



**The American Civil Liberties Union**

## **I. Introduction**

The ACLU is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The  
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non-criminal portion still at 26%.<sup>7</sup> These numbers make clear that DHS has not adhered to &RQJUHVVYUHTKUHPhQWwKDW'6SULRULWLJHYLROHQWFRQYHFWHKG5ULPLQDOV \$750 million in Congressional funding over the past four years,<sup>8</sup> yet the program continues to operate contrary to Congressional intent.

Instead of deporting serious convicted criminals, S-Comm is a major contributor to the destruction of families with American citizen children. 39% of individuals arrested through S-Comm ± 88,000 people as of October 2011 ± reported that they have a U.S. citizen spouse or child; an estimated 88,000 of these families were affected as of October 2011.<sup>9</sup> ICE recently reported that from January to June 2011, 22% of deportees had one or more children born in the United States. That translates to a stunning 46,486 parents of U.S. citizen children deported in six months, resulting in thousands of families torn apart or uprooted from their communities.<sup>10</sup> This marks a nearly tenfold increase from the pre-S-Comm rates: In the decade before S- &RPPYUROGut, from 1998 to 2007, 108,434 parents with U.S. citizen children were deported during the entire ten-year period<sup>11</sup> The alarming increase in the destruction of families is directly linked to S-&RPPYUHOHQWOHVVGUDJQHWH[SDQVLRQ

### III. S-Comm promotes racial profiling

DHS has stated that its immigration enforcement programs arHQRWWRINQFWLRQDVDFRQGKW RULQFHQWLYHIRUGLVFULPLQDW'RBISRIOLISQdctly how S-Comm operates, by virtue of its very design. Under S-Comm, any time an individual is arrested and booked into a local jail IRUDQUHDVRQKLVRUKHUILQJHUSULQWVDUHHOHFWURQLFDOOUQWKURJK,&(YGDWDEDV fingerprints allow ICE to identify people in state or local custody and to take enforcement action against them if ICE believes they may be removable.

Because local law enforcement officials know that S-Comm will capture the fingerprints of everyone they arrest<sup>2</sup> even if the arrest is baseless or blatantly unconstitutional<sup>2</sup> rogue local

<sup>7</sup> U.S. Immigration and Customs Enforcement, Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through May 31, 2012, available at [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interop\\_stats-fy2012-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf)

<sup>8</sup> S.R. 112-74, Senate Appropriations Committee Report on the 2012 Department of Homeland Security Appropriations Bill (Sept. 7, 2011), 59, available at <http://www.gpo.gov/fdsys/pkg/CRPT-112srpt74/pdf/CRPT-112srpt74.pdf>

<sup>9</sup> Kohli, Markowitz, and Chavez, Secure Communities by the Numbers supra.

<sup>10</sup> ICE, Deportation of Parents of U.S. Born Citizens (Mar. 26, 2012), available at <http://www.lirs.org/atf/cf/%7bA9DDBA5E-C6B5-4C63-89DE-91D2F09A28CA%7d/ICE%20-%20DEPORT%20OF%20PARENTS%20OF%20US%20CIT%20FY%202011.PDF>

<sup>11</sup> OLFKDHO)DOFRQH3DUHQWVRI&LWLJHQV:HUH'HSRUWHG2YHUHDUV1HUN7LPHV)HE

<sup>12</sup> Margo Schlanger, Officer for Civil Rights and Civil Liberties and Gary Mead, Executive Associate Director of ,&(0HPRUDQGKWR\$OO,&(DQG&5&/3HUVRQQHORQ6HFH&RPPQLWLHV&RPSODLQWV,QYROYLQJ6WDWHRU/RFD /DQIRUFHPhQW\$JHQFLHV-QH available at <http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf>, at 2.

office of the Effic strong incentive to make pretextual arrests based purely on race, ethnicity, or SHUFHLYHGIRUHLJQQHCVm, therefore, creates an incentive for state and local police to target suspected immigrants to arrest for minor offenses<sup>2</sup> including, for example, driving with a broken taillight or driving with an expired tag<sup>2</sup> purely in order to bring them into the jail and trigger the fingerprint-sharing aspect of S-Comm. Police understand that even if an arrest is baseless, even if local officials decline to press charges, or even if the person is later cleared of wrongdoing, they can use S-Comm to bring WKDWSHUVRQWR,&(VLPFHGLDWHDWWHQWLRQIRU potential deportation.

After a similar ICE jail screening program (the Criminal Alien Program or CAP) was initiated in Irving, Texas, the Warren Institute at the University of California, Berkeley, found strong evidence that local police, emboldened by the knowledge that the people they arrested ~~KNIGEHEURJKWWR,&(VDWWHQWLRQRQFHWKH7UHERRNHGLQWRMDLOHQJDJHGLQUDFLDC~~ anGSUHHW[WNODUUHVWV7KHUHSRUWFRQFO&HGWKDWWKHUHDVDDPDUHIGU LVSQQLFV after CAP came into effect.<sup>13</sup> Racial profiling is a persistent and well-documented phenomenon. For example, in Milwaukee, Wisconsin, a statistical analysis determined that police pulled over Hispanic city motorists nearly five times as often as white drivers in 2010, and WKDW%ODFNDQGLVSQQLFGULYHUV7UHDDUUHVWHGDWWZFWHKKHWDWHRIKLVHVDIWHUJ VWRSSHG<sup>14</sup> An ACLU of Arizona study showed that during 2006-2007, the state highway patrol





60WDLQLQLQGLYLGN0VVROH0WRYHULIWKHLULPPLJUDWLRQVWDWXX0GUDLVHFRQVW  
FRQFHUQ<sup>36</sup>This is exactly the kind of behavior S-Comm incentivizes.

Incentives for racial profiling of perceived immigrants come in many forms. An example shows how S-Comm invites and facilitates racial profiling:

In West Virginia, S-Comm was activated in February 2009. Two months later, early on a Sunday morning, eleven people in three vehicles left Lobos, a popular Latin dance club in Inwood, a farming region. All departed the club with designated drivers and were of Hispanic heritage. One was the young mother of two U.S. citizen children (ages 5 months and 2 years). The vehicles, traveling separately, were stopped by the West Virginia State Police (WVSP) a mile from Lobos, purportedly for the following infractions: failure to stop at stop sign, crossing WKHFHQWHUOLQHDQGVLW<sup>37</sup>IRGULYHUVZUHLVVNGWUDIILFFLWDWLRQVEW  
eleven people were held on ICE detainers issued immediately and remotely by the Pittsburgh Field Office. The children were left for a month without their parents, who could not even contact them for three days. Those arrested were transferred to detention in York, PA, where deportation proceedings continue for some of them.

7KHVH DUUHVVWVRRNSODFHLQDFRQWH[WKHUH:96370DUWLQVEKJGHWDFKPHQW  
made the stops, has been documented to be twice as likely to stop Hispanic drivers as Caucasians.<sup>27</sup>





was the primary aggressor. As a result, immigrant survivors of domestic violence who have sought police protection in S-Comm jurisdictions have ended up being placed in deportation proceedings, and in some cases deported.

For much of the past four years, ICE refused to acknowledge that a problem even existed with domestic violence victims. On June 17, 2011, the agency presented wholly inadequate cosmetic fixes to counter growing media and public attention to S-Comm related recognition of S-Comm. ICE advised that agents and trial attorneys should exercise discretion not to deport crime victims and witnesses who are caught up in the dragnet, are cold comfort for those victims and witnesses who have already been deported, and do nothing to dispel the fear in immigrant communities that ICE lacks the expertise, field training, and factual omniscience to sort out complicated domestic violence scenarios such that innocent parties are not deported.

The following case examples illustrate the problem and the inadequacy of leaving a

- Isaura Garcia, an immigrant in Los Angeles, endured three years of beatings from her boyfriend before calling 911 in Los Angeles. When the police arrived, they berated Isaura for speaking in Spanish and handcuffed her along with her assailant. Stunned, Isaura fainted. At the hospital, a doctor found bruises on her body and identified her as a domestic violence survivor. Because of S-Comm, however, Isaura was placed in deportation proceedings, which were rescinded only after the ACLU of Southern California had I realized I could be arrested after calling 911 for help and deported, I never would arrest both parties in domestic disputes, her fingerprints were submitted to immigration officials; despite having no criminal record, she was flagged for deportation
- Veronica had a serious argument with her brother when he refused to let her leave a party with her daughter. Veronica called the police, who arrived and briefly questioned her before arresting her. They took her to jail, where they fingerprinted her and held her for three hours, releasing her upon discovering that she was legally in the country. Veronica reports that she would never call the police again.<sup>33</sup>

<sup>32</sup> Lee Romney & Paloma Esquivel, Noncriminals swept up in federal deportation program, TIMES (Apr. 25, 2011), available at <http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425>

<sup>33</sup> ACLU OF NORTHERN CALIFORNIA, COSTS AND CONSEQUENCES: THE HIGH PRICE OF POLICING IMMIGRANT COMMUNITIES 9 (2011), available at [http://www.aclunc.org/docs/criminal\\_justice/police\\_practices/costs\\_and\\_consequences.pdf](http://www.aclunc.org/docs/criminal_justice/police_practices/costs_and_consequences.pdf)

- Hun, a Japanese national, called 911 for help after being abused by her husband for years. When the police arrived, Hun could not speak English and defend herself when her husband accused her of instigating the fight. The police arrested Hun, and ICE, alerted to her presence, took custody of her and placed her in removal proceedings. Hun was separated from her one-year-old child, who was placed in foster care.<sup>34</sup>
- The 17-year-old sister of Maria Perez-Rivera from Lodi, California, called police after her husband was charged with a crime, Maria was fingerprinted by police and identified by S-Comm. She was deported two days later. Her 2-year-old daughter Kimberly and her 3-month-old son Anthony, both U.S. citizens, were with the children. The Sacramento Bee reported that she peeks around her apartment complex for her mom. If she hears police sirens, she runs.<sup>35</sup>
- Norma from San Francisco called the police for protection after a domestic violence partner hit her. But the undocumented mother of a U.S.-born toddler was too fearful of police and too broken of spirit to do so. In October, she finally worked up the courage to call police and police arrested her and, because of S-Comm, she was taken into ICE custody. She was placed on electronic monitoring pending a deportation proceeding, despite never being charged with any crime.

It is past time for DHS to recognize the unconscionable human toll caused by S-Comm. S-Comm implicates the federal government in the creation of a zone of impunity for domestic violence abusers. Immigrant women and children like those described here deserve equal protection from abuse, not the second-class status to which S-Comm relegates them.

## V. S-

Secure Communities by the Numbers details the burdens S-Comm has imposed on communities across the country. The report concluded that S-Comm has led to the detention of a significant number of U.S. citizens (estim-BT1 0Tmf50.98 Tm[(e)-2(sti)-



Just as the promise of prosecutorial discretion by DHS is inadequate to address the fear inspired by S-Comm in crime victims and witnesses

