—because the timing is extraordinarily curious. If the task force were not actually operating in the manner that you would have liked or that DHS would have liked, wouldn't it have been a little bit sooner or maybe even a little bit later? But within hours after the Supreme Court ruling, that is a very interesting time line that I would love to hear what they spoke to you about and what is going to be going forward.

Mr. MORTON. Well, we have had discussions underway with the Department for quite some time on the unproductive task forces. In the President's budget request for this year, the Department and OMB are seeking fewer dollars for the 287(g) program precisely because the task force model has proved to be unproductive. We were not going to renew the 287(g) agreements that were rescinded in Arizona for the next fiscal year, so we were going to terminate them anyway in a few months. In discussions with the Department, we ultimately decided that it made sense, upon the Supreme Court's ruling, to allay the future—clearly that they are not to have a series of truncated efforts. They were producing, as I said, zero removals for 2 years running in 6 of the 7 cases. We decided to do it all at once.

Mr. QUAYLE. So there was a concerted effort and a conscious decision that because of the decision by the Supreme Court, we wanted to do it quickly after that because—I don't understand why it was necessary to do it at that point, unless it was for various political reasons from the administration.

Mr. MORTON. I think we did it because we just thought that it made the most sense to do it at the same time. We knew we were

going to terminate those agreements. They were producing no removals. We knew that there would be questions about how things would operate. We wanted to set the record very clear how we were going forward. That is you can call the law enforcement support center 24 hours a day for our assistance. We will respond to law enforcement queries in Arizona pursuant to our priorities. But we are not going to continue or suggest that we were going to continue with task forces that, again, from our perspective, were not a good use of taxpayer resources. I think the record is very clear on that. Anything that we are spending money on that leads to zero removals for 2 years in a row doesn't make sense.

Mr. QUAYLE. Okay. Now, another thing I want to talk about is that if you look at the crux of that law and trying to cooperate and work with Federal law enforcement officials to actually adhere to Federal law, and then you have—and the Chairwoman was mentioning it earlier—Cook County not being cooperative with the Secure Communities. Have you heard of anything that the administration is going to take against Cook County? Are they going to sue Cook County? Are they going to have the DOJ get involved in taking them to court because they are not actually—they are actually contradictory and contrary to what Federal law is rather than being—trying to aid Federal law enforcement officials. I know this is outside, that is DOJ, but I just want to know if you have heard anything about that.

Mr. MORTON. The short answer to your question is I have personally met with the Department of Justice to raise my concerns. Those concerns are shared by the Secretary. She has testified to that herself. So we are in discussions with the Department of Justice to see what we can do on many fronts to come to a better resolution in Secure Communities in Cook County, because I think we all agree that the present approach is not a good one. I don't know if you heard my answer before, but that both the question of can we work with the Department of Justice to look at any legal options we may have to get to a better place with the county, but also to look at the county's annual request for reimbursement under the Federal SCAAP program for the individuals that they detain that are there unlawfully. Cook County in past years has received several million dollars each year from the Federal Government to reimburse it for the cost of detaining people who are here unlawfully. We just find that position wholly inconsistent with not allowing us to—

Mr. QUAYLE. So you haven't heard anything about a Federal lawsuit. Because it was pretty swift when Arizona passed their own law and the DOJ came in pretty quickly and operated in that fashion. But now with Cook County, since you have had some serious issues with them, you have had discussions with DOJ, there has been no talk about a lawsuit? Or is there a lawsuit pending?

Mr. MORTON. I have not yet heard back from the Department of Justice. In fairness to them, we have only been meeting for the last couple of months, and they wanted to see how certain pieces of court decisions came out. I expect to hear from them shortly. I can tell you that resolving the issue in Cook County is very important for me. It is one of the single largest detention systems in the country. Right now, it is not a question of Cook County releasing some

individuals to us. They are releasing no individuals to us, including very violent offenders. I just don't think that is a good policy.

Mr. QUAYLE. Thank you, Director.

My time has expired. Thank you, Madam Chairwoman.

Mrs. MILLER. The Chairwoman now recognizes the gentlelady from Texas, Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you. Thank you to the Chairwoman and the Ranking Member.

Welcome, Director Morton, and thank you for your service.

As well let me offer my concern for the officers who were involved in an incident of violence, to their families—and I say violence, who were impacted, and to their families and to your organization. We must always look to thanking those who are on the front lines for us. I want to make sure that I do so. I believe that the work that you have been doing is very important. But I never come to an immigration hearing, whether it is Judiciary that I served for however long, and here in Homeland Security, and I call both assignments a privilege, that what this country needs is real comprehensive immigration reform so that we are not confusing and juxtaposing benefits and the right opportunity for those who want to immigrate to this country, and enforcement, and particularly enforcement against those who would want to do us harm.

Secure Communities certainly has its failures and its value. I think it is important that we try to determine what lessons we have learned and how we can be more effective. I happen to applaud the President's decision on the DREAM Act. Living in a State like Texas, we have seen 90 percent, 99 percent good as opposed to harm. Many of us have met these students that will be impacted up close and personal. I appreciate that there have been a number of utilization of powers under the law that your agency has been effective at utilizing. But I think this Executive Order will be helpful to all of us. But it would be better under comprehensive immigration reform.

So I speak to two issues, and I will do it quickly. A 14-year-old Texas girl was missing from 2010 until 2012, was mistakenly deported to Colombia by immigration agents. It was proven that the 14-year-old gave ICE agents a fake name which belonged to a 22-year-old illegal immigrant from Colombia who had warrants for her arrest. She was held in a Harris County jail in my community. ICE agents took the 14-year-old's fingerprints but did not confirm identity before deporting her. Another incident, according to media reports, James Makowski, a Chicago area resident born in India, adopted by an American family in New Jersey, and naturalized as a U.S. citizen at age 1 was flagged by Secure Communities as an illegal immigrant after a drug-related arrest because the Federal Government had never updated his immigration status. He was held for 2 months in a maximum security prison before ICE officials acknowledged the error and canceled the detention order. Obviously, both cases are very troubling. I think we have engaged, my office engaged ICE on one of these troubling stories, the one in Houston.

What failures in the Secure Communities databases and program procedures could allow a U.S. citizen to be detained? What is ICE doing to such? Then also please share before the subcommittee the

outreach and collaboration efforts ICE initiated through Secure Communities, if at all, and lessons learned on both of those cases, please. Thank you.

Mr. MORTON. Thank you.

With regard, let me start with the database issues. Obviously, one of the lessons that has become clear is that when you have an information-sharing system that depends on information in databases, the sharing and the results that come from it are only as good as the information that is in the system. So we have to have accurate records in place.

The Chicago case is under litigation, so I have got to be careful about what I will say in that case. But I do think it highlights the need to have accurate records from all of the pieces of the puzzle. Part of Secure Communities is that Congress mandated the sharing of information. It is not simply ICE databases; it is all across the Department of Homeland Security, in fact all across the Federal Government. We need to make sure that the information in there is correct.

With regard to the 14-year-old, I view that case as a very sad case. As you know, the young lady's history was somewhat troubled. There were many steps along the way, all the way from the moment she was arrested by the local police, she managed to fool the judge, the prosecutor, and her own defense attorney in that particular case, ultimately ICE, ultimately Colombian authorities. She got a residency upon her—in her time there.

But, you know, we did meet with you and other members of the caucus, and we took a hard look. What it told us is that particularly with regard to juvenile offenders, when we have some sense that something is awry, even though on the surface everybody is saying that it is proper, we have got to go the extra mile with juveniles to make sure that we are not making a mistake, because mistakes can be made.

It is why I am a big believer in improved transparency of the Secure Communities program. You are right that we, as an agency, were not as transparent as we should have been. We should have had better outreach. In many communities, Secure Communities is misunderstood. There is a lot of rumor, innuendo, concerns about things. The best way to answer those criticisms is to have outreach, to meet with people. We are doing that, and then to involve Members, such as yourself. I very much appreciate the assistance you gave us in Texas when we had our first outreach on the Secretary's memorandum with regard to the DREAM Act kids. That was the very first outreach in the country. It happened in your district. I think those kinds of things are very, very helpful.

So we have just got to get out there. When a mistake is made, not run from that mistake, own that mistake, try to improve the system. It operates on a very large scale. Mistakes will happen. Then get out and explain to people why we are doing things the way we are doing them, what the reasons are for them, and do that in a dispassionate and professional way.

Ms. JACKSON LEE. Madam Chairwoman, may I just—let me thank you for your indulgence.

Just there was one element, Director, where the fingerprints were not checked. In your review and working with juveniles, are

you going to be more—this is under the young lady that is 14—persistent in looking at those elements to be able to ascertain, juvenile or not, or what condition this person is in?

Mr. MORTON. We are. One of the tricks in her case, I believe, was that she had never been encountered before in a way that led to her fingerprinting. So there was no other prior fingerprint to compare against. The fingerprints that were taken at Harris County was the very first time she had been fingerprinted in a way that ICE could have checked.

We need to figure out a way, particularly with young juveniles, to have extra procedures in place.

I will tell you that I have never seen a case like hers in my entire time in the Federal Government. As I noted, she was able to adopt an identity that many, many parts of the system believed. That is not a perfect answer, and the result needs to be that the system needs to deal with that, even when a troubled person adopts an identity like that. But I will say I do think it is a relatively rare case.

Ms. JACKSON LEE. I thank the Chairwoman.

Before you close, I just want to make an inquiry. I didn't know if you were closing.

Mrs. MILLER. Yes, we are going to be closing.

Ms. JACKSON LEE. Madam Chairwoman and to the Ranking Member, I think this has been a very helpful hearing. I appreciate the director's comments.

But with new technology and young people being more mature than they are, I think we need to really be focused on how we make sure we are attentive to those kinds of cases.

I would also ask if the Chairwoman and the Ranking Member would consider incidents that are occurring at the border. There are lawsuits going on with respect to certainly very fine leadership at the border, but some troubling incidences where documented U.S. citizens' papers are being taken away, and they are being forced to sign papers that they are not U.S. citizens. We want to make sure that we don't have illegal entry. But we also, those of us in Texas, are concerned that our U.S. citizens who might decide to live temporarily in Mexico are having their documents voided out of pressure and intimidation. I believe it is a very viable hearing or inquiry to make. I will write a letter to that extent and ask for further opportunity for us to look into that.

I yield back. I hope both the Chairwoman and Ranking Member would consider that as an important hearing. If we give resources to Customs, CBP, I think those resources should be used in an effective and legal and upstanding manner, as they have been. But this is an incident or incidents that I think require our review.

I yield back. I thank the gentlelady.

Mrs. MILLER. I would comment to all of the Members that the hearing record will be held open for 10 days. So any other additional comments, questions, letters, what have you, can be submitted certainly for the record.

I certainly want to thank Director Morton for attending today. I think this was an excellent hearing. A lot of questions. A lot of good answers. A lot of challenges ahead for your agency, for the

committee, for the Nation as well as we all try to do our very best to make sure that we do have secure borders.

I know you are running for an airplane, and we said we would try to be timely and cognizant of that fact. But we appreciate your service. On behalf of a very grateful Nation, we certainly appreciate the men and women in your agency that work very diligently each and every day to keep our country safe. With that, the subcommittee will stand adjourned.

[Whereupon, at 11:10 a.m., the subcommittee was adjourned.]

