



**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

November 29, 2011

The Subcommittee on Immigration Policy and Enforcement  
House of Representatives  
B-353 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee:

The Electronic Frontier Foundation (EFF) is a nonprofit civil liberties law firm and advocacy organization representing public interest in the digital age. We are writing to express deep concerns about the privacy and due process implications of the Secure Communities Program, which includes data-sharing practices that exceed the data minimization and use specifications practices articulated in the Department of Homeland Security's *Fair Information Practice Principles*. The Secure Communities Program sets a dangerous precedent for overcollection and misuse of sensitive personally identifiable information, with ramifications for the privacy and due process rights of all Americans.

Under Secure Communities, local law enforcement agencies have lost control over the data they collect for purely local purposes. They are required to submit fingerprints and detailed information on all individuals they arrest to the Federal Bureau of Investigation (FBI), which then sends a copy of the data to the U.S. Immigrations and Customs Enforcement (ICE). ICE then checks the immigration status of the individuals, and moves to deport those who do not have appropriate residency standing. Notably, individuals can be arrested, fingerprinted, and deported even if they are not convicted of a crime. For example, individuals engaged in civil disobedience at a protest rally but whose charges are later dismissed or individuals who are wrongfully arrested due to racial discrimination or false evidence could find their fingerprint data collected and face potential deportation. In fact, ICE reports that 21% of the program's deportees were never convicted of a crime,<sup>1</sup> contrary to the due process principles that are fundamental to the American legal system.

EFF is concerned that the Secure Communities Program fails to meet the standards of the *Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security* (FIPPS).<sup>2</sup> These principles create a foundation to ensure that the Department of Homeland Security will uphold the privacy rights of individuals even when conducting investigations of importance to national security. DHS is responsible for overseeing the Secure Communities Program, and thus the entire program should adhere to the FIPPS. More broadly, the FIPPS provide a framework for the collection and

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<sup>1</sup> See *Quinn hits back against immigration checks*, Chip Mitchell, WBEZ 91.5 Radio, August 25, 2011  
<http://www.wbez.org/story/quinn-hits-back-against-immigration-checks-91065>

<sup>2</sup> See *Privacy Policy Guidance Memorandum 2008-01*, The Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security, December 29, 2008  
[http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_policyguide\\_2008-01.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf)

usage of personal information generally, and can be seen as guiding principles for government and nongovernmental agencies dealing with sensitive personal information in a wide range of circumstances.

The FIPPs define 8 principles, including:

**Purpose Specification:** DHS should specifically articulate the authority that permits the collection of PII and specifically articulate the purpose or purposes for which the PII is intended to be used.

**Data Minimization:** DHS should only collect PII that is directly relevant and necessary to accomplish the specified purpose(s) and only retain PII for as long as is necessary to fulfill the specified purpose(s).

**Use Limitation:** DHS should use PII solely for the purpose(s) specified in the notice. Sharing PII outside the Department should be for a purpose compatible with the purpose for which the PII was collected.

The Secure Communities Program runs counter to these principles by transferring data between agencies in ways that exceed the purpose for which the data was originally collected. In particular, fingerprint data of individuals booked into jails is obtained for the purpose of identification and checking preexisting criminal history; it is not collected to review an individual's immigration status for possible deportation. Being booked into a jail – especially when one is not convicted of a crime – should not give the government carte blanche to share one's personal information between government agencies. This secondary usage of the data is incompatible with the purpose for which the data was originally collected, and the transfer of data from detention facilities such as local jails to a central database within ICE violates the principles of use limitation and data minimization.

The expediency of the Secure Communities process comes at the cost of dearly held American rights to privacy and due process, and sacrificing civil liberties for such expediency in immigration enforcement creates a dangerous precedent. The Secure Communities of today may be only the first step in DHS's efforts to expand its dragnet data collection program. While Secure Communities is currently operating with data collected from arrestees, if left unchecked this program has the potential to expand to personally identifiable information from a range of other sources.

We oppose the Secure Communities Program because it threatens the privacy rights of Americans and runs counter to due process. To safeguard civil liberties, we recommend that:

- Congress order an external review of the data retention and sharing practices under Secure Communities, and create guidelines for cabining data such that it is not used for purposes other than for which it is collected.
- Congress eliminate funding for the Secure Communities Initiative and other programs that use state and local law enforcement agencies to conduct

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immigration enforcement until and unless programs are instituted that respect civil liberties.

- The Subcommittee should urge DHS to terminate Secure Communities in jurisdictions that have chosen to opt out of the program.

Thank you for your time and consideration.

Sincerely,

/s/

**Jennifer Lynch**, Staff Attorney  
**Rainey Reitman**, Activism Director  
Electronic Frontier Foundation