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ICE FOIA 102674.0013852 -53	Undated	Draft Individual LEA/ORI deployment plan	(b)(5) deliberative process	Draft plan that does not reflect final agency deployment plan	
ICE FOIA 10- 2674.0014055- 56	09/30/2010	Email exchange between OPA and senior ICE leadership on request for interview from Washington Post	(b)(5) deliberative process	Suggestion on agency strategy regarding handling the specific reporter that made the request.	

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
NATIONAL DAY LABORER ORGANIZING :
NETWORK, et al., :

Civil Action No. 10-CV-3488

Plaintiffs, :

- v - :

DECLARATION
OF RYAN LAW

UNITED STATES IMMIGRATION AND CUSTOMS :
ENFORCEMENT, et al., :

Defendants. :
----- X

Ryan Law, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Deputy FOIA Officer of the Freedom of Information Act Office (the "ICE FOIA Office") at United States Immigration and Customs Enforcement ("ICE"). I have held this position since May 9, 2010. Prior to this position, I was a Senior Paralegal Specialist and Paralegal Specialist within the ICE FOIA Office beginning in February 2007. Prior to my employment with ICE, I was a FOIA Specialist within the Transportation Security Administration's FOIA Office beginning in September 2005. The ICE FOIA office mailing address is 500 12th Street, S.W., Washington, D.C. 20536-5009.

2. As the Deputy FOIA Officer, I am responsible for overseeing ICE processing of FOIA and Privacy Act requests. I assist in the management and supervision of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. I am personally familiar with ICE's processing of the FOIA request that Cardozo Law School submitted on February 23, 2010, on behalf of the National Day Laborer Organizing Network

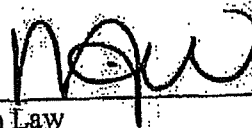
("NDLON"), the plaintiff in the above-captioned action. The ICE FOIA Office assigned FOIA case number 2010FOIA2674 to this request.

3. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. Pursuant to the Court's July 11, 2011, Order in this matter, ICE personnel involved in attorney client communications that ICE withheld from plaintiffs under FOIA Exemption (b)(5) have reviewed all such communications for the purpose of determining whether confidentiality had been maintained. Each of those personnel have responded that confidentiality has in fact been maintained.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 8th day of August 2011.



Ryan Law
Deputy FOIA Officer
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

EXHIBIT D

Microsoft Outlook

From: (b)(6) & (b)(7)(C)
Sent: Monday, October 04, 2010 10:18 AM
To: (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C)
Subject: RE: SCAAP and SC issue about "opting out"
Thanks (b)(6) & (b)(7)(C)

From: (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C)
Sent: Monday, October 04, 2010 10:15 AM
To: (b)(6) & (b)(7)(C)
Subject: Re: SCAAP and SC issue about "opting out"

Per (b)(6) & (b)(7)(C) the SCAAP/legislative portion went to (b)(6) & (b)(7)(C) but I have not had further visibility on that . The binder is in progress but got delayed friday in other confusion about the overall assignment. It should be done this morning.

From: (b)(6) & (b)(7)(C)
To: (b)(6), (b)(7)(C)
Cc: (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C)
Sent: Mon Oct 04 10:03:54 2010
Subject: RE: SCAAP and SC issue about "opting out"

(b)(6)

I finally reviewed all the stuff on this.

I sent Beth the draft memo but it seems like she was looking for more from us – draft legislative language and some kind of binder. Are we working on that?

(b)(6)

From: (b)(6) & (b)(7)(C)
Sent: Friday, October 01, 2010 9:09 AM
To: (b)(6) & (b)(7)(C)
Subject: FW: SCAAP and SC issue about "opting out"

I sent the draft back for a clarification or two. I think it is actually very good. Should I furnish that to Beth along with the proposed SCAAP legislative change and tell her it is still a draft?

(b)(6) (b)(7)(C) ...
Director of Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(b)(6) & (b)(7)(C)

From: Gibson, Beth N [mailto:(b)(6) & (b)(7)(C)]
Sent: Friday, October 01, 2010 5:39 AM
To: Gibson, Beth N; Vincent, Peter S; Venturella, David
Cc: (b)(6) & (b)(7)(C); (b)(6) & (b)(7)(C)
Subject: Re: SCAAP and SC issue about "opting out"

I expect the WP article today to keep the heat on this issue. Any sense of eta?
Beth Gibson

12/31/2010

Assistant Deputy Director, ICE

(b)(6) & (b)(7)(C)

From: Gibson, Beth N (b)(6) & (b)(7)(C)
To: Vincent, Peter S (b)(6) & (b)(7)(C) Gibson, Beth N (b)(6) & (b)(7)(C) Venturella, David

CC: (b)(6) & (b)(7)(C)

Sent: Wed Sep 29 13:53:49 2010
Subject: Re: SCAAP and SC issue about "opting out"

If the draft memo explores the underlying CJIS agreement and authority, the draft may be useful now -- even if it is subject to revision. The "mandatory" piece from our view likely slows from the CJIS agreement (if you want their data, you play ball with all federal partners-as outlined in the CJIS charters and amendments).

Beth Gibson
Assistant Deputy Director, ICE

(b)(6) & (b)(7)(C)

From: Vincent, Peter S (b)(6) & (b)(7)(C)
To: Gibson, Beth N (b)(6) & (b)(7)(C) Venturella, David (b)(6) & (b)(7)(C) Vincent, Peter S

CC: (b)(6) & (b)(7)(C)

Sent: Wed Sep 29 13:40:49 2010
Subject: FW: SCAAP and SC issue about "opting out"

Beth:

We have a draft memorandum under review now. We have not shared it yet to OGC. Would you like to see our draft before David has reviewed? (b)(6) & (b)(7)(C)

(b)(6) & (b)(7)(C) Of course, the draft memorandum discusses that issue.

Best regards,

Peter

Peter S. Vincent
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

(b)(6) & (b)(7)(C)

From: Gibson, Beth N [mailto:(b)(6) & (b)(7)(C)]
Sent: Wednesday, September 29, 2010 12:00 PM
To: Venturella, David; Vincent, Peter S
Cc: (b)(6) & (b)(7)(C) (b)(6) & (b)(7)(C) (b)(6) & (b)(7)(C)
Subject: RE: SCAAP and SC issue about "opting out"

Dave and Peter,

I am following up on the get backs listed below. First, Dave, thanks for the SFR ordinance that you sent and for the revised messaging on SC generally. I am now focused on how to rework our messaging on the "opting out"

12/31/2010

issue emerging in several places. The urgency on the get backs has increased, particularly in light of the Santa Clara votes. Peter, I understand Director Morton asked you to pull together a binder of the legal underpinnings. That dovetails with the get backs listed below (pasted from my September 9th email). Please provide asap to help inform the redraft of the opt out language. Dave, if you have specific language drafted to move away from the "voluntary" and "phased" language we have been using, please send it. Thanks

"In terms of specific meeting get backs,
--OPLA is gathering the legal support for the "mandatory" nature of participation in 2013
--SC is drafting revised language to describe the shift from the current "voluntary" formula to the "2013" formula"

From: Venturella, David
Sent: Friday, September 10, 2010 2:24 PM
To: Gibson, Beth N
Cc: (b)(6) & (b)(7)(C); Vincent, Peter S; (b)(6) & (b)(7)(C)
Subject: RE: SCAAP

FYI - Attached in the SFR City Ordinance the Sheriff references.

David J. Venturella
Assistant Director - Secure Communities
[Redacted]
http://www.ice.gov/secure_communities/

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From: Gibson, Beth N
Sent: Thursday, September 09, 2010 7:40 AM
To: Venturella, David
Cc: (b)(6) & (b)(7)(C); Vincent, Peter S; (b)(6) & (b)(7)(C)
Subject: RE: SCAAP

Dave,

Director Morton will be calling (b)(6) & (b)(7)(C). If he still wants me to go to SF for a meeting, I think you definitely should attend. You are more than welcome to attend any meetings that follow, even if we opt against OAS participation. Please loop (b)(6) & (b)(7)(C) into that issue.

In terms of SCAAP, I think you should approach the folks in DOJ with whom you have good relationships. Please first explore whether they think the application could be amended to indicate a clear preference that jurisdictions use SC as a tool to speed and ease the identification of illegal aliens they have/have had in their custody. I think we may have some room for gains even before we tackle whether to try to bring SCAAP over to ICE and statutory reform.

In terms of statutory provisions, (b)(6) & (b)(7)(C) is looking at the issue. Ideally, [Redacted]
[Redacted]
(b)(5) OP
[Redacted]

(b)(5) DP

In terms of specific meeting get backs,

- OPLA is gathering the legal support for the "mandatory" nature of participation in 2013
- SC is drafting revised language to describe the shift from the current "voluntary" formula to the "2013" formula
- SC is monitoring for the need for a meeting in SF
- I will follow any call between the Director and AG Brown and let SC know if the call alters the bullet above.

Call if you need any clarification of if I missed any get backs. Otherwise, send the get backs to me and we will schedule a follow up meeting once it is all collected.

From: Venturella, David
Sent: Tuesday, September 07, 2010 5:33 PM
To: Gibson, Beth N
Subject: Re: SCAAP

Beth,

Based on the discussion we had this afternoon, is there anything more you need me to do with this white paper?

Also, do you still plan on making the trip to SFR? If so, would you need me to join you? I would be happy to participate.

Sent using BlackBerry

From: Gibson, Beth N
To: Venturella, David
Cc: Chaparro, James
Sent: Mon Sep 06 13:57:23 2010
Subject: RE: SCAAP

This is quite helpful. Your suggestions are quite good.

From: Venturella, David
Sent: Friday, September 03, 2010 3:14 PM
To: Gibson, Beth N
Cc: Chaparro, James
Subject: SCAAP

Beth,

This is my first cut at this.

David J. Venturella
Assistant Director - Secure Communities
Office: (b)(6) & (b)(7)(C) ; **Cell:** (b)(6) & (b)(7)(C)
FAX: (b)(6) & (b)(7)(C)
http://www.ice.gov/secure_communities/

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12/31/2010

ICE FOIA 10-2674.0003000

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12/31/2010

ICE FOIA 10-2674.0003001

EXHIBIT E

Microsoft Outlook

From: Greenberg, Randi L
Sent: Monday, August 02, 2010 3:59 PM
To: (b)(6), (b)(7)(C)
Subject: FW: SC assistance needed

Importance: High

(b)(6), (b)(7)(C) can you send a message to CJIS on this topic to let them know what we're exploring and what they think?

Randi Greenberg
(b)(6), (b)(7)(C) (Desk)
(b)(6), (b)(7)(C) (BB)

From: Greenberg, Randi L
Sent: Monday, August 02, 2010 2:41 PM
To: (b)(6), (b)(7)(C)
Subject: SC assistance needed
Importance: High

(b)(6), (b)(7)(C)

Secure Communities has a meeting on **Wednesday (8/4/10)** with some Representatives from California on the ability to "opt out" of SC participation. As we continue to do refine our implementation strategy, Mr. Venturella has asked us to look into a legal mandate, provision, law, etc. that would allow ICE/DHS to request fingerprint information from the FBI for law enforcement and/or criminal justice purposes, regardless of whether states and locals can opt in or out. SC did some research on this topic months ago, though we never went anywhere with it. We're hoping that OPLA might now be able to weigh in and provide legal references and/or a legal interpretation of the references listed below. My guess is there is additional legislation out there that we don't know about but are hoping that you do!

References:

- 8 U.S.C. § 1373:

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local

12/31/2010

ICE FOIA 10-2674.0013173

government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

- 28 U.S.C. § 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials
 - U.S. Attorney General is authorized to collect criminal identification information, including fingerprints
 - Federal government has information sharing agreements with states and locals through a series of compacts
- 42 U.S.C. § 14615. Enforcement and implementation
 - The federal government can enforce compact agreements
- 42 U.S.C. § 14616. National Crime Prevention and Privacy Compact and 42 U.S.C. § 14611. Findings
 - There are reasons above and beyond “traditional” criminal justice information sharing needs, such as need to know immigrations status, that may necessitate information sharing between federal, state, and local entities

Any help is appreciated, feel free to call me if you need some additional background.

Thanks!

Randi Greenberg

Branch Chief, Communications & Outreach

Secure Communities

(b)(6), (b)(7)(C) (Desk)

(b)(6), (b)(7)(C) (BB)

(b)(6), (b)(7)(C)

12/31/2010

ICE FOIA 10-2674.0013174

EXHIBIT F

Microsoft Outlook

From: (b)(6), (b)(7)(C)
Sent: Thursday, September 30, 2010 10:50 AM
To: (b)(6), (b)(7)(C) Greenberg, Randi L
Cc: Rocha, Richard A; (b)(6), (b)(7)(C)
Subject: Re: Another Calif. County Seeking to Retroactively Opt Out of SC
We need a copy of the actual legislation as BG requested. It is for a Wash Post story.

From: (b)(6), (b)(7)(C)
To: Greenberg, Randi L
Cc: Rocha, Richard A; (b)(6), (b)(7)(C)
Sent: Thu Sep 30 10:36:42 2010
Subject: RE: Another Calif. County Seeking to Retroactively Opt Out of SC

Thanks for the clarification. Do you have a copy of the legislation that speaks to IDENT being mandatory?

(b)(6), (b)(7)(C)
Southern Regional Communications Director
U.S. Immigration and Customs Enforcement (ICE)
(b)(6), (b)(7)(C) (cell)
(b)(6), (b)(7)(C) (office)

From: Greenberg, Randi L
Sent: Thursday, September 30, 2010 10:29 AM
To: (b)(6), (b)(7)(C)
Cc: Rocha, Richard A; (b)(6), (b)(7)(C)
Subject: Re: Another Calif. County Seeking to Retroactively Opt Out of SC

There is no legislation that makes SC mandatory. Rather, there is legislation (in various forms) that makes IDENT/IAFIS interoperability mandatory. SC utilizes IDENT/IAFIS interoperability.

SC receives Congressional appropriations for Secure Communities specifically, and then is responsible for reporting on ICE-wide Criminal Alien Enforcement efforts.

Randi Greenberg
Branch Chief, Communications & Outreach
Secure Communities, ICE
(b)(6), (b)(7)(C) (desk)
(b)(6), (b)(7)(C) (BB)

(Apologies for any typos as I am sending this from my BlackBerry)

From: (b)(6), (b)(7)(C)
To: Greenberg, Randi L
Cc: Rocha, Richard A; (b)(6), (b)(7)(C)
Sent: Thu Sep 30 10:25:09 2010
Subject: RE: Another Calif. County Seeking to Retroactively Opt Out of SC

Randi:

12/30/2010

ICE FOIA 10-2674.0005568

(b)(6). our director, is asking for a copy of the SC legislation that speaks to it being mandatory. Do you have that?

(b)(6), (b)(7)(C)
Southern Regional Communications Director
U.S. Immigration and Customs Enforcement (ICE)
(b)(6), (b)(7)(C) (cell)
(b)(6), (b)(7)(C) (office)

From: Greenberg, Randi L
Sent: Thursday, September 30, 2010 10:14 AM
To: (b)(6), (b)(7)(C)
Cc: Rocha, Richard A
Subject: Re: Another Calif. County Seeking to Retroactively Opt Out of SC

In a meeting. Will call you in a bit.

Richard - are we allowed to speak to Boston media today?
Randi Greenberg
Branch Chief, Communications & Outreach
Secure Communities, ICE
(b)(6), (b)(7)(C) (desk)
(b)(6), (b)(7)(C) (BB)

(Apologies for any typos as I am sending this from my BlackBerry)

From: (b)(6), (b)(7)(C)
To: Greenberg, Randi L
Cc: Rocha, Richard A
Sent: Thu Sep 30 10:10:38 2010
Subject: RE: Another Calif. County Seeking to Retroactively Opt Out of SC

Are you around? I need to chat with you about some questions from the Boston Globe?

(b)(6), (b)(7)(C)
Southern Regional Communications Director
U.S. Immigration and Customs Enforcement (ICE)
(b)(6), (b)(7)(C) (cell)
(b)(6), (b)(7)(C) (office)

From: Greenberg, Randi L
Sent: Monday, September 27, 2010 8:18 PM
To: Rocha, Richard A; Kice, Virginia C; (b)(6), (b)(7)(C) Gibson, Beth N; Rapp, Marc A
Cc: (b)(6), (b)(7)(C) Venturrella, David
Subject: Re: Another Calif. County Seeking to Retroactively Opt Out of SC

Virginia - I like what you wrote.

Richard- we submitted some language to Beth last week for her review and comment. Once received, I'll loop you in so we can finalize and update the PAG accordingly.

Thanks!
Randi Greenberg
Branch Chief, Communications & Outreach
Secure Communities, ICE
(b)(6), (b)(7)(C) (desk)
(b)(6), (b)(7)(C) (BB)

12/30/2010

ICE FOIA 10-2674.0005569

(Apologies for any typos as I am sending this from my BlackBerry)

From: Rocha, Richard A
To: Kice, Virginia C; (b)(6), (b)(7)(C) Gibson, Beth N; Rapp, Marc A
Cc: (b)(6), (b)(7)(C)
Venturella, David
Sent: Mon Sep 27 20:16:31 2010
Subject: Re: Another Calif. County Seeking to Retroactively Opt Out of SC

Vk, if you haven't heard from others...this proposed response is good to go from OPA for tonight.

Randi, Dave and Marc, perhaps tomorrow we can brainstorm on how OPA and OSLTC can help make our position on participation clear.

Thanks,
Rich
Richard Rocha
Deputy Press Secretary
U.S. Immigration and Customs Enforcement
(b)(6), (b)(7)(C) desk
(b)(6), (b)(7)(C) cell

Sent using BlackBerry

From: Kice, Virginia C
To: (b)(6), (b)(7)(C) Gibson, Beth N; Rapp, Marc A
Cc: (b)(6), (b)(7)(C)
Rocha, Richard A
Sent: Mon Sep 27 19:58:47 2010
Subject: Another Calif. County Seeking to Retroactively Opt Out of SC

All -

ISSUE: A reporter for the San Jose Mercury News is seeking ICE's comment regarding an anticipated vote tomorrow night by the Santa Clara County Board of Supervisors seeking to retroactively "opt out" of Secure Communities, which was launched in Santa Clara County in early May - see recent article below. Given the current circumstances with San Francisco County and the sensitivities involving the state's role...I could use some guidance on how we should appropriately respond.

BACKGROUND: The SC data I have, which is current thru Aug. 31, indicates there have been more than 1,700 Level 1/2/3 convicted criminal aliens identified by the system in Santa Clara County since the activation. To date, 339 deportable aliens have been turned over to ICE. Of those, nearly 75 percent (253 were convicted criminal aliens, including 98 Level 1 offenders).

PROPOSED RESPONSE: Secure Communities continues to be a vital tool for identifying and expediting the removal of deportable criminal aliens who've come into local law enforcement custody. In the four months since its activation in Santa Clara County, Secure Communities has resulted in ICE taking custody of 339 deportable aliens, nearly 75 percent of whom are convicted criminal aliens. That includes 98 individuals with prior convictions for serious or violent offenses who might have been released to streets without this important information-sharing capability. As these figures demonstrate, Secure Communities is a major step forward in ICE's efforts to prevent potentially dangerous criminal aliens from being released to the streets in Santa Clara County and we would welcome an opportunity to discuss the results further with the Board of Supervisors and other county officials.

Santa Clara County supervisors get answer they wanted in quest to opt out of federal law enforcement program

12/30/2010

ICE FOIA 10-2674.0005570

By Tracy Seipel

Posted: 09/01/2010 08:24:30 PM PDT

Updated: 09/02/2010 05:25:12 AM PDT

A controversial federal program that seeks to enlist local law enforcement in the war on illegal immigrants is apparently voluntary, according to a federal memo seeking to clarify confusion about the program.

Armed with this new information, Santa Clara County Supervisors George Shtrakawa and Don Gage on Wednesday agreed to forward a recommendation to the full board that directs county officials to opt out.

Known as Secure Communities, the program has been put in place across the United States, sparking praise from law-and-order advocates and fear from immigrant rights groups.

If the five-member board approves, the county will notify federal immigration enforcement authorities and the state Department of Justice of its opposition to participating in Secure Communities, which began in the county May 4.

The resolution also asks that U.S. Immigration and Customs Enforcement officials refrain from accessing fingerprint data the county provides to other federal authorities.

A spokeswoman for Shtrakawa said she expects the matter to go before the board at its Sept. 28 meeting.

The program, which was launched last year and is being phased in across Northern California this summer, gives federal officials access to the fingerprints of people arrested locally.

Backers call it a common-sense strategy that's led to the deportation of tens of thousands of lawbreakers. Critics say it focuses too much on low-level criminals and does not protect against racial profiling, among other problems.

The proposal to the board comes after news of a recent memo issued by ICE that clarifies that local jurisdictions can choose not to participate. The state attorney general's office had previously denied at least one request from San Francisco officials to opt out of the program.

Santa Clara County leaders have said they never agreed to participate in the program but inadvertently play a role in it whenever someone is arrested and taken to the county jail. At that point, his or her fingerprints are sent to an identification system that is ultimately downloaded to the California Department of Justice.

That agency, in turn, has a practice of sharing information with the federal government for law enforcement purposes. The county doesn't object to that, but it does protest allowing ICE officials to access the information to verify immigration status.

"It seems like ICE is kind of backtracking by issuing statements to the press and public that Secure Communities has been a cooperative program all along," said Deputy County Counsel Anjali Bhargava. "That is not consistent with our experience working with ICE. But we are hopeful that this represents a change in direction."

Virginia Kice
Western Regional Communications Director/Spokesperson
U.S. Immigration and Customs Enforcement (ICE)
Phone: (b)(6), (b)(7)(C)
www.ice.gov

12/30/2010

ICE FOIA 10-2674.0005571

EXHIBIT G

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



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

The Honorable Jack Markell
Governor of Delaware
Tatnall Building
William Penn Street, 2nd Floor
Dover, DE 19901

AUG 05 2011

Dear Governor Markell:

I write regarding the deployment of Secure Communities in your state. U.S. Immigration and Customs Enforcement (ICE) has long viewed state and local governments as being valuable partners that can serve a helpful role in assisting ICE in fulfilling its responsibilities with respect to immigration matters. Accordingly, we take concerns that have been raised with our immigration enforcement programs very seriously.

I seek to clarify an issue that has been the subject of substantial confusion: whether a memorandum of agreement (MOA) between ICE and a state is necessary to operate the program in that state. ICE has determined that an MOA is not required to activate or operate Secure Communities for any jurisdiction. Once a state or local law enforcement agency voluntarily submits fingerprint data to the federal government, no agreement with the state is legally necessary for one part of the federal government to share it with another part. For this reason, ICE has decided to terminate all existing Secure Communities MOAs.

This change will have no effect on the operation of Secure Communities in your state. ICE will continue to operate Secure Communities for jurisdictions where it is already deployed and will continue to activate the program for new jurisdictions. Of course, we will notify your office prior to the activation of any new jurisdictions for your state. We anticipate that all remaining jurisdictions will be activated by 2013.

I would also like to take this opportunity to highlight some recent improvements to the Secure Communities program. These improvements will better advance our shared goals when it comes to immigration enforcement, namely focusing ICE's limited resources on the removal of individuals who pose a threat to public safety or who have flagrantly violated the nation's immigration laws, and to do so in a way that respects civil rights and civil liberties.

First, we have issued a new memorandum designed to assist ICE agents, officers, and attorneys in ensuring that our limited resources are expended on individuals who meet ICE's enforcement priorities by encouraging the exercise of discretion in appropriate cases that fall outside these priorities. At the direction of the Secretary, we also issued a new policy specifically designed to protect victims of domestic violence and other crimes and to make

The Honorable Jack Markell
Page 2

certain these crimes continue to be reported and prosecuted. These new memoranda will help ensure that ICE enforcement programs, including Secure Communities, are focused on individuals who fall within ICE's enforcement priorities—priorities that I am confident you share.

In addition, ICE and the Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL) announced plans for the enhanced civil rights monitoring of Secure Communities based on in-depth statistical analysis of the operation of the program. ICE and CRCL also implemented new training for state and local law enforcement, unveiled a new civil rights complaint process, and revised the detainer form ICE sends to state and local jurisdictions to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours. These measures will help guarantee that Secure Communities is operated in a manner that is fully consistent with all applicable civil rights and civil liberties laws and policies.

Finally, a special task force of the Homeland Security Advisory Council has been created to provide, among other things, recommendations regarding ways ICE could implement changes to the manner in which Secure Communities addresses those arrested for minor traffic offenses. This task force will also explore whether other minor criminal offenses should be handled in a similar manner. These reforms will help better focus Secure Communities on those individuals that meet ICE's enforcement priorities.

Thank you for your attention to our immigration enforcement efforts. ICE welcomes your thoughts about how our immigration enforcement activities operate in Delaware. With these reforms to Secure Communities, I am confident that we can continue to build a productive relationship between ICE and Delaware.

Enclosed is a fact sheet that more fully describes these changes and responds to other questions about the program. If you have any questions or I can be of further assistance, please feel free to contact me at (202) 732-3000.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Morton", with a long horizontal flourish extending to the right.

John Morton
Director

Enclosure

EXHIBIT H

**Secure Communities
Frequently Asked Questions
Addendum to Governor Notifications**

1. What is Secure Communities?

When allocating its enforcement resources, U.S. Immigration and Customs Enforcement (ICE) prioritizes the expenditure of those resources on cases involving public safety and national security, the integrity of the immigration system, and border security. As a result, ICE focuses on the removal of criminal aliens and repeat immigration violators, as well as on the enhancement of border security through the removal of those who recently unlawfully entered the United States. Secure Communities is a simple and common sense tool that helps ICE effectuate these priorities. It utilizes an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) and helps to identify removable aliens who have been arrested and booked for violations of criminal law, without imposing new or additional requirements on state and local law enforcement.

For decades, local jurisdictions have shared the fingerprints of individuals who are booked into jails with the FBI to determine if they have a criminal record. Under the Secure Communities program, the FBI, as mandated by statute, automatically sends these fingerprints to DHS to check against its immigration databases. If these checks reveal that an individual may be unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE determines what, if any, enforcement action to take – prioritizing the removal of those individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors, as well as those who have repeatedly violated immigration laws.

Secure Communities imposes no new or additional requirements on state and local law enforcement, and only the federal government, not the state or local law enforcement agency, determines what immigration enforcement action, if any, is appropriate.

2. How does Secure Communities work?

When state and local law enforcement officers arrest and book someone into a jail for a violation of a state or local criminal offense, they generally fingerprint the person. After fingerprints are taken at the jail, the state and local authorities submit the fingerprints to the FBI. The FBI takes these fingerprints and runs them through its database of criminal records and sends the state and local authorities a record of the person's criminal history.

Under Secure Communities, DHS receives these fingerprints from the FBI, so that ICE can determine if that person is also subject to removal (deportation). This approach, whereby the fingerprints that are sent to the FBI are then shared them with DHS, fulfills a 2002 Congressional mandate for federal law enforcement agencies to share information that is relevant to determine the admissibility or deportability of an alien. *See* 8 U.S.C. § 1722(a)(2).

If the person has been previously encountered and fingerprinted by an immigration official and there is a digitized record, then the immigration database will register a "match." ICE then reviews other databases to determine whether the person is here illegally or is otherwise removable.

In cases where the person appears from these checks to be removable, ICE may issue a detainer on the person, requesting that the state or local jail facility hold the individual no more than an extra 48 hours (excluding weekends and holidays) to allow for an interview of the person. Following the interview, ICE decides whether to seek the person's removal.

In making these decisions, ICE considers a number of factors, including the person's criminal history, immigration history (such as whether the person was previously deported or has an outstanding removal order from an immigration judge), family ties, duration of stay in the U.S., significant medical issues, and other circumstances.

3. What are states required to do under Secure Communities?

In jurisdictions where Secure Communities has been activated, Secure Communities imposes no new or additional requirements on state or local law enforcement. In fact, following the activation of Secure Communities in a jurisdiction, it is important that law enforcement agencies enforce the criminal law in exactly the same manner as they did before Secure Communities was activated.

Under Secure Communities, state and local law enforcement officers are not deputized, do not enforce immigration law, and are not tasked with any additional responsibilities. In all jurisdictions except the few in which there is an agreement with the federal government in place under Section 287(g) of the Immigration and Nationality Act, only federal DHS officers make immigration enforcement decisions, and they do so only after a completely independent decision by state and local law enforcement to arrest and book an individual for a criminal violation of state law separate and apart from any violations of immigration law. Additionally, it is DHS and the FBI, and not state or local governments, that perform the information sharing that is the cornerstone of Secure Communities.

4. What reforms of Secure Communities have been implemented?

On June 17, 2011, ICE announced key improvements to the Secure Communities program. Secure Communities has proven to be a critical tool for carrying out ICE's enforcement priorities. To continue to improve the program, DHS and ICE are committed to addressing concerns that have been raised about its operation, including through the following reforms:

- **Advisory Task Force & Minor Traffic Offenses:** ICE has created a new advisory task force that will advise the Director of ICE on ways to improve Secure Communities, including making recommendations on how to best focus on individuals who pose a true public safety or national security threat. This panel is composed of chiefs of police, sheriffs, state and local prosecutors, ICE agents from the field, immigration advocates, and leading academics. The first report of this advisory group will provide recommendations on how ICE can adjust the Secure Communities program to mitigate

potential impacts on community policing practices, including how to implement policies related to the detention and removal of individuals charged with, but not convicted of, minor traffic offenses who have no other criminal history or egregious immigration violations. For a full list of committee members, visit: <http://www.dhs.gov/files/committees/task-force-on-secure-communities-membership.shtm>.

- **Prosecutorial Discretion:** ICE Director John Morton has issued a new memo providing guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise discretion when appropriate—authority designed to help ICE better focus on meeting the priorities of the agency by using its limited resources to target criminals, those that put public safety at risk, and those who have repeatedly violated the nation's immigration laws. The memo also clarifies situations in which the exercise of discretion is inappropriate—cases involving threats to public safety or national security, among others. The new memo can be accessed at: <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.
- **Training for States:** ICE and the DHS Office for Civil Rights and Civil Liberties (CRCL) have developed a new training program for state and local law enforcement agencies to provide more information about how Secure Communities works and how it relates to civil rights and aliens' rights in the criminal justice system. The first set of training materials can be accessed at: http://www.ice.gov/secure_communities/crcl.htm.
- **Protecting Victims & Witnesses of Crimes:** At the direction of Secretary of Homeland Security Janet Napolitano, ICE, in consultation with CRCL, has developed a new policy specifically to protect victims of domestic violence and other crimes and to ensure that these crimes continue to be reported and prosecuted. This policy directs all ICE officers and attorneys to exercise appropriate discretion to ensure that victims of and witnesses to crimes are not penalized by removal. ICE is also working to develop additional tools that will help identify people who may be victims, witnesses, or members of a vulnerable class so officers can exercise appropriate discretion. The policy can be accessed at: <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.
- **Detainer Form:** ICE has revised the detainer form that it sends to local jurisdictions to request that an alien be held for ICE to interview, to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours (excluding weekends and holidays). Once implemented (likely in September 2011) the form will also require local law enforcement to provide arrestees with a copy, which includes an explanation of how to make a complaint in six languages and a number to call if the arrestee believes his or her civil rights have been violated in a manner connected to immigration enforcement. The revised detainer form can be accessed at: <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.
- **Civil Rights Complaints:** ICE and CRCL have created a new complaint system whereby individuals or organizations who believe civil rights violations connected to Secure Communities have occurred can file a complaint. For example, CRCL will investigate complaints of racial or ethnic discrimination by policing jurisdictions for which Secure Communities has been activated, and DHS will take steps to ensure that bias or other abuses do not affect immigration enforcement. Details on the new

complaint system are available at:

http://www.dhs.gov/xabout/structure/gc_1273526572731.shtm.

- **Data Collection and Monitoring:** ICE and CRCL have created an ongoing quarterly statistical review of the program to examine data for each jurisdiction where Secure Communities is activated to identify effectiveness and any indications of potentially improper use of the program. Statistical outliers in local jurisdictions will be subject to an in-depth analysis and DHS and ICE will take appropriate steps to resolve any issues. More information on the statistical review is available at: <http://www.ice.gov/doclib/secure-communities/pdf/statisticalmonitoring.pdf>.

5. What are the benefits of Secure Communities?

Along with border enforcement, ICE's top civil enforcement priorities are the identification and removal of criminal aliens, other aliens who pose a threat to public safety, and aliens who have repeatedly violated our nation's immigration laws. In ICE's experience, the most effective way to identify such aliens is by checking the immigration status of individuals arrested and booked into state and local jails for violations of state or local criminal laws. Secure Communities allows ICE to efficiently identify these high priority cases by taking advantage of state and local law enforcement agencies' long-standing practice of voluntarily submitting fingerprint information to the FBI for criminal background checks.

Under Secure Communities, DHS receives this information from the FBI, determines the individual's immigration status, and then makes a decision about what immigration enforcement action, if any, should be taken. By focusing on individuals who have been arrested and booked into state and local jails for alleged violations of state and local criminal laws, Secure Communities has proven to be one of ICE's most important tools for identifying and removing criminal aliens as well as repeat immigration violators.

However, that is not the only benefit of Secure Communities. Other benefits include:

- The program is designed to ensure that the responsibility of immigration enforcement remains with federal officials. It does not authorize or permit state or local law enforcement to enforce federal immigration law.
- The program is designed to not require or permit any change to law enforcement agencies' customary booking process.
- Finally, information is shared in near real time and is based on biometrics, in this case fingerprints. Fingerprints are accurate, reliable, and virtually impossible to forge.

The National Sheriffs' Association, Major County Sheriffs' Association, New York Sheriffs' Association and the New York Association of Chiefs of Police have all issued formal statements in support of Secure Communities.

6. When is ICE planning to activate Secure Communities nationwide?

ICE continues to work with its law enforcement partners across the country to responsibly and effectively implement this federal information sharing capability and plans to reach complete nationwide activation by 2013. When Secure Communities is activated in a jurisdiction, the FBI automatically sends the fingerprints it receives from that jurisdiction to DHS to check against DHS's immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE determines what, if any, enforcement action to take.

7. How does ICE define "criminal aliens"?

Criminal aliens are immigrants who have been convicted of a crime by a court of law. This conviction may occur in the United States or overseas, provided that the overseas conviction is one that is recognized in the United States.

8. Why are immigration violators who have *not* been convicted of a crime being identified by Secure Communities, and why are some of them being removed from the United States?

Immigration violators who have not been convicted of a crime are being identified by Secure Communities because Secure Communities identifies all people who have been arrested and booked into custody and have had some prior contact with immigration officials—including people who, for example, have received an immigrant benefit as well as those who were previously apprehended while attempting to cross the border or applied for a now-expired visa. Some of the individuals without criminal convictions who are identified through Secure Communities are being removed because, although they have not been convicted of a crime, they still fall within ICE's enforcement priorities—for example by repeatedly violating U.S. immigration law or because they are fugitives from immigration court. Where an individual who is awaiting trial on certain criminal offenses falls within ICE's enforcement priorities and already has an outstanding final order of removal, ICE may, in some circumstances, decide to remove that individual before the criminal trial.

9. Can a state or local law enforcement agency choose not to have fingerprints it submits to the FBI checked against DHS' system?

This question has been asked in many contexts, and it is important to clarify that the information-sharing partnership between DHS and the FBI that is the cornerstone of Secure Communities is mandated by federal law, which means that state and local jurisdictions cannot prohibit information-sharing between agencies in this respect. Secure Communities is mandatory in that, once the information-sharing capability is activated for a jurisdiction, the fingerprints that state and local law enforcement voluntarily submit to the FBI to be checked against the DOJ's biometric identification system for criminal history records are automatically sent to DHS's biometric system to check against its immigration and law enforcement records. The United States government has determined that a jurisdiction cannot choose to have the fingerprints it submits to the federal government processed *only* for criminal history checks. Further, jurisdictions cannot ask that the identifications that

result from DHS's processing of the fingerprints not be shared with local ICE field offices in that jurisdiction. It is ICE, and not the state or local law enforcement agency, that determines what immigration enforcement action, if any, is appropriate.

A state or local jurisdiction may, however, choose not to receive the information about identifications that result from processing fingerprints through DHS's databases that is provided to the local ICE field office. A jurisdiction's decision not to receive this information does not affect whether the local ICE field office in that jurisdiction will or will not take enforcement action based on those results.

10. What protocols are in place to monitor State and local conduct to guard against profiling?

ICE will not allow Secure Communities to turn into a conduit for any civil rights abuses. ICE and CRCL have recently improved safeguards—training, complaint processes, and data collection and monitoring—to further protect the program from officers or jurisdictions that may engage in racial or ethnic profiling, or would otherwise affect ICE's prioritization through improper policing practices. As described in part above, several initiatives to achieve these goals are underway:

- In all ICE detention facilities, ICE prominently advertises a 24-hour phone number for those who feel they have been the targets of racial or ethnic profiling and ensures that complaints, including those about Secure Communities, are transmitted to CRCL, the Department of Justice, or other appropriate office.
- In order to identify jurisdictions that *may* be making improper arrests that could result in identification of aliens through Secure Communities, ICE and CRCL have retained a leading statistician who is examining data for each jurisdiction where Secure Communities is deployed. Statistical outliers will be subject to in-depth analysis. This analysis will take place four times per year to ensure consistent monitoring, and DHS and ICE will take appropriate steps to resolve any issues.
- To prevent and address possible abuses of Secure Communities, ICE and CRCL are working together to develop new outreach and awareness materials for state and local law enforcement agencies in jurisdictions where Secure Communities is deployed.
- ICE and CRCL have created a complaint system whereby individuals or organizations who believe civil rights violations connected to Secure Communities have occurred can file a complaint. For example, CRCL will investigate complaints of ethnic discrimination by policing jurisdictions for which Secure Communities has been deployed, and DHS will take steps to ensure that bias or other abuses do not affect immigration enforcement.
- ICE has revised the immigration detainer form to ensure that any alien who is detained receives a copy. The revised form will include information on how to file a complaint in six languages.
- ICE, in consultation with CRCL, has developed a new policy specifically to protect victims of domestic violence and other crimes and to ensure that these crimes continue to be reported and prosecuted. This policy directs ICE officers and attorneys to exercise appropriate discretion to ensure immediate victims of and witnesses to crimes are not penalized by removal. ICE is also working to develop additional tools that will help

identify people who may be victims, witnesses, or members of a vulnerable class so officers can exercise appropriate discretion.

DHS and ICE take allegations of racial profiling and other complaints relating to civil rights and civil liberties violations very seriously. Formal allegations are referred to CRCL, which is tasked with guarding against violations in DHS programs. ICE fully supports all CRCL investigations, including by taking action to ensure witnesses and complainants are able to remain in the United States.

11. In the past, ICE has entered into agreements with states before activating Secure Communities. Is this step required to operate Secure Communities in a state?

No, a memorandum of agreement (MOA) is not required to activate Secure Communities for a state. Secure Communities relies on an already-existing federal information-sharing program, consisting of the sharing of biometric data between two federal law enforcement agencies—DHS and the FBI—and is designed to advance the federal government's responsibility to enforce immigration laws. Once a state or local law enforcement agency voluntarily submits fingerprint data to the federal government, no agreement with the state is legally necessary for one part of the federal government to share it with another part. Accordingly, no state act or permission is required to allow ICE to activate or operate Secure Communities for a state or local jurisdiction, and an MOA with a state is not required to activate Secure Communities for jurisdictions within that state.

12. Will the Secure Communities MOAs that have already been executed remain in effect? What is the effect of a termination of a Secure Communities MOA?

Because ICE has determined that an MOA with a state is not necessary to activate or operate Secure Communities for jurisdictions within that state, ICE has decided to terminate all existing MOAs. For states that already terminated their MOAs, ICE will honor the state's desire to no longer receive information regarding the immigration status of an individual whose fingerprint information is submitted to the federal government via the FBI, and will cease providing the immigration status information generated through Secure Communities to the state.

The termination of the MOAs will have no effect on the operation of Secure Communities for any state. ICE will continue to operate Secure Communities for jurisdictions where it is already deployed and, over the next two years, will activate the program for the remaining jurisdictions. ICE will fully deploy Secure Communities for all jurisdictions by the end of 2013. Prior to the activation of new jurisdictions within a state, ICE will provide advance notice to both the state and local governments.

13. Will the federal government continue its practice of validating Original Agency Identification numbers (ORIs) in my state immediately prior to Secure Communities activation?

No. The federal government is changing the manner in which it activates Secure Communities. As a result of these changes, your state will eventually not need to validate an ORI number immediately prior to Secure Communities activation. Within the next few weeks, the federal government will provide additional information to your State Identification Bureau regarding the new Secure Communities activation process.