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October 18, 2011

Judge William Webster
Chairman
Homeland Security Advisory Council (HSAC)
U.S. Department of Homeland Security
Washington, D.C. 20528

Via E-Mail: HSAC@dhs.gov

RE: Task Force on Secure Communities Draft Report

Dear Judge Webster:

We at the Catholic Legal Immigration Network, Inc. (CLINIC) are grateful for the opportunity to communicate with the Homeland Security Advisory Council (HSAC) regarding the draft report of the Task Force on Secure Communities. We would like to thank HSAC for convening the Task Force and for nominating individuals with such a wide range of perspectives and expertise. CLINIC is comprised of over 200 affiliates who are direct legal service providers for immigrants throughout the country. We would like to provide the perspective of our affiliates on the Secure Communities program and to respond to the Task Force's draft report in a way that addresses our faith-based concerns.

Christ lived the life of the migrant, the stranger, the alien. We are challenged to see Christ in each migrant, and to consider our care for anyone in need equivalent to our care for Him: "For I was a stranger and you welcomed me." (Mt: 25: 35). Pope John Paul II said it best in his Message for World Migration Day, 1996:

Today the illegal migrant comes before us like that "stranger" in whom Jesus asks to be recognized. To welcome him and to show him solidarity is a duty of hospitality and fidelity to Christian identity itself.

CLINIC welcomes some of the recommendations made by the Task Force in its draft report. However, CLINIC believes the reforms could be further expanded to repair the structural and operational difficulties with the Secure Communities program.

Secure Communities continues to place parental rights in jeopardy. CLINIC is pleased that the Task Force recognized the substantial negative community effects created by the deportation of so many people who are charged solely with minor violations or who have no criminal records whatsoever. Yet the Task Force does not address the interaction of the Secure Communities program with state family court systems.

There are approximately 5.5 million children in the U.S. who live with at least one undocumented parent, and most of these children are U.S. citizens. We would like the Task Force to have recognized that parents in immigration detention often face the loss of their parental rights while incarcerated, since they may not receive notice of court proceedings, may not have adequate legal counsel, cannot comply with the terms of family reunification plans mandated by the child welfare system, and are often not even told where their children are. We would like HSAC to propose additional reforms that ensure the protection of parental rights from the moment a detainer is issued by ICE.

Secure Communities continues to endanger crime victims. The fear of being detained or deported, of being taken away from children and from families, makes victims as well as neighbors much less likely to report crimes. As we noted in our August 30 letter, this erosion of trust impacts immigrant women particularly harshly. It renders them helpless in the face of domestic violence and an easier target for human traffickers. Despite ICE Director John Morton’s June 17, 2011 statement that, “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime,” ICE continues removal proceedings against victims.¹ We encourage HSAC to expand on the Task Force’s recommendations as to victims of crime by calling upon Secretary Napolitano to immediately issue guidance to the field and to create other mechanisms to ensure consistent application of this policy.

Secure Communities cannot achieve its stated goals because it is structurally flawed. As we noted in our August 30 letter, and as the Task Force itself acknowledges, there is a serious disconnect between the stated goal of the program – to remove truly dangerous *criminals* – and the operation of the program – to catch anyone *arrested* by local police, regardless of whether a charge is made, the nature of the charge or the existence of a conviction.

We applaud the Task Force for recommending that ICE withhold enforcement action based solely on minor traffic offenses. But the draft report makes no recommendations as to how to address the discretion exercised *by the state and local officers* (rather than by ICE officials). Recommending federal enforcement forbearance *after* fingerprints collected by local police have been shared with ICE is a thoroughly insufficient fix to the program. We would press the Task Force to address more of the tragic repercussions that follow from the unexamined intersection of state criminal procedure and the Secure Communities program.

First, Secure Communities is designed to rely upon a data set accumulated by local police, whose initial actions in the field frame the entire process. Their on-the-ground stop and arrest decisions are insufficiently monitored by DHS for instances of civil rights violations, like pre-textual arrests and placing checkpoints in front of schools and churches in immigrant communities. The Task Force’s recommendation will not impact the underlying reality that local law enforcement is often motivated by priorities that vary greatly from those of ICE.²

Second, the recommendation by the Task Force that ICE refrain from issuing detainers solely on the basis of minor traffic offenses misses a central point: many states are consciously and steadily expanding their lists of non-traffic-related activities categorized as arrestable misdemeanor offenses, explicitly with the goal of “attrition through enforcement” (examples of arrestable offenses include loitering, littering, jaywalking, failing to carry documents, renting someone an apartment, and asking for car rides, to name a few). While the Task Force does

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- A CLINIC affiliate in Washington, D.C. currently represents a spousal abuse victim in Prince George’s County, Maryland who is in removal proceedings because of Secure Communities. This victim is a mother of five children. Early in the morning one Sunday, her eldest daughter called the police when her father physically attacked her mother for spending \$20 on gas. The police officers who responded to the call asked the couple to show identification, and the woman did so in the form of her passport. The officers then placed both husband and wife in handcuffs, telling them that they had to be taken to the station and that it would not take more than an hour and a half. After being fingerprinted, shackled on her hands and feet, and transferred to another facility, the woman was told she would be deported. She could not make a phone call until 5pm to arrange adequate care for her children. She was not again able to communicate with her children until the following Thursday, when she was transferred to ICE custody in Baltimore and released with an ankle bracelet.

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- For example, a CLINIC affiliate in Texas related the following experience at a meeting to discuss Secure Communities held by advocates, local law enforcement, and the ICE field office. The chief detention officer for a Texas county asked advocates to see the issue from his perspective: every morning, he studies the report on how many detention beds are filled in his county. His task, he said, is to fill those beds. While he would *like* to fill those beds only with serious offenders who also have immigration problems, if he has to fill them with minor traffic offenders, he will.

suggest that ICE consider its detainer policy with respect to these non-violent minor offenses, we do not believe that this goes far enough. CLINIC would like ICE to adopt a universal post-conviction detainer policy.

Third, Secure Communities requires that local law enforcement (not just ICE) always be notified when a fingerprint matches ICE's database. Even if ICE chooses not to act in any given instance, state and local police will still learn the immigration status of that individual. Several states (Utah, Indiana, Alabama, Arizona, Georgia, and South Carolina) have expanded the authority of their police officers to detain and otherwise restrict the rights of individuals based solely on immigration status, *regardless of what ICE chooses to do*. If Secure Communities continues to operate so as to automatically notify local law enforcement of the immigration status of *everyone*, even minor traffic offenders, ICE's detainer policy will not protect individuals from *state* laws that, for example, deny bail based solely on one's immigration status. We are encouraged by the Task Force's recommendation that ICE work to tailor the immigration status information it returns to these local agencies and for recognizing that immigration status data is often irrelevant to the primary public safety mission of local criminal law enforcement. However, the Task Force recommends that the local agencies themselves take charge of defining the types of information they consider relevant to their enforcement objectives. We are concerned that this approach could undermine the purpose and potency of the recommendation. We would like HSAC to consider instead a program-wide recommendation focusing on DHS's role in the information-sharing process. HSAC's recommendation on this issue must take seriously the fact that, in certain contexts, sharing immigration status information with local agencies poses a risk to the civil rights of all immigrants.

Finally, the Task Force does not explain how ICE should implement its recommendation that minor traffic offenses never serve as the sole basis for enforcement. If the method is simply steady implementation of prosecutorial discretion consistent with ICE Director John Morton's stated objectives, CLINIC has concerns about how such discretion can be adequately monitored and consistently applied. We welcome the Task Force's suggestion that ICE train field officers and attempt to provide more detailed guidance. But CLINIC affiliates regularly observe ICE field officers cooperating with local law enforcement in detaining individuals who do not match Director Morton's priorities.³

Our affiliates' examples demonstrate the insufficiency of relying on federal prosecutorial discretion as a universal fix for enforcement collaboration between federal and state officers. CLINIC is further concerned that, in the months since the Administration's announcements regarding prosecutorial discretion, the field has not yet

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- A CLINIC affiliate in Virginia served a client whose car was rear-ended and who then called the police. In the course of assisting this traffic accident victim, the officer asked if he had a green card. The individual did not answer. The officer told him to wait at the scene while he called ICE. ICE arrived and detained him *for twelve (12) days*. He was then released with an order of supervision.
- A CLINIC affiliate in Washington, D.C. served a client who was pulled over by a Maryland police officer for driving with a broken windshield, arrested for driving without a license, and transferred into ICE custody. The county police department responsible for the arrest and transfer continues to insist that it does not arrest or report individuals to ICE for minor traffic violations. The affiliate also served two clients who were arrested in another Maryland county, one for driving without a license and one for improperly parking. ICE detained both individuals.
- In a particularly egregious case of ICE collaboration with aggressive state officials, an immigrant woman's abusive partner called the DMV to alert them to the fact that she had (lawfully) obtained a driver's license though she was undocumented. The DMV asked a local police officer to go to her house. This officer told her that there was a problem with her license, and that she would need to go to the DMV to clear it up. The police then arranged for an ICE officer to meet her at the DMV. When she arrived at the DMV to fix the problem with her license, the police asked her questions about her immigration status. When she admitted that she was undocumented, they called the ICE officer into the room and she was detained. Several months later, after regularly reporting in to ICE, an abusive officer scared this domestic violence victim (who had just given birth) by incorrectly telling her (without any legal basis to support his assertion) that she should pack her bags and get a passport for her baby because she would be deported imminently (at the time, her BIA appeal was pending and she could not legally be removed). Sadly, this experience so terrified the woman so that she escaped supervision and is now on the run with her infant.

received any guidance on how it will be implemented. The Task Force's recommendations alone will not be enough to enable the Secure Communities program to meet its stated goals or to support ICE's own enforcement priorities.

Secure Communities continues to lack meaningful oversight or redress for civil rights violations. CLINIC is grateful for the attention paid by the Task Force to these particular issues. However, the Task Force did not provide concrete direction for expanding the jurisdiction of DHS's Office of Civil Rights and Civil Liberties (CRCL) to adequately investigate abuse of the Secure Communities program by state and local officers. CRCL maintains that, absent Title VI authority (which is available to CRCL only when investigating local jurisdictions that receive financial support from DHS), and absent formal agreements with local jurisdictions (as is the case with the 287(g) program), it does not have authority to compel local officers to cooperate with its investigations of complaints arising from Secure Communities. This leaves CRCL with no real ability to redress civil rights violations by local officers acting pursuant to Secure Communities. We would like HSAC to explore additional administrative tools that could facilitate local cooperation in such investigations, including changing the Secure Communities protocols for individual jurisdictions. In her June 14, 2011 memorandum, CRCL Officer Margo Schlanger suggested this as a promising tool for enhancing cooperation.

Furthermore, as our August 30 letter noted, Secure Communities continues to operate in jurisdictions where the Department of Justice has already opened investigations into allegations of racial profiling. Thus, DHS's oversight of the actions of local officers remains completely inadequate. We have considered the Task Force's recommendation on the establishment of independent local panels tasked to review a random sampling of individual cases. However, we maintain that it is more useful to strengthen OCRCL's ability to redress complaints, given the likely difficulty of empanelling community members who would be wholly objective and would be willing to take action against officers and enforcement agencies in their communities.

CLINIC urges HSAC to expand on the Task Force's draft report and to consider making the following additional recommendations to Secretary Napolitano:

- The Secretary should institute a post-conviction detainer policy, preventing the issuance of any detainers solely on the basis of arrest.
- The Secretary must immediately issue guidance to field officers and representatives about the use of prosecutorial discretion, particularly with respect to crime victims.
- The Secretary must take steps to bolster the investigative authority of OCRCL in addressing complaints made against any local officer, when that officer's behavior results in the issuance of a detainer.
- The Secretary should provide tangible legal safeguards for parental rights and obligations from the moment a detainer is issued.
- The Secure Communities Program should be frozen until these changes are made.

We thank you very much for the opportunity to place these concerns and recommendations before HSAC. We eagerly await your response.

Sincerely,



Maria M. Odom
Executive Director