



The American Civil Liberties Union

Written Statement
For a Hearing on

“Is Secure Communities Keeping Our Communities Secure?”

**Submitted to the House Judiciary Subcommittee
on Immigration Policy and Enforcement**

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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 Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. The Washington Legislative Office (WLO) represents the interests of the ACLU before Congress and the Executive Branch of the federal government. The ACLU submits this statement to express its concerns about the daily harms caused by Secure Communities ("S-Comm") to U.S. citizens, lawful permanent residents, temporary admitted visitors ranging from students to business executives, and undocumented persons who often have mixed status families with U.S. citizen children.

The Departments of Justice (DOJ) and Homeland Security (DHS) jointly operate S-Comm. Under S-Comm, the FBI, which DOJ oversees, sends the fingerprints of every arrested person – which it receives from states and localities for criminal purposes – to DHS for civil immigration enforcement purposes. S-Comm causes localities to expend their already-strained law enforcement resources on detaining low-level offenders who would otherwise be released; encourages racial profiling in jurisdictions that are being investigated by DOJ for discriminatory police practices; and recklessly endangers the fundamental prerequisite to effective policing: community trust. The Governors of Illinois, New York, and Massachusetts have asked unsuccessfully for DHS to end their states' involvement in S-Comm, citing the public safety problems S-Comm presents for state and local law enforcement agencies. S-Comm is under review by both the Government Accountability Office and the DHS Office of Inspector General to examine programmatic failings and official misrepresentations to members of Congress and governors.

In short, S-Comm is a failed program, with extensive statistical and qualitative documentation of its ill effects and well-founded state and local resistance to its intrusive dictates. It must be terminated immediately.

II. S-Comm fails to meet its own stated goals and has wasted taxpayers' money.

S-Comm originated in Congress's instructions attached to the 2008 budget, requiring that DHS "improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment, and who may be deportable, and remove them." Congress requested "a

methodology U.S. Immigration and Customs Enforcement will use to identify and prioritize for removal criminal aliens *convicted of violent crimes*.”¹ In 2010, the annual House Homeland Security Appropriations report re-emphasized that ICE’s priority should be the removal of aliens “convicted of serious crimes.”² When S-Comm was originally implemented, it was to target “the worst of the worst,”³ and the ICE brochure on S-Comm continues to asserts that ICE focuses its efforts on “the most dangerous and violent offenders.”⁴

DHS’s rhetoric, however, bears no relation to the realities of S-Comm’s implementation. In May 2011, Illinois Governor Pat Quinn officially sought to withdraw his state’s participation in S-Comm “[d]ue to the conflict between the stated purpose . . . and the implementation of the program.” He noted that “by ICE’s own measure, less than 20% of those who have been deported from Illinois under the program have ever been convicted of a serious crime. . . . [M]ore than 30% of those deported . . . have never been convicted of *any* crime, much less a serious one.”⁵

These statistics are replicated around the country. As of October 31, 2011, 27% of those removed or returned under S-Comm were, in ICE’s terms, non-criminals—that is, they had no record of any criminal conviction. An additional 31% had been convicted only of Level 3 (misdemeanor) offenses. These numbers are not appreciably improving. In FY 2011, the combined percentage of non-criminal and Level 3 removals or returns was still 55%, with the non-criminal portion at 26%.⁶ Despite DHS Secretary Napolitano’s October 5, 2011, speech asserting that S-Comm is “track[ing] down criminals and gang members on our streets,” DHS has not adhered to Congress’s requirement that DHS prioritize violent convicted criminals.

¹ Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 110th Cong. (2008) (emphasis added).

² H.R. REP. 111-157, at 8 (2010), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr157.111.pdf (“Since 2007, the Committee has emphasized how ICE should have no higher immigration enforcement priority than deporting those who have proved their intent to do harm and have been convicted of serious crimes.”).

³ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE FISCAL YEAR 2008 ANNUAL REPORT 5 (2008).

⁴ U.S. Immigration and Customs Enforcement, “Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens” (Jan. 2010), available at www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf

⁵ Letter from Governor Quinn to ICE’s Marc Rapp (May 4, 2011), available at <http://uncoverthetruth.org/wp-content/uploads/2011-05/interminate.pdf>

⁶ U.S. Immigration and Customs Enforcement, Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through September 30, 2011, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf

S-Comm has consumed \$750 million in Congressional funding over the past four years.⁷ The administration has asked for \$184 million in funding for FY 2012, an increase of 35% over the prior year. Yet the program continues to operate contrary to Congressional intent.

III. S-Comm promotes racial profiling.

Under S-Comm, any time an individual is arrested and booked into a local jail for any reason, his or her fingerprints are electronically run through ICE's database. The fingerprints allow ICE to identify people in state or local custody and to initiate deportation proceedings against them if ICE believes they may be removable. 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 would be brought to ICE's attention once they were booked into jail, engaged in racial profiling and pretextual arrests. The report concluded that there was a "marked rise in low-level arrests of Hispanics."⁸

Massachusetts Governor Deval Patrick highlighted racial profiling in explaining his opposition to S-Comm: while "[n]either the greater risk of ethnic profiling nor the overbreadth in impact will concern anyone who sees the immigration debate in abstract terms[,] . . . for someone who has been exposed to racial profiling or has comforted the citizen child of an undocumented mother coping with the fear of family separation, it is hard to be quite so detached."⁹ Research has established that "Latinos comprise 93% of individuals arrested through Secure Communities though they only comprise 77% of the undocumented population in the United States."¹⁰ Civil rights groups across the country have criticized S-Comm on this basis for encouraging pretextual arrests and racial profiling of immigrants.

Under S-Comm, ICE receives notification of a person's whereabouts at booking—before that person has been convicted of any wrongdoing, and in some cases even before the person has been formally charged. S-Comm, therefore, creates an incentive for state and local police to target immigrants for arrest for minor offenses—including, for example, driving with a broken taillight or driving with an expired tag—purely in order to bring them into the jail. Police

⁷ 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>

⁸ Trevor Gardner II and Aarti Kohli, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, "The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program," September 2009, 1, 5, 8, available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf

⁹ Brian Fraga, "Governor responds to Hodgson criticisms on immigration program." SouthCoast Today.com (June 11, 2011).

¹⁰ Aarti Kohli, Peter Markowitz, and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics And Due Process*. 5-6 (2011), available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

understand that even if the arrest is baseless or if the person is later cleared of wrongdoing, S-Comm will bring that person to ICE's immediate attention for potential deportation even if local officials elect not to charge or prosecute. By targeting non-criminals, misdemeanants, and persons arrested but not convicted of criminal charges, S-Comm sends a clear message to local police that ICE will turn a blind eye to how arrestees came to be fingerprinted. Not surprisingly, then, some jurisdictions with a history of racially-motivated police misconduct have abnormally high numbers of non-criminals and low-level offenders among the people processed and removed through S-Comm.¹¹

Despite DHS's claim that "racial and/or ethnic profiling . . . is not permitted and may result in the suspension of the local jurisdiction,"¹² DHS has deployed S-Comm in jurisdictions around the country where local law enforcement agencies have been or are being investigated by DOJ's Civil Rights Division for discriminatory policing targeting Latinos or other people of color. For example, DHS continues to operate S-Comm in the New Orleans area even though the Civil Rights Division in spring 2011 announced, following a comprehensive investigation, that the New Orleans Police Department (NOPD) had engaged in patterns of misconduct that violate the Constitution and federal statutes. The DOJ report documented multiple instances of Latinos being stopped by NOPD officers for unknown reasons and then questioned about immigration status. Members of the New Orleans Latino community told DOJ that Latino drivers are pulled over at a higher rate than other drivers for minor traffic violations because officers assume from physical appearance that they are undocumented and therefore driving without a valid license.¹³ The DOJ report cites several specific incidents when Latino workers called to request police assistance after being victimized by crime, but were then questioned by NOPD officers about their immigration status and offered no support in pursuing a criminal case.

Yet DHS has continued to operate S-Comm in greater New Orleans, blithely ignoring DOJ findings of biased policing. In this context, it is unsurprising that in Orleans Parish, S-Comm's consequences have disproportionately fallen on non-criminals and people with minor convictions: 61% of all S-Comm removals have been non-criminals, and another 20% have been

¹¹ Nationwide, just over a quarter (26%) of all those deported under S-Comm from 2008 to 2010 had no criminal convictions. In Maricopa County, Arizona, however, more than half (54%) of all the people deported under S-Comm were non-criminals. And in Travis County, Texas, that percentage was 82%. NDLOJ, Briefing Guide to Secure Communities, 3, available at <http://uncoverthetruth.org/wp-content/uploads/Secure-Communities-Fact-Sheet-Briefing-guide-8-2-2010-Production.pdf.pdf>

¹² DHS, Secure Communities Standard Operating Procedures: Distributed for Adoption by Participating County and Local Law Enforcement Agencies (undated), 3, available at http://epic.org/privacy/secure_communities/securecommunitiesops93009.pdf

¹³ United States Department of Justice, "Investigation of the New Orleans Police Department," Mar. 16, 2011, 63, available at http://www.justice.gov/crt/about/spl/nopd_report.pdf

convicted of misdemeanors.¹⁴ This combined rate of 81% far exceeds the national average, making New Orleans one of the worst-performing jurisdictions in the country when measured against S-Comm's Congressionally-mandated focus on the most dangerous and violent convicted criminals. DHS has taken no remedial steps regarding S-Comm in New Orleans in the wake of DOJ's report.

Similarly, in early 2011, DHS chose to activate S-Comm in Suffolk County, New York, even though DOJ initiated an investigation of the Suffolk County Police Department (SCPD) in 2009 to address community concerns about SCPD's policing practices with the Latino community. Many Latino crime *victims* in Suffolk County described how SCPD officers demanded to know their immigration status, rather than addressing the crimes they had come to report. In September 2011, DOJ sent a formal letter to SCPD, finding that SCPD's policy governing the collection and use of information regarding the immigration status of witnesses, victims, and suspects is subject to abuse by officers. DOJ also recommended that SCPD revise the use of roadblocks in Latino communities and prohibit identity checks and requests for citizenship documentation.¹⁵

New Orleans and Suffolk are just two of the many jurisdictions with records of discriminatory policing where DHS has persisted in operating S-Comm. Other jurisdictions include Maricopa County, Arizona (sued by DOJ); Alamance County, North Carolina (under DOJ investigation); Puerto Rico (extensive DOJ investigation followed by findings released in September 2011); and Alabama (sued by DOJ for passing HB 56 which, inter alia, mandates verification of immigration status by Alabama law enforcement).

Incentives for racial profiling of perceived immigrants come in many forms; two examples show how S-Comm abets this unconstitutional practice:

- A former Sheriff's deputy in McHenry County, Illinois, an S-Comm jurisdiction, recounted to the *Chicago Tribune* that, "In 2006, the department began posting monthly lists praising deputies with high ticket and arrest totals...prompting younger deputies to compete. Seipler said he was told in 2007 by one deputy that a place to make easy traffic arrests was a predominantly Hispanic apartment complex where, presumably, some residents were illegal immigrants who couldn't get driver's licenses...That didn't seem to square with the minority population of McHenry County, where the state says 7 percent

¹⁴ U.S. Immigration and Customs Enforcement, Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through September 30, 2011, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf

¹⁵ See Suffolk County Police Department Technical Assistance Letter (Sept. 13, 2011), available at http://www.justice.gov/crt/about/spl/documents/suffolkPD_TA_9-13-11.pdf

of drivers are Hispanic...In those officers' zeal to snag unlicensed drivers, Seipler said, he feared they were violating the rights of licensed, law-abiding Hispanic citizens."¹⁶

- 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 are of Hispanic heritage. One is 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 the centerline, and "side registration light" out. No drivers were issued traffic citations, but all 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 six of them.

These arrests took place in a context where WVSP's Martinsburg detachment, which made the stops, has been documented to be twice as likely to stop Hispanic drivers as Caucasians.¹⁷ One arresting officer played Mexican music in his police car at the time. When the ACLU affiliates of West Virginia and Pennsylvania visited the Lobos arrest site six months later, one of the attorneys discovered that there was no stop sign where a state trooper said the infraction took place. The trooper then changed his statement in the deportation proceedings from saying that a stop sign was ignored to saying that there was a failure to stop at an intersection.

IV. S-Comm endangers crime victims and witnesses, including domestic violence survivors.

The law enforcement leaders who know best—police chiefs and sheriffs from diverse communities across the country—have spoken out against S-Comm's effects. As but one example, Los Angeles Police Department chief Charlie Beck said recently that S-Comm "tends to cause a divide . . . [T]here's a lack of trust, a lack of reporting, a lack of cooperation with

¹⁶ Joe Mahr and Robert McCoppin, "Study suggests racial mislabeling skews McHenry County sheriff data Tribune analysis suggests sheriff's deputies underreported Hispanics in traffic stops." *Chicago Tribune* (Mar. 26, 2011).

¹⁷ See West Virginia Division of Justice and Community Services, WV Traffic Stop Study: 2009 Final Report, "Search Disparity Indices and Ratios for State Police Detachments," available at http://www.djcs.wv.gov/SAC/Documents/WVSAC_Traffic_statestopratios09.pdf

police. You know, I cannot prosecute crimes without witnesses.”¹⁸ New York Governor Andrew Cuomo, who formally sought to end his state’s participation on June 1, 2011, stated that S-Comm was “compromising public safety by deterring witnesses to crime and others from working with law enforcement.” Governor Cuomo’s decision was endorsed by the State Association of Chiefs of Police, the State Police Benevolent Association, and the State Sheriffs Association.¹⁹

In jurisdictions across the country, S-Comm has driven a wedge between local law enforcement and the communities they serve. Witnesses are afraid to come forward and report crimes or assist in investigations; crime victims are afraid to speak out. Perhaps the most damaging impact has fallen on domestic violence survivors. In many jurisdictions when police respond to a domestic violence call, their policy or practice is to arrest everyone on the scene—particularly where both parties have injuries, or where police cannot immediately determine who the primary aggressor is. As a result, immigrant victims 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 an extended period, 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’s flaws. ICE’s statement that agents and trial attorneys should exercise discretion not to deport crime victims and witnesses is cold comfort for those victims and witnesses who have already been deported, and does 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 stories illustrate the problem and the inadequacy of leaving a solution to ICE’s discretion:

- 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

¹⁸Leslie Berestein Rojas, “LAPD chief on Secure Communities: ‘It tends to cause a divide’.” *Multiamerican* (June 23, 2011), available at <http://multiamerican.scpr.org/2011/06/lapd-chief-on-secure-communities-it-tends-to-cause-a-divide/>.

¹⁹ See generally America’s Voice, Public Safety on ICE: How Do You Police a Community That Won’t Talk to You? (Aug. 2011), available at http://amvoice.3cdn.net/669182cf0231bbf4d6_kdm6bnsbj.pdf

California drew attention to her case. “I still don’t understand why I was arrested, but had I realized I could be arrested after calling 911 for help and deported, I never would have called,” she said. As reported in the *Los Angeles Times*, “[b]ecause police often arrest both parties in domestic disputes, her fingerprints were submitted to immigration officials; despite having no criminal record, she was flagged for deportation proceedings.”²⁰

- 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.²¹
- 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. While Hun was in ICE custody, her one-year-old child was placed in foster care.²²
- The 17-year-old sister of Maria Perez-Rivera from Lodi, California, called police after seeing Maria “with bruises and scratches on her face and body” caused by a repeat abuser. Although never charged with a crime, Maria was fingerprinted by police, identified by S-Comm, and deported two days later. Although Maria didn’t want her sister to call the police, her sister did so because she feared Maria “might have ended up in the hospital, or gotten killed.” After Maria’s arrest, her 2-year-old daughter Kimberly and her 3-month-old son Anthony were left in their grandmother’s care; their grandmother was forced to quit her job to look after the children. The *Sacramento Bee* reported that 2-year-old Kimberly “[e]very day . . . peeks around her apartment complex for her mom. If she hears police sirens, she runs inside.”²³
- Norma from San Francisco called the police for protection after a domestic violence incident. She was “found . . . sobbing, with a swollen lower lip.” As the *Los Angeles Times* reported, “[m]ore than once, Norma recalls, she yearned to dial 911 when her

²⁰ Lee Romney & Paloma Esquivel, *Noncriminals swept up in federal deportation program*, L.A. TIMES (Apr. 25, 2011), available at <http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425>

²¹ 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

²² *Id.*

²³ Stephen Magagnini, *Deported Mexicans leave two small kids in Lodi*, *Sacramento Bee* (Nov. 2, 2010).

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 paid a steep price.”²⁴ The 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.

V. S-Comm’s enforcement dragnet is ensnaring U.S. citizens.

The Warren Institute’s October 2011 report, *Secure Communities by the Numbers*, details the numerical toll that S-Comm has exacted on all who enter the immigration enforcement system as a result of its operations. The report found that S-Comm has resulted in the detention of a significant number of U.S. citizens. In addition, 39 percent of individuals apprehended through Secure Communities have a U.S. citizen spouse or child, “meaning that approximately 88,000 families with U.S. citizen members have been impacted by Secure Communities.”²⁵

Antonio Montejano was born in Los Angeles in 1971. On November 5, 2011, he and his family were at Sears in Santa Monica. They purchased several hundred dollars worth of merchandise and were continuing to shop when one of Antonio’s children asked if he could buy a \$10 bottle of perfume. Antonio agreed and placed the bottle in a bag of purchased merchandise, intending to pay for it on departure. His young children also took some chocolate candies in the store and began eating them. When Antonio saw this, he told his kids they shouldn’t have indulged and said he would have to pay for the candies. He put the wrappers in his pocket, but forgot about them when he checked out, at which time the store clerk found the perfume. Antonio immediately realized his mistake and offered unsuccessfully to pay for the items.

Arrested for petty theft, Antonio was informed by the police that he would be taken to the station for fingerprinting and then released in a few hours. But because of S-Comm, ICE issued a detainer on Antonio. As a result, he spent two days in the Santa Monica police station before pleading guilty to a civil infraction, a violation that does not even rise to a misdemeanor. He was then transferred to Los Angeles County custody. When Antonio was booked into the county jail, he was asked by a sheriff’s department clerk whether he was a U.S. citizen. He told the clerk that he was. Nevertheless, Antonio remained in custody despite repeatedly attesting to his citizenship.

²⁴ *Id.*

²⁵ Kohli, Markowitz, and Chavez, *supra*, 2.

Antonio was held for two days in the Inmate Reception Center, which is only a booking facility and not meant to house inmates. The facility does not have beds, only chairs. He was not provided any blankets and was forced to sleep on the floor. Antonio was finally released once the ACLU of Southern California intervened to get his ICE detainer lifted. He was freed after four days of unlawful detention.

S-Comm has led to a state of affairs in which the detention of a person born in the United States is an unexceptional occurrence. That is unacceptable. U.S. citizens should never spend time in ICE custody.

VI. DHS's proposed reforms have not been implemented and do not address S-Comm's inherent flaws.

Just as the promise of *post facto* discretion by DHS is inadequate to address the fear inspired by S-Comm, DHS's other purported "fixes" are illusory. Consider ICE's actions with respect to racial profiling. After more than a year of DHS denials that S-Comm was susceptible to racial profiling, ICE Director John Morton testified to Congress in March 2011: "I totally recognize the concern on racial profiling. We are instituting a whole series of analytical steps working with the Civil Rights Division [of DOJ], the OCRCL [Office for Civil Rights and Civil Liberties] at DHS, inviting them to literally be part of the analysis with us so that we can root out and identify any jurisdictions that are misusing Secure Communities."²⁶ Three months later, ICE announced that "[f]our times a year, beginning in June 2011, CRCL and ICE will examine Secure Communities data to identify law enforcement agencies that might be engaged in improper police practices."

No such data review has yet taken place, leaving it to nongovernmental analysts to investigate S-Comm's impact on people of color.²⁷ Furthermore, even if DHS does belatedly begin reviewing the data for every S-Comm jurisdiction (1,729 and counting), it is unclear what remedial action DHS would take when faced with evidence of racial profiling. OCRCL has no authority to investigate racial profiling by local law enforcement agencies. In addition, despite Director Morton's mention of DOJ's Civil Rights Division, DOJ has had no involvement in S-Comm oversight to date—a surprising gap given the FBI's central role in transmitting S-Comm fingerprints to DHS, in contravention of the Bureau's agreements with the states that own the fingerprints.²⁸ Moreover, the new training module developed by OCRCL for state and local law

²⁶ House Appropriations Subcommittee on Homeland Security, "Hearing on the Immigration and Customs Enforcement Budget." (Mar. 11, 2011).

²⁷ See Kohli, Markowitz, and Chavez, *supra*.

²⁸ See ACLU, "Sharing Prints: DOJ and FBI Must Take Responsibility for S-Comm Failures, Too." (Nov. 21, 2011), available at <http://www.aclu.org/blog/immigrants-rights-racial-justice/sharing-prints-doj-and-fbi-must-take-responsibility-s-comm>

enforcement agencies is optional, thereby making it highly unlikely that those local agencies with histories of racial profiling will ever participate. ICE's promised oversight thus remains thoroughly illusory five months after its announcement, and S-Comm's scale and structure make it impossible to place confidence in OCRCL's ability to detect, much less prevent, the program's abuses.

VII. Conclusion

By every metric, S-Comm is an irreparably flawed and damaging program. Lacking meaningful oversight and adrift from its congressionally-mandated priorities, S-Comm has led to confrontations with governors, county commissioners, city council members, law enforcement leaders, and victims' advocates who know better than ICE how to promote public safety in their communities. DHS's heavy-handed implementation of S-Comm has deeply damaged the cooperation that is essential to smart policing at a time when violent crime rates, across the country, are at the lowest levels in nearly 40 years.²⁹

It is incumbent on Congress to rein in this abusive and costly program, which has caused rampant constitutional and humanitarian violations. To rebuild damaged community trust and end the incentives for racial profiling, Congress must defund and end S-Comm.

²⁹ Richard A. Oppel, Jr., "Steady Decline in Major Crime Baffles Experts." *New York Times* (May 23, 2011).