

EXHIBIT A

Board of Supervisors



COUNTY OF SAN MATEO

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(650) 363-4653
FAX: (650) 699-1027

July 21, 2010

Assistant Secretary John Morton
Immigration and Customs Enforcement
500 12th St, SW
Washington, DC 20536

Re: Secure Communities

Dear Assistant Secretary Morton:

On May 25, 2010, ICE implemented its Secure Communities program in San Mateo County. Under the program, fingerprints of persons booked into our County jails, which are forwarded to the California Department of Justice and to the FBI for criminal screening purposes, are now also shared with ICE, which uses the fingerprint data to identify persons held in local jails who may have outstanding immigration violations. This program, as you are likely aware, has proven to be controversial with many local communities, which are concerned with the adverse impact that this program will have on the efforts of local governments to develop and strengthen relationships with growing immigrant communities. Of particular concern is the belief that there is no method by which a local community can opt out of the Secure Communities program. Further, as a county faced with unprecedented fiscal challenges resulting from the recent economic crisis, we are concerned about the additional expense that the County will bear in housing persons who are placed on an immigration hold as a result of the program. I am writing on behalf of, and at the direction of, the San Mateo County Board of Supervisors to request the position of Immigration and Custom Enforcement on the question of whether counties have the ability to opt out of the Secure Communities program.

We are aware that the Secure Communities program is implemented in the State of California through a Memorandum of Agreement (MOA) entered into in May 2009. Our counsel has reviewed the MOA, and advises that its provisions do not require participation by local entities such as the County of San Mateo. We are also in receipt of a copy of a letter sent by ICE to the California Department of Justice, dated January 23, 2009, which contemplates that a signed Statement of Intent will be required from a county before the Secure Communities program is deployed in that county. These documents strongly suggest that counties should have the opportunity to opt out of the Secure Communities program, if that is their choice.

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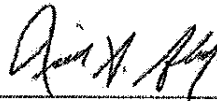
Unfortunately, uncertainty as to the position of ICE on the ability of local governments to opt out has led to confusion as to whether the authority to opt out exists, and it is for this reason that we write to seek clarification of the position of the agency.

We have also sent a letter to the Attorney General for the State of California, a copy of which is enclosed, requesting that he reverse a decision denying the request of the City and County of San Francisco to opt out of the Secure Communities program.

On behalf of the San Mateo County Board of Supervisors, I respectfully request that you advise as to the position of ICE on the authority of a local governmental entity to opt out of the Secure Communities program. If your position is that there is no ability to opt out, I request that you advise as to the authority that requires local governments to participate.

Thank you for your attention to this matter.

Very truly yours,



Richard S. Gordon, President
San Mateo County Board of Supervisors

Enc.

MPMACLWaal:sl

EXHIBIT B



**U.S. Immigration
and Customs
Enforcement**

Mr. Miguel Márquez
County Counsel
County of Santa Clara
70 West Hedding Street, Ninth Floor
San Jose, CA 95110-1770

Dear Mr. Márquez:

Thank you for your August 16, 2010, letter regarding U.S. Immigration and Customs Enforcement's (ICE) Secure Communities initiative. I appreciate the opportunity to discuss ICE's immigration enforcement policies with you and to respond to your questions.

As an overview, Secure Communities is ICE's comprehensive strategy to improve and modernize the identification and removal of criminal aliens from the United States. As part of the strategy, ICE uses a federal biometric information sharing capability to more quickly and accurately identify aliens when they are booked into local law enforcement custody. ICE uses a risk-based approach that prioritizes immigration enforcement actions against criminal aliens based on the severity of their crimes, focusing first on criminal aliens convicted of serious crimes like murder, rape, drug trafficking, national security crimes, and other "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act (INA). Under this strategy, ICE maintains the authority to enforce immigration law. The activation of biometric information-sharing capability in new jurisdictions enables ICE to identify criminal aliens before they are released from law enforcement custody into our communities, which strengthens public safety. ICE works with state identification bureaus to develop deployment plans for activating the biometric information sharing capability in their jurisdictions. Your specific questions about Secure Communities are answered below.

1. Is there a mechanism by which localities can opt out?

As part of the Secure Communities activation process, ICE conducts outreach to local jurisdictions, which includes providing information about the biometric information sharing capability, explaining the benefits of this capability, explaining when the jurisdiction is scheduled for activation, and addressing any concerns the jurisdiction may have. If a jurisdiction does not wish to activate on the scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing by email, letter, or facsimile. Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date or removing the jurisdiction from the deployment plan.

a) Can you provide information on the Statement of Intent referenced in the cover letter accompanying the 2009 MOA?

ICE does not require local jurisdictions to sign Statements of Intent or any other document to participate in Secure Communities. The reference to the Statement of Intent in the cover letter to the MOA was an oversight. The MOA signed by the state of California makes no mention of a Statement of Intent, and ICE has advised the California Department of Justice that it will not be utilizing Statements of Intent.

b) Do you view the State of California as having the ability to exempt certain counties from the program under the 2009 MOA signed by ICE and the California Department of Justice?

ICE recognizes the California Department of Justice as the agency having the responsibility for the management and administration of the state's criminal data repositories, which includes development of and adherence to policies and procedures that govern their use and how information is shared with other state and federal agencies. Therefore, ICE defers to the California State Attorney General on how state, county, and local law enforcement agencies within the state of California will share biometric data under the MOA.

c) Have you allowed other localities of law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?

The Washington, D.C. Metropolitan Police Department is the only jurisdiction to date that has terminated its signed Memorandum of Agreement. As referenced by your letter, activated jurisdictions do not have to receive the "match responses" and Secure Communities, in coordination with the state identification bureaus and the FBI's Criminal Justice Information Services (CJIS) Division, has accommodated jurisdictions that requested not to receive that information.

d) What is the purpose of receiving the "match messages"? Do they require or authorize counties to take action with respect to arrested individuals?

The purpose of local law enforcement receiving a 'match message' is to provide any additional identity information about the subject, including aliases, from the DHS biometric database storing over 100 million records that may not have been available based only on a criminal history check. Additional identity information may further a law enforcement officer's open investigations and lead to improved officer safety. Receiving a 'match message' does **not** authorize or require any action by local law enforcement.

2. Once Secure Communities is deployed in a locality, is the locality required to comply with detainers, and will you provide reimbursement and identification?

- a) Is it ICE's position that localities are required to hold individuals pursuant to Form I-247 or are detainers merely requests with which a county could legally decline to comply?**

ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who may otherwise be released for up to 48 hours (excluding Saturdays, Sundays, and holidays). This provides ICE time to assume custody of the alien.

- b) Who bears the costs related to detaining individuals at ICE's request?**

Pursuant to 8 C.F.R. § 287.7(e), ICE is not responsible for incarceration costs of any individual against whom a detainer is lodged until "actual assumption of custody." The exception provided in section 287.7(e) stating that ICE shall not incur "fiscal obligation...except as provided in paragraph (d) of this section" only serves to authorize payment but does not require it. To the extent a payment is considered, it should only be made pursuant to a written agreement because, under INA § 103(a)(11), ICE pays detention costs when aliens are in its custody pursuant to "an agreement with a State or political subdivision of a State."

- c) Will ICE reimburse localities for the cost of detaining individuals pursuant to Form I-247 beyond their scheduled release times? Will ICE indemnify localities for any liability incurred because of that detention?**

ICE does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual. Further, ICE will not indemnify localities for any liability incurred because the Anti-Deficiency Act prohibits such indemnity agreements by federal agencies.

3. Is it ICE's position that localities where Secure Communities is deployed are legally required to:

- i. Inform ICE if a subject is to be transferred or released thirty days in advance of any release or transfer? If so, what is the legal basis for such a requirement?**

The notification to ICE of inmate transfer or release within thirty days is pursuant to ICE's request for that information. It is not a statutory requirement.

ii. Allow ICE agents and officers access to detainees to conduct interviews and serve documents? If so, what is the legal basis for such a requirement?


INA § 238, 8 U.S.C. 1228, provides for the availability of special removal proceedings at federal, state, and local correctional facilities for aliens convicted of certain criminal offenses. Such programs require ICE officers to conduct inmate interviews to determine alienage and any possibilities for relief or protection from removal. The statute does not require state or local jurisdictions to participate in such programs.

iii. Assist ICE in acquiring information about detainees? If so, what is the legal basis for such a requirement?

Assisting ICE in acquiring detainee information is not a legal requirement.

Thank you again for your letter. If you have any additional questions, please feel free to contact me at (202) 732-3900.

Sincerely yours,

A handwritten signature in black ink that reads "David J. Venturella". The signature is written in a cursive style with a large, prominent initial "D".

David Venturella
Assistant Director

EXHIBIT C



OFFICE OF THE COUNTY MANAGER

2100 Clarendon Boulevard, Suite 302, Arlington, VA 22201
TEL 703.228.3120 FAX 703.228-3218 TTY 703.228.4611 www.arlingtonva.us

October 7, 2010

The Honorable John Morton
Director
U.S. Immigrations and Customs Enforcement
500 12th St, SW
Washington, DC 20536

Dear Director Morton:

I am writing to request information regarding Arlington County's inclusion in the Immigration and Customs Enforcement's (ICE) Secure Communities initiative. I have included a copy of the recently passed Arlington County Board Resolution regarding this issue for your information. I appreciate your prompt attention to this request.

In recent months, there has been conflicting information from your agency regarding the ability of local governments to not participate in Secure Communities. In a September 7, 2010 letter to Representative Zoe Lofgren, Homeland Security Secretary Janet Napolitano stated "a local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program.....the agency must also notify the appropriate state identification bureau by mail, facsimile, or e-mail. If a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens." Additionally, in an August 17, 2010 document produced by ICE entitled "Setting the Record Straight," ICE outlines potential solutions for jurisdictions that choose not to be activated under the program, "which may include adjusting the jurisdiction's activation date in or removing the jurisdiction from the deployment plan."

Conversely, an October 7, 2010 article in the Washington Post quotes Secretary Napolitano, speaking of Secure Communities, as saying "we do not see this as an opt-in, opt-out program." This statement follows a September 30, 2010 article that quotes a "senior ICE official, speaking on the condition of anonymity because he was not authorized to talk" as saying, "Secure Communities is not based on state or local cooperation in federal law enforcement. The program's foundation is information sharing between FBI and ICE. State and local law enforcement agencies are going to continue to fingerprint people and those fingerprints are forwarded to FBI for criminal checks. ICE will take immigration action appropriately."

Due to these conflicting statements, I am writing to seek clarification on the ability of Arlington County and other local governments to withdraw from the program. If local participation is voluntary, I request you inform us how Arlington may withdraw from the program and what would be required regarding notification to ICE of "suspected criminal

aliens" once Arlington becomes a non-activated community. Should local participation not be voluntary, I would appreciate the opportunity to work with you to identify potential technical and procedural solutions that would fulfill ICE's stated objectives for Secure Communities while not adversely impacting local community policing models and not compromising Arlington's submissions to the Virginia Central Criminal Records Exchange or the federal Automated Fingerprint Identification System.

Let me be clear - Arlington County has and will continue to abide by all federal and state laws related to immigration, and our concerns regarding Secure Communities do not mean that we believe our nation's immigration laws should be ignored. Arlington County understands the need for ICE to fulfill its national security and public safety role by enforcing federal immigration law, and in fact, there are many instances in which our local law enforcement officers work with you to achieve this mission.

As you may know, Arlington County has an extremely diverse population, with nearly one quarter of our residents born outside of the United States. The manner in which Secure Communities has been implemented creates an unnecessary and dangerous fear of local law enforcement in our immigrant community. Contrary to its intent, Secure Communities potentially makes our community less safe by creating divisions within our community that hinder our successful community policing practices. There must be a better way to achieve the federal and local public safety missions without forsaking either. We look forward to working with you to find this solution.

Thank you for your attention to this important matter. I look forward to hearing from you soon. Should you have any questions, I can be reached at (703) 228-3120.

Sincerely,



Barbara M. Donnellan
County Manager

Enclosure

EXHIBIT D

Unbek. D

City and County of San Francisco

OFFICE OF THE SHERIFF



Michael Hennessey
SHERIFF

(415) 554-7225

August 31, 2010
Reference: 10-079

VIA FACSIMILE (510) 622-4188, (202) 732-4030

Hon. Edmund G. Brown
Attorney General
California Department of Justice
1300 I Street, Suite 1740
Sacramento, CA 95814

Mr. David Venturella, Executive Director
Office of Secure Communities
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20024

Mr. Marc A. Rapp, Deputy Director
Office of Secure Communities
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20024

Dear Attorney General Brown, Mr. Venturella and Mr. Rapp;

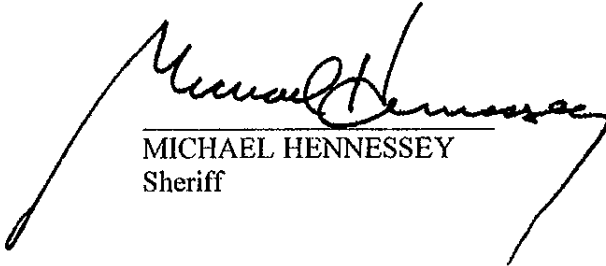
Pursuant to *Secure Communities: Setting the Record Straight*, dated August 17, 2010, I write to formally notify the California Department of Justice, as my state's identification bureau, and ICE that San Francisco County wishes to be removed from participation in Secure Communities.

The ICE communication, *Secure Communities: Setting the Record Straight*, specifies that, "If a jurisdiction does not wish to activate on its scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing (email, letter or facsimile). Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date in or removing the jurisdiction from the deployment plan."

San Francisco County has already been activated in accordance with the deployment plan. However, as you know, I sought to opt out, in writing, to both the California Department of Justice and Secure Communities. I was told at that time in a telephone conversation with Mr. Rapp that there was no provision for a local jurisdiction to opt out. The information provided in *Secure Communities: Setting the Record Straight* would suggest that there is now a procedure in place to address such requests.

I look forward to meeting with you and to coming to a mutually agreeable resolution of this matter.

Sincerely,



MICHAEL HENNESSEY
Sheriff