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ICE to Expand New Immigration Enforcement Program in Local Jails

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US Immigration and Customs Enforcement (ICE) plans to dramatically expand an immigration enforcement program that uses biometric information to check the immigration status of all individuals booked at state and local jails.

Known as Secure Communities, ICE expects to make the program available to each of the nation's 1,200 state and federal prisons and 3,100 local jails by the end of 2012.

ICE officials believe the program's wider coverage will make it easier for the agency to apprehend and deport criminal aliens, meaning both unauthorized immigrants and legal immigrants who have committed crimes rendering them deportable. The expansion will target specific geographic areas with high levels of criminal activity, including communities along the Southwest border.

ICE first proposed the Secure Communities program in March 2008, after Congress appropriated additional funding for the agency to develop a comprehensive plan to remove criminal aliens.

The program was launched in October 2008 in Houston, Texas. Though the program is voluntary, since 2008, the agency has established biometric identification technology at 50 sites, serving approximately 2,100 booking locations in eight states. Participating cities include Dallas, Miami, Phoenix, and Boston. In May 2009, the Texas Department of Criminal Justice became the first statewide prison system to enroll in Secure Communities.

Here's how the program works. First, local correctional officers scan the fingerprints of a person booked at the jail after he has been arrested for a state or local offense. Next, using enhanced technology, the scanned fingerprints are checked against a number of government databases that include terrorist watch lists, criminal databases, and lists of immigration absconders.

If the check reveals that the person is an unauthorized immigrant, or a legal immigrant who previously committed a crime that may make him deportable, the Secure Communities program sends an automatic response to the local law enforcement agency and to the local ICE office.

ICE can then decide whether to issue a "detainer" on the individual, which directs the local jail or prison to hold the person until ICE takes over custody. After moving the person to federal immigration custody, ICE may initiate removal proceedings.

ICE estimates that between October 2008 and February 2009, its biometric sites processed 117,000 fingerprint submissions, which resulted in the identification of approximately 12,000 "criminal aliens." Of those, 862 were "Level 1" offenders, those convicted of major drug offenses or violent crimes.

In ICE's three-tiered approach, "Level 1" offenders are the highest priority as ICE considers them the greatest risk to public safety. "Level 2" offenders include those convicted of minor drug offenses and crimes such as burglary, larceny, or money laundering; "Level 3" offenders have been convicted of other crimes.

To support the expansion, Homeland Security Secretary Janet Napolitano has requested a 30 percent increase in the Secure Communities program budget in the agency's proposed budget for fiscal year (FY) 2010. In FY 2009, ICE received \$150 million for the program.

Secure Communities has not escaped controversy. Government officials argue that the program eliminates the risk of ethnic or racial profiling because it makes screening for immigration violations part of the routine booking and background check process at local jails.

Critics have said that Secure Communities relies on flawed government databases that could potentially lead ICE to detain US citizens or legal immigrants who are not deportable. Immigrant advocacy organizations are also concerned that screening for immigration-status violators in local jails may cause police officers to engage in ethnic and racial profiling when making arrests.

Immigrant advocates and lawyers have said it is uncertain whether ICE will actually target the removal of "Level 1" offenders. The existing guidelines for Secure Communities do not explain how ICE will prioritize the removal of "Level 1" offenders over the removal of other individuals whose fingerprints are also run through the Secure Communities biometrics system but who may have been arrested for minor crimes or violations.

This criticism follows similar concerns about other ICE programs. A recent Migration Policy Institute study on ICE's Fugitive Operations Program — designed to arrest and deport individuals who had ignored deportation orders and posed dangers to the community — found that a large number of the immigrants arrested through the program were "ordinary immigration status violators" rather than immigrants with criminal convictions.

Analysts have also noted that it is unclear how the expansion of Secure Communities will affect ICE's section 287(g) partnerships. Currently, the 287(g) program allows ICE to train state and local law enforcement agents to enforce certain aspects of immigration law. Given that many of the 287(g) agreements that operate in jails already allow local correctional officers to check the immigration status of prison inmates, it is possible that Secure Communities will either make redundant or subsume those agreements.

It also remains to be seen whether an expanded Secure Communities will place a heavy financial burden on states and localities that detain unauthorized immigrants screened through the program.

Currently, through the State Criminal Alien Assistance Program (SCAAP), states and localities may request federal reimbursement for part of the detention costs associated with incarcerating unauthorized immigrants. However, the Obama administration's proposed FY 2010 budget recommends eliminating SCAAP reimbursements.

- Read the **ICE fact sheet** on Secure Communities.
- Read the written **congressional testimony** of David Venturella, director of ICE's Secure Communities program.
- Read MPI's report ***Collateral Damage: An Examination of ICE's Fugitive Operations Program***.

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Attorney General Reverses Decision on Ineffective Legal Counsel

Attorney General Eric Holder reversed a Bush administration decision on June 3 that prevented immigrants who had been previously ordered deported from reopening deportation proceedings due to ineffective legal counsel.

Immigrant advocates and legal scholars heavily criticized the decision, which then Attorney General Michael B. Mukasey issued in January during the final weeks of the Bush administration. In their view, Mukasey's decision abolished a long-established right to effective counsel in immigration proceedings and greatly limited the ability of immigrants to appeal deportation orders.

Prior to the Mukasey decision, in *Matter of Enrique Salas Compean*, courts generally permitted immigrants to reopen deportation proceedings if they could show that the action or inaction of their lawyers had negatively affected their case.

However, Mukasey found that immigrants did not have a constitutional right to effective assistance of legal counsel in deportation proceedings, since they are considered civil, not criminal, in nature.

Holder stated that the Mukasey decision did not "thoroughly consider" all of the issues involved, and that it ignored a well-established legal framework for considering whether immigration cases could be reopened because of ineffective counsel.

The Holder decision asks immigration judges to use the pre-*Compean* rules for considering future motions to reopen based on ineffective counsel.

- Read **Eric Holder's new decision** in *Matter of Compean*.
- Read **Michael B. Mukasey's previous decision** in *Matter of Compean*.
- Read more about the *Matter of Compean* case in the **January 2009 Policy Beat**.

Policy Beat in Brief

H-2A Rules. The Department of Labor (DOL) has suspended until March 2010 a controversial rule issued during the final month of Bush administration that made it easier for employers to petition for temporary agricultural workers (H-2A visa holders). Farm labor advocates heavily criticized the December 2008 rule, saying it would lead to employer abuse and lower worker wages.

- Read the **DOL announcement** suspending the December 2008 rule.
- Read more about H-2A visas in the **December 2008 Policy Beat**.

Decline in Border Arrests. US Customs and Border Protection (CBP) arrested 27 percent fewer people attempting to illegally enter the country in the last six months than during the same period a year earlier. Between October 2008 and May 2009, CBP arrested 354,959 people, down from 486,735 immigrants between October 2007 and May 2008. Immigration experts attribute the decrease to increased border security along the Southwest border and to the US recession.

Read the **testimony of CBP Chief David Aguilar** before the Senate Judiciary Committee. **AgJobs Bill.** Senator Dianne Feinstein (D-CA) and Representative Howard Berman (D-CA) reintroduced a bill on May 14 that would create a path to lawful permanent residence for unauthorized immigrants working in agriculture. If passed, the Agricultural Jobs Opportunities,

Benefits and Security Act (AgJobs) bill would allow those who worked in the agriculture industry for at least 150 days or for the two years prior to December 31, 2008, to apply for temporary residence. Workers with temporary residence would be able to apply for lawful permanent residence after three years. The bill is similar to the AgJobs bills introduced in 2003, 2005, and 2007.

- Read the [new AgJobs bill](#).
- Read more about the previously introduced AgJobs bill in the [January 2007 Policy Beat](#).

Hearing on Immigration Benefits for Same-Sex Partners. Senator Patrick Leahy (D-VT), the current chair of the Senate judiciary committee, held hearings on a bill on June 3 that would allow US citizens and permanent residents to petition for immigration benefits for same-sex domestic partners. Proponents of the Uniting American Families Act emphasized that current immigration law does not grant parity to same-sex partners as other fields of law do. Opponents argued that the bill violates the provisions of the Defense of Marriage Act of 1996.

- Read the [Uniting American Families Act](#).

Legal Migration from Cuba. The Obama administration has asked the Cuban government to reconsider its policy of not allowing Cubans to legally immigrate to the United States. Under the terms of the Cuban Adjustment Act, Cubans who are paroled into the United States after attempting to enter the country illegally are eligible to apply for lawful permanent residence after they have lived in the United States for one year. The last time the United States and Cuba discussed legal migration was in 2003.

- Read more about President Obama's Cuba policy in the [May 2009 Policy Beat](#).

Western Hemisphere Travel Initiative Rule for US Citizens. All US citizens crossing into the country from Mexico or Canada must present a valid US passport or other "enhanced" identification document as of June 1, 2009. The rule is part of the Western Hemisphere Travel Initiative, a set of regulations that implement the Intelligence Reform and Terrorist Prevention Act of 2004. Border Patrol officers will also accept valid "trusted traveler" cards issued to individuals who regularly cross the US border, as well as enhanced driver's licenses, which are available for residents in New York, Vermont, Michigan, and Washington.

- Read the [new rules](#) for land-border crossings.
- Read more about the Western Hemisphere Travel Initiative in the [May 2005 Policy Beat](#).

E-Verify Delay for Federal Contractors. The Department of Homeland Security (DHS) has delayed for the fourth time a new rule requiring all federal contractors and subcontractors to enroll in the federal E-Verify program. Federal contractors and subcontractors will not have to enroll in the program until September 8, 2009. E-Verify enables employers to check new hires in an online database to see if they are authorized to work. Over 117,000 US employers are currently enrolled in the program.

- Read the [USCIS press release](#) announcing the delay.
- Read more about E-Verify in [The Basics of E-Verify, the US Employer Verification System](#) and in the [January 2009 Policy Beat](#).

DHS Grants for Border States. DHS will distribute \$60 million in border security grants to state and local law enforcement agencies in 13 border states and Puerto Rico. Through the program,

known as Operation Stonegarden, law enforcement agencies receive funding to increase the number of law enforcement agents stationed on the border or purchase enhanced technology for border security. In FY 2010, 39 agencies will receive grants through the program, 24 more agencies than received grants in FY 2008.

- Read the [DHS press release](#) on Operation Stonegarden.

DHS Change in Policy for Widows. DHS will grant work authorization and protection against deportation to widows and widowers of US citizens who would otherwise face deportation following the deaths of their spouses. Under current immigration law, if a widow or widower has a pending application for legal status but has been married to the spouse for less than two years, the death of the spouse terminates the immigration application.

- Read the [DHS press release](#) on the new widow policy.

State and Local Policy Beat in Brief:

Public Assistance for Immigrants in New York. New York state does not have to provide the same level of public assistance to elderly and disabled legal immigrants that it provides to similarly situated US citizens, according to a decision by New York's highest court that overturned the decisions of two lower courts. *Khrapunskiy v. Doar* dealt with eligibility for Supplemental Security Income (SSI) payments. The 1996 welfare reform law amended the rules governing SSI so that noncitizens could only receive SSI benefits for a maximum of seven years. The appeals court found that New York had no obligation to make up for the federal government's decision not to provide public benefits to immigrants.

- Read the lower court's decision in [*Khrapunskiy v. Doar*](#).
- Visit the MPI Data Hub for the latest stats on immigrants in [New York](#) and for the [State Responses to Immigration](#) data tool.

ID Cards for Immigrants in Oakland, California. The city of Oakland, California, will make new identification cards available to all city residents regardless of immigration status under a plan the Oakland City Council has passed. Proponents of the program hope the ID card will allow unauthorized immigrants to better access city services and make them more likely to report crimes. While the details of the card program have not been finalized, city officials anticipate that the card might serve as a bus pass and debit card, as well as a form of identification. The plan is modeled after a similar program in San Francisco.

- Read more about New Haven's ID cards for unauthorized immigrants in the [August 2007 Policy Beat](#) and the [August 2008 Policy Beat](#).
- Visit the MPI Data Hub for the latest stats on immigrants in [California](#) and for the [State Responses to Immigration](#) data tool.

Immigration Law in Valley Park, Missouri. A federal appeals court has upheld a decision that permits Valley Park, Missouri, to enact a law prohibiting the hiring of unauthorized immigrants. Valley Park ordinance 1736, which the city enacted on August 9, 2007, requires all businesses applying for business licenses in Valley Park to attest that they did not knowingly hire unauthorized immigrants. The judge who issued the initial decision found that federal immigration law did not preempt the Valley Park ordinance.

- Read the [Eighth Circuit Court's decision](#).

- Read more about the Valley Park law in the [February 2008 Policy Beat](#).
- Visit the MPI Data Hub for the latest stats on immigrants in [Missouri](#) and for the [State Responses to Immigration](#) data tool.