

“Is Secure Communities Keeping Our Communities Secure?”

Statement of Julie Myers Wood

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Chairman Gallegly, Ranking Member Lofgren, Members of the Subcommittee. I appreciate the opportunity to testify before you today about the importance of Secure Communities and the ongoing challenges faced by the agency in implementing the program.

My name is Julie Myers Wood, and I am the President of ICS Consulting, LLC and Immigration and Customs Solutions. In these roles, I work with companies on their internal compliance programs, create web-based solutions to assist businesses with export and immigration compliance challenges, and consult with companies that work with the government. I also serve as an Advisory Committee member of the American Bar Association’s Commission on Immigration and as a Member of the Constitution Project’s Committee on Immigration. I am testifying today solely in my personal capacity and not as a representative of any group or organization.

Prior to forming these companies, I most recently served as the Assistant Secretary of Immigration and Customs Enforcement (ICE) for nearly three years. Before that, I served in a variety of government positions, including Assistant Secretary for Export Enforcement at the Department of Commerce, Chief of Staff for the Criminal

Division at the Department of Justice and Deputy Assistant Secretary (Enforcement – Money Laundering and Financial Crimes) at the Department of Treasury.

The challenges faced by ICE in implementing Secure Communities are quite familiar to me as the agency's former Director. When I first arrived at ICE, we did not have a good handle on the population of criminal aliens in jails and correctional institutions, despite our obligation to monitor the criminal alien population and reduce releases into society. It was critical for the agency to determine the appropriate incarcerated population and create a program to more effectively identify those that had come into our country illegally, and then committed additional crimes here. Although ICE had various programs in many state, federal and local correctional institutions, the programs were not uniform and the absence of ICE representation at many facilities was of great concern to the agency, and to Congress.

In my initial review of the criminal alien programs, I discovered that the success, failure, or even mere existence of these programs depended almost entirely on the relationships between the relevant ICE officials and the federal, state or local correctional personnel. Where relationships were strong, ICE often compiled a significant record of identifications and removals. Where relationships were weak, ICE might not have any monitoring of the facility and the local law enforcement official might not even know how to contact the appropriate ICE official. This patchwork approach resulted in a number of cases where criminal aliens were released into society without ICE identifying them, and then these criminal aliens engaging in additional, sometimes violent acts.

It was the frustration that ICE was failing to identify criminal aliens and that ICE was often inefficient in the processing/apprehending of criminal aliens that it did identify, that caused the creation of the program known as Secure Communities. Congress played a critical role in urging the agency to improve its efforts in this regard. In fact, the Department of Homeland Security 2008 Appropriations Act specifically required ICE to submit a program to “improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment and who may be deportable, and remove them from the United States once they are judged deportable.” In Fiscal Year, 2009, Congress directed that the program be expanded to include removal of all deportable criminal aliens, regardless of whether they were in custody.

A key goal of Secure Communities was to create uniformity and to ensure that all individuals who were arrested by local or state law enforcement would not simply blend back into society without an encounter by ICE. It was to take away the randomness of local programs to help prevent releases in any city or town. Making the program voluntary or allowing localities to opt-in would undermine a central goal of the program.

The agency has made significant strides in implementing Secure Communities, but challenges remain. From the beginning, ICE recognized that there would be significant resource issues in implementing the program, and the agency sought to make appropriate priority decisions with existing resource allocations. One difficulty we anticipated was the large number of criminal aliens that would be newly identified by ICE, and the lack of resources to detain all these individuals, and put them in proceedings. This required the agency to think more creatively about the effective use of bed space, immigration proceedings, and agency personnel. Because it was always

obvious that resources were limited, ICE knew it could not simply do business as usual. Transforming the removal process was a central part of the goal of Secure Communities.

Based on existing resource limitations, it is my understanding that currently not everyone who is identified through the Secure Communities program is placed into immigration proceedings or even has their case reviewed by ICE. If resources permitted, it would be preferable for everyone identified through the Secure Communities process to go through the immigration detainer process, and a detainer would be issued on individuals as appropriate. ICE could then apply a risk-assessment tool to determine which individuals are a threat to the community and pose a significant risk of flight. Those individuals would be detained if resources permitted their detention. Other individuals could be tracked through the immigration court process while on alternatives to detention, including ICE's Intensive Supervision Appearance Program (ISAP II), bond release, or even release on their own recognizance.

It is important that ICE's review of the aliens does not result in ICE knowingly permitting criminal aliens to simply return to the streets with no follow up or monitoring of any kind. This is difficult given the resource limitations, and there are many risks or times where the agency could make the wrong call. Although it makes sense for ICE to do a classification based on offenses criminal aliens were convicted of, for example, the agency must be careful to avoid treating certain offenses as always "unimportant" or assuming that certain activities always pose no risk. This picking and choosing of criminal convictions risks creating a "conviction of the day" mentality where the government is only focused on the previous threat.

To avoid further crowding the overburdened immigration system with Secure Community referrals, however, ICE must also aggressively utilize techniques to improve the efficiency of the removal process. The agency should increase use of the program that places individuals in immigration proceedings while they are serving time in federal or state institutions (known as the Institutional Removal Program). By strategically funding courtrooms, judges, and immigration lawyers (including virtual courtrooms) in federal, state and local institutions with a high population of illegal aliens, the government could reduce excess time that criminal aliens spend in immigration custody after release from criminal custody.

The agency should also take other steps to increase efficiency and ensure that aliens identified through Secure Communities are reviewed by ICE, and put into immigration proceedings as appropriate. For example, stipulated removals provide opportunities for immigrants who have voluntarily agreed to their removal to largely avoid the court process.¹ It is important that the process be closely monitored to ensure that individuals are not forced into participating in the program, are fully informed about potential claims for relief, and understand the restrictions they are agreeing to in this process. However, for many individuals without valid claims to adjustment, stipulated removals allow them to resolve their situation promptly. A Ninth Circuit decision in 2010 criticized the process by which ICE had utilized stipulated removal, which significantly reduced stipulations all over the country for the rest of the fiscal year.² The agency purportedly has revised the process to conform to the Ninth Circuit ruling and make the notice more

¹ 8 U.S.C. §1229a(d).

² United States v. Ramos, No. 09-50059, available at <http://www.ca9.uscourts.gov/datastore/opinions/2010/09/24/09-50059.pdf>.

transparent, but there is more that could be done in this area to ensure that this tool is fully and appropriately utilized.

An additional mechanism that could be more aggressively utilized is the rapid repatriation program, or Rapid REPAT program. This program supports removal efforts by enhancing the ability of ICE to remove criminal aliens from the country, and reducing the number of aliens that go through the full removal process. The Rapid REPAT program provides for conditional early release of qualifying non-violent criminal aliens on the condition that those aliens voluntarily agree to their removal, waive appeal rights associated with their state convictions and agree not to return to the United States.³ This program has the dual benefits of saving the federal government money while reducing the amount of time that eligible aliens spend in detention.

While seeking to increase efficiency with the resources allocated to the program, ICE must ensure it does not reduce transparency or fairness of the process. In this area, there is also room for improvement by the government. Groups reviewing the progress of Secure Communities have identified potential issues with immigrants being improperly targeted or arrested as a “ruse” to ensure that they are screened for alienage under the Secure Communities program. Some of this criticism misses the mark – as bad actors could always behave improperly to target immigrants and refer them to ICE, with or without Secure Communities. Law enforcement officers can always call the Law Enforcement Support Center (LESC) whenever they encounter an individual to help determine whether there is an existing immigration detainer on them. However, to the extent that there are substantially more referrals with the Secure Communities program, it

makes sense to try to prevent improper behavior. To avoid problems with immigrants improperly identified and arrested by police, ICE should encourage localities to get additional training to avoid racial profiling based on the Department of Justice guidelines, and proactively work with entities to improve their processes when incidents arise. Routine training could also be implemented at the time that the Secure Communities program is started in a local community. The solution to potential problems with identification should first and foremost be education, and not simply flyspecking every underlying crime and arrest that subjects an immigrant to the Secure Communities process.

In summary, the agency's plan to ensure all facilities are covered through Secure Communities by 2013 will go a long way in keeping our communities secure. In order to ensure long-term success of the program, ICE must continue to address resource, efficiency and fairness issues with the program's implementation. Continued support by Congress will be critical in these efforts.