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Are American Communities Becoming More Secure?

Evaluating the Secure Communities Program

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Are American Communities Becoming More Secure?
Evaluating the Secure Communities Program

by

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Dedication

This thesis is dedicated to my mother, María "Chayo" Pérez and my father Pedro Villagrán Sr. Mom, you have instilled in me the values of love for one's family, compassion for others, and an everlasting appreciation for the struggles of *los del otro lado*. Dad, although your departure was too soon and unjust in nature, every stroke of the pen is with you in mind and every triumph is through your grace. Thank you both very much.

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Abstract

Are American Communities Becoming More Secure?
Evaluating the Secure Communities Program

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This thesis examines the federal government's progression in implementing the Secure Communities program. The Secure Communities program was initiated by the Department of Homeland Security (DHS) in 2008 as a pilot program in only fourteen jurisdictions nation-wide. As of the writing of this thesis, four years following the initiation of the program, S-Comm. has been implemented in over 1700 jurisdictions nation-wide and it is set to be implemented in all local jurisdictions nationally by the end of 2013 (Immigration and Customs Enforcement, 2012). Although local law enforcement agencies had long shared the fingerprints of those they arrested with the FBI, the FBI now forwards this information to the DHS through S-Comm. who then checks the fingerprints against the Automated Biometric Identification System known as IDENT—a fingerprint database containing information on over 91 million individuals, including travelers, applicants for immigration benefits, and immigrants who have previously violated immigration laws. ICE then supposedly reviews their records to see

if the person arrested is deportable. If they believe they are, or want to further interrogate them, ICE will issue a detainer. The detainer is a request to the local police to inform federal immigration authorities when the arrestee will be released from custody and to hold the individual for up to two days for transfer to ICE (The Chief Justice, 2011). This process is considered to be the most advanced form of file sharing between local authorities and federal immigration authorities yet. The focus of this endeavor is to evaluate whether this program has been effective in doing as its title maintains. If this program is one that the American people, documented or not, have to endure then it is important that we ask: has Secure Communities made American communities safer? Recent data collected on the program, reports of mass opposition to the initiative by local law enforcement officials throughout the country, and numerous personal accounts of discriminatory harassment of mostly Spanish-speaking Americans by federal immigration agents and state and local law enforcement officials participating in Secure Communities collectively demonstrate that this program has failed in making American communities more secure.

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Chapter 1: Localizing Immigration Enforcement

Introduction

This thesis examines the federal government's progression in implementing the Secure Communities program. I begin by describing the evolution of the program and introducing the reasons the program has governmental support. In the chapters that follow I examine the outcomes of the program. The complex task of balancing the enforcement of restrictive immigration policy, especially with the political pressure applied by a national constituency largely favoring strict enforcement (Lopez, Gonzalez-Barrera, & Motel, 2011), is one the United States has long confronted. With demands for low-cost labor and the establishment of transnational familial networks through immigration—which commonly pull in immigrant relatives (Hernandez-Leon, 2011)—the matter becomes even more complicated. On one hand, the U.S. receives pressure from agribusiness and other labor-intensive industries to continue allowing high levels of immigrant labor (Krissman, 2000) while on the other they are dealing with a deafening dissent from an apprehensive public which commonly uses examples of economic degradation to justify their dissatisfaction with an increased immigrant presence. This conundrum is compounded with the existence of sizeable groups, of which Latinos are the largest (Lopez, Gonzalez-Barrera, & Motel, 2011), ready to scrutinize almost any restrictive immigration legislation passed. How has the federal government reacted to its long-standing inability to effectively address the issue of immigration policy enforcement? The federal government has responded by alleviating the burden on itself

and instead placing much of the burden on local authorities through increasing the role of state and local law officials in immigration policy enforcement. Presently, there are three separate federal initiatives at the forefront of this movement towards state and local enforcement of immigration laws. They are known as Secure Communities (S-Comm.), the Criminal Alien Program (CAP), and 287(g). The most recent of these programs and also the most wide-spread among the three is the Secure Communities program.

The Secure Communities program was initiated by the Department of Homeland Security (DHS) in 2008 as a pilot program in only fourteen jurisdictions nation-wide. As of the writing of this thesis, four years following the initiation of the program, S-Comm. has been implemented in over 1700 jurisdictions nation-wide and it is set to be implemented in all local jurisdictions nationally by the end of 2013 (Immigration and Customs Enforcement, 2012). Although local law enforcement agencies had long shared the fingerprints of those they arrested with the FBI, the FBI now forwards this information to the DHS through S-Comm. who then checks the fingerprints against the Automated Biometric Identification System known as IDENT—a fingerprint database containing information on over 91 million individuals, including travelers, applicants for immigration benefits, and immigrants who have previously violated immigration laws. ICE then supposedly reviews their records to see if the person arrested is deportable. If they believe they are, or want to further interrogate them, ICE will issue a detainer. The detainer is a request to the local police to inform federal immigration authorities when the arrestee will be released from custody and to hold the individual for up to two days for transfer to ICE (The Chief Justice, 2011). This process is considered to be the most

advanced form of file sharing between local authorities and federal immigration authorities yet.

Although other programs similar to S-Comm. such as the 287(g) and CAP had existed long before it, they were not implemented at such a high rate and did not themselves gain much popularity until the 2000s. CAP, the oldest of the three programs, emerged in the 1980s but did not settle into its current CAP form until 2005. And in a 2009 House Resolution Committee on Homeland Security, Hearing Chairman Bennie Thompson said that the third program discussed, the 287(g), had been around since 1996 but only "experienced a remarkable surge in popularity in recent years" as "participation has grown from 29 programs in 2006 in 13 States to 67 programs in 23 States" as of March of 2009 (Examining 287(g), 2009). In other words, the latter half of the 2000s witnessed the U.S. federal government reaching into the 1980s and 1990s for a policy answer to the evolving immigration debate of the new millennium. Ultimately, these exploratory programs seemed to not be enough to appease those that felt that immigration policy did not deter undocumented immigration, therefore keeping Americans unsafe against potential criminals, as evidenced by the creation of the Secure Communities program toward the end of the 2000s. With its broad goal of encompassing all local jurisdictions by 2013, it was clear from the onset that S-Comm. was established in order to have a long-term localization program replace the more exploratory, pre-existing ones. The focus of this endeavor is to evaluate whether this program has been effective in doing as its title maintains. If this program is one that the American people, documented or not, have to endure then it is important that we ask: has Secure Communities made

American communities safer? Recent data collected on the program, reports of mass opposition to the initiative by local law enforcement officials throughout the country, and numerous personal accounts of discriminatory harassment of mostly Spanish-speaking Americans by local law enforcement officials participating in Secure Communities collectively demonstrate that this program has failed in making American communities more secure.

Origins of Localizing Immigration Enforcement

The process of localizing enforcement of immigration leading up to implementation of S-Comm. was a lengthy one that began in 1986 with the emergence of what would become known later as the Criminal Alien Program. Prior to 1986, the role that state and local law officials played in enforcing immigration was minimal as their involvement went only to the extent of screening for immigrant status once a person had already been arrested, convicted, and sentenced to prison (Immigration Policy Center, 2010). In 1986, the Immigration and Naturalization Services (INS)—government agency in charge of enforcing immigration policy at the time that has since been placed under the Department of Homeland Security (Ridge, 2003)—began using local law officials in screening arrestees' immigrant status prior to conviction, a responsibility that had previously been exclusive to federal authorities, through the creation of the Alien Criminal Apprehension Program (ACAP). ACAP would later merge with a subsequently formed—in 1988—program similar to ACAP known originally as the Institutional Hearing Program (IHP) but then later as the Institutional Removal Program (IRP) to

create the Criminal Alien Program or CAP in 2005. Originally, ACAP and the IHP/IRP programs were similar in that they both screened arrestees' immigrant status prior to conviction and they both were sparsely utilized (Immigration Policy Center, 2010). It was not until the 2000s, a decade in which an increased commitment to apprehending and deporting undocumented immigrants became abundantly clear, that ACAP and IRP merged to form CAP. This program was initiated as a pilot and despite its sparse use initially has survived the test of time. It also helped establish a trend for boundary-crossing legislation on immigration such as the Secure Communities and 287(g) programs.

Ten years after the first program localizing immigration enforcement had been introduced, policymakers created the 287(g) program. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was added to the Immigration and Nationality Act and included Section 287(g), which allowed for the performance of immigration officer functions by state officers and employees. This authorized the deputy director of Immigration and Customs Enforcement (ICE) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, provided that the local law enforcement officers received appropriate training and function under the supervision of ICE officers (Immigration and Customs Enforcement, 2010). In the House Resolution Committee of 2009 referenced prior, they describe 287(g) in the following way: "According to Immigration and Customs Enforcement, the main goal of the program is to increase the safety and security of our communities by apprehending and removing undocumented criminal aliens who

are involved in violent and serious crimes" (Examining 287(g), 2009, p. 1). Here we see essentially the same rhetoric used to justify 287(g) that we see with Secure Communities suggesting that S-Comm. was created in the mold of both the CAP and 287(g) programs. This group of three federal programs incorporating local law enforcement in the process of regulating immigration policy—all becoming increasingly used around the same time—makes it easy to get lost in a haze of confusing policy. Because Secure Communities is currently the only one of the three that is already mandated to be implemented in every jurisdiction in the country, it is ultimately the one deserving of the most attention. Considering that S-Comm. is so new and somewhat hidden beneath a veil of other programs similar to it, there is limited data available on the program outside of what the DHS and ICE websites offer. Fortunately, in October of 2011, the Chief Justice Earl Warren Institute on Law and Social Policy out of the University of California, Berkeley Law School published a comprehensive analysis of the program.

Methods and Chapter Summaries

This thesis bases its findings on a review of federal policies, including: studies by the Warren Institute of the University of California at Berkeley, the Migration Policy Institute, and the Pew Hispanic Center. It also strongly considers a collection of oral accounts of those most affected by Secure Communities including immigrants as well as state and local law enforcement and political officials that were attained through newspaper clippings, television news programs, and a small collection of interviews conducted by researchers at Whitman College. My primary source is a comprehensive,

quantitative study performed on Secure Communities entitled *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* (The Chief Justice, 2011) prepared by the Warren Institute. The writing of this thesis actually began before the publication of the report by the Warren Institute, but its release was crucial to the substance embedded in these pages. With help from a group of organizations, the Warren Institute study researchers attained a partial settlement of a Freedom of Information Act lawsuit providing them with a random national sample of 375 individuals who were flagged and later apprehended by ICE as a part of S-Comm. The data consists of demographic information, detentions and enforcement actions. The group also attained data on immigration court proceedings from the Executive Office of Immigration Review. Finally, they also received forms filled out by the ICE official who administratively arrests and questions the individual in immigration custody entitled the I-213; these forms allow insight into the due process received by the immigrant detainee (The Chief Justice, 2011). Collectively, these items contribute to what has become the most significant, comprehensive review of the program to date.

The Warren Institute study does not stand alone, however, in the mounting case against S-Comm. It is simply a quantitative component of the case against S-Comm., as the qualitative component lies in the surplus of personal accounts from those adversely affected by the program. There are testimonies that have been made before Congress, newspaper articles, television news stories, and a small collection of interviews of immigrants about S-Comm. recently conducted by Whitman College researchers which tell of the hardships inflicted upon a mostly Latino sector of the population and they will

be reviewed in order to provide agency to those who this program has most let down. As the evidence reveals, S-Comm. has let down many people throughout the country, but in particular it has made the Latino community in America increasingly unsecure, adding to the long list of U.S. immigration policies that have aggressively targeted Latinos.

This thesis, therefore, explores the issues reviewed. Chapter 2 reviews how the history of U.S. immigration policy is riddled with anti-Latino sentiment and how issues of race have long been embedded in American immigration policy. Chapter 3 reviews data released by ICE in regards to S-Comm., the data collected by the Warren Institute study, and the positive and negative public reactions to S-Comm. by state and local political and law enforcement officials. Chapter 4 examines the oral accounts of Latino immigrants in regards to their S-Comm. and immigration in general. Within this chapter, I also utilize a survey conducted by the Pew Hispanic Center which confirms that the collection of oral accounts discussed in this thesis is reflective of popular sentiment in the Latino community. Finally, in Chapter 5 I conclude by offering a summary of the findings and offer recommendations to address: securing U.S. communities without infringing on the rights of U.S. residents, mending broken relationships between state and local law enforcement agencies and Latino communities, and eliminating the stigma that casts Latino Americans as undesirable immigrants.

Chapter 2: How Race Has Factored Into U.S. Immigration Policy

This chapter explores the historical development of immigration policy in order to defend the position that immigration law has not been neutral because of its varying treatment of different perceived races embedded in its design. Over the years, the American government has chosen to regulate who is allowed to enter the U.S. and who is excluded. The purpose of this chapter is to provide a history of U.S. immigration policy as a context in which to understand the implementation of the Secure Communities program. I argue that the program was passed with the intent to reduce immigration from Mexico and other Latin American countries when the U.S. economy no longer necessitated a large labor force, following a pattern of exclusion which long preceded it in American history.

Early Handling of Race in Immigration Policy

The racial component behind who gets to be an American citizen and who does not did not appear out of thin air. The Naturalization Act of 1790 limited the right of citizenship in the United States to "free white persons" (Schultz, 2000, p. 284). This piece of legislation that was initiated so early in the establishment of the American republic set the tone for what was to ensue throughout the following two hundred and twenty years: racism in immigration policy. Most immigrants to the United States in the late eighteenth century and the entire nineteenth century were from Europe (Nevins, 2002) and the undocumented immigrant as we know it today essentially did not exist for most of that span. Historian Mai Ngai describes the flow of nineteenth century European

immigration to the United States in the following way: "Immigration into the United States was numerically unrestricted, reflecting a tradition of laissez-faire labor mobility that dated to the colonial period. Freedom of movement was a right acquired in Europe and North America with the emergence of capitalism" (Ngai, 2004, p. 17). Despite the prevalence of European immigration to the United States and the white population that was stockpiling in nineteenth century America, the country had to consistently deal with questions of citizenship among non-white groups that were in the country at this time such as Mexicans and Asians. Mexicans were in America by virtue of conquest (Mexican-American War) and Asians were taking opportunities to migrate to the U.S. for employment with the increase in industrialization, mimicking European trends that were common in Asia because of European colonization (Ngai, 2004). It was in 1882 that the U.S. first used explicitly racist, restrictive immigration policy against one of them with the passage of the Chinese Exclusion Act.[1]

The Chinese Exclusion Act of 1882 represented the first time in American history that an immigrant group faced restrictive immigration policy based solely on their race.[2] In essence, any Chinese nationals immigrating to the United States after the passage of this legislation would have been the first "undocumented immigrants" as we understand the term in its contemporary American context. Although the Chinese Exclusion Act targeted the Chinese specifically, it was simply a precursor to further legislation that

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[1] Blacks and Native Americans also had their citizenship challenged, but do not qualify as immigrants
[2] The Page Act of 1875 was the first to exclude Asians but not solely based on their race. This legislation banned Asians that were coming to be contract laborers, prostitutes/polygamists, and convicts of all nationalities. For more, see Abrams 2005.

would construct all Asians as an undesirable racial group in America. Ngai captures this process masterfully in the following excerpt:

> After Congress legislated Chinese exclusion in 1882, Japanese and other Asians immigrated to replace Chinese labor but became new targets of exclusion. A diplomatic agreement between the United States and Japan in 1908 curbed Japanese immigration and the Immigration Act of 1917 excluded Asian Indians and all other native inhabitants of a 'barred Asiatic zone' that ran from Afghanistan to the Pacific. The Chinese exclusion law and federal courts also declared Asians racially ineligible for naturalization (Ngai, 2004, p. 18).[3]

To bar such a broad region altogether from immigration and naturalization suggests adherence to racist generalizations on behalf of American policymakers. Moreover, it instilled the idea of racial exclusion into the body of American immigration and naturalization law (Ichioka, 1988 & Hing, 1993). The government began with attacking the Chinese, but soon it spread to all Asians. This judgment of Asians as undesirables that was reflected in the restrictive policy coincided with the common perceptions of them taking jobs away from whites (Gutierrez, 1995), a recurring, racist anti-immigrant argument. White Americans feeling threatened by non-white immigrants would continue throughout the twentieth century as Mexican immigrants began to join the party of the racialized labor following Asian exclusion.

Most European immigrants had essentially experienced a free-flow into the United States until the Johnson-Reid Act of 1924 finally placed limitations on them by establishing a quota system.[4] The Johnson-Reid Act set forth numerical quotas on immigration from all countries outside the Western Hemisphere, including Europe (Ngai,

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[3] The Immigration Act of 1917 did not include Japan and the Philippines (Ngai, 2004, p. 37.)
[4] The 1921 Immigration Act was passed to restrict immigration from Europe, but failed to do so. Consequently, a stricter numerical quota was passed in 1924.

2004). Quotas were set allowing immigrants from Western and Northern Europe to enter in large numbers. Immigrants from Germany and Great Britain were the preferred populations, while the immigration quotas were set very low for immigrants from southern Europe, specifically Italy. The Johnson-Reid Act limited European immigration to the United States and it did so at the expense of limiting immigration from non-European countries as well, keeping the racial makeup of the U.S. steadily white. Although immigration policy was designed to keep certain white ethnics out of the United States, their quotas were much larger, as white immigrants were still desired, and were viewed to be assimilable populations, while most immigrants outside of Europe and Canada were not (Roediger, 2005).

Europeans were allotted the higher quotas through this system as the quotas were based on the percentage of nationalities already present in the country and "whites" from Europe had the highest populations in the U.S. in 1924. The quotas were intentionally designed to fulfill a mission Americans had of keeping the country homogenously white. Joseph A. Hill, chairman of the Quota Board, said in regards to the high quotas allotted to European nations, "The stream that feeds the reservoir should have the same composition as the contents of the reservoir itself" (Ngai, 2004, p. 27). America consistently attached a racist component to its immigration policy in both the eighteenth and nineteenth centuries (sometimes explicit in the name such as the Chinese Exclusion Act of 1882) and the twentieth century would be no exception. This time, however, Mexican immigrants became the primary target of racist immigration policy.

Mexicans Begin to Immigrate

Early twentieth century America saw a dramatic increase in the population of foreign-born Mexicans due to the labor shortage caused by the Asian exclusion acts and the migration of Mexicans fleeing the Mexican Revolution of 1910 (Gutierrez, 1995). Considering that Mexicans had previously been granted citizenship through "a series of treaties conferring citizenship on Spaniards and Mexicans in the wake of U.S. expansion into Florida and the Southwest" (Haney-Lopez, 2006, p. 43-44), the increase in their immigration to the United States provided an interesting test as to whether or not they would continue to be considered citizens. The population of Mexicans living on American territory following U.S. expansion into the Southwest was minimal compared to that of 1920,[5] so the issue of whether or not to allow the naturalization of Mexicans was not as significant then. With the influx of Mexicans at the turn of the century, however, that right to citizenship would be tested. How would America react to the influx? More importantly, how would immigration policy be affected by this increase? Mae Ngai offers an answer to both of these questions:

> The immigration laws during the 1920s did not assign numerical quotas to Mexicans, but the enforcement provisions of restriction--notably visa requirements and border-control policies--profoundly affected Mexicans, making them the single largest group of illegal aliens by the late 1920s. The actual and imagined association of Mexicans with illegal immigration was part of an emergent Mexican 'race problem,' which also witnessed the application of Jim Crow segregation to Mexicans in the Southwest, especially in Texas, and, at the federal level, the creation of 'Mexican' as a separate racial category in the census (Ngai, 2004, p. 7).

Attempts to exclude people of Mexican descent from the country were very alive in the

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[5] The population of U.S. residents born in Mexico increased from approximately 68,000 in 1880 to approximately 478,000 in 1920. See Gutierrez 1995, 45.

1920s. The reason that they were not barred from citizenship or immigration in this time period was because ranchers and farmers in the U.S. needed their labor and, running low on labor due to the exclusion of Asians, lobbied on their behalf (Nevins, 2002). In other words, Mexicans were recruited for their labor while simultaneously facing immigration policy restrictions out of fear that they might immigrate at too high of a rate. American officials refused to place quotas on Mexicans but set up obstacles to lower Mexican immigration by enforcing tax charges against them and requiring them to pass literacy tests (Nevins, 2002). These obstacles caused thousands of Mexicans who disregarded them to become undocumented (Ngai, 2004). Contention surrounding Mexican immigration continued this way until the Great Depression as tough economic times gave more credence to the anti-Mexican stance.

As financial concerns among white Americans increased racial tension toward Mexicans, attempts to deport and repatriate them back to Mexico intensified. The anti-Mexican frenzy did not distinguish between documented immigrants, undocumented immigrants, and American citizens (Ngai, 2004). The 1920s had successfully blurred the lines of citizenship among Mexicans and by the arrival of the Great Depression, the U.S. began repatriating, or returning, Mexicans in America back to Mexico, often regardless of their citizenship. The fact that tens of thousands of Mexicans Americans with U.S. citizenship were deported as a part of this repatriation is yet another example of Latinos being targeted by U.S. immigration policy because of a discontent with their high numbers. This would continue until World War II when their presence became desired once again.

Immigration Policy of World War II

World War II brought significant changes to the Mexican American community in the United States. The end of the war brought them hope that they would finally shake off their image as non-citizens due to the United States entering what "promised to be a new era of liberalized race relations" (Gutierrez, 1995, p. 141). Mexican immigration to the United States had been minimal following the repatriation of the 1930s until the creation of the Emergency Farm Labor Program, otherwise known as the *Bracero* Program, in 1942.[6] The war had created a labor shortage, and once again Americans sought Mexican labor to fill its needs. The Program essentially brought a "new era of large-scale legal as well as officially unsanctioned Mexican immigration to the United States" (Gutierrez, 1995, p. 118). Although the Bracero Program brought workers legally, their large numbers made it easier for Mexicans who were crossing over illegally to blend in with the large Mexican work forces. This second twentieth century influx of Mexicans again began to blur the lines of citizenship among Mexicans. A study that was sponsored by George I Sanchez in the early 1950s confirms this point when it stated that "No careful distinctions are made between illegal aliens and local citizens of Mexican descent. They are lumped together as 'Mexicans' and the characteristics that are observed among the wetbacks are by extension assigned to the local people" (Saunders & Leonard, 1950, p. 70). The popular "wetback" (undocumented worker) image was commonly assigned to people of Mexican descent living in the United States with this

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[6] In 1917 a small scale bracero program was instituted (Menchaca, 2012).

second influx of Mexican immigrants. By 1954, after experiencing an economic boom that followed the war (Vatter & Walker, 1996), the United States resorted to old tactics to again limit the Mexican population.

In 1954, the United States saw its second repatriation of Mexicans when Operation Wetback was initiated by the Immigration and Naturalization Service (Ngai, 2004). This initiative was similar to the first repatriation of Mexicans during the Great Depression in that Americans again became concerned with the high amount of Mexican immigrants entering the country and again decided that mass deportation of Mexicans was the best solution (Nevins, 2002). Racism was again involved in this second anti-Mexican immigrant effort as again many American citizens of Mexican descent were deported unlawfully. Within a month, however, the deportations were suspended as agribusiness interests necessitated a large labor pool.   Instead, braceros were allowed to continue filtering into the U.S. while policies were enacted that made it more difficult for them to obtain green cards for their families. The U.S. government wanted temporary workers, but not necessarily their families.

The Latter Half of the 20th Century and Into the 21st

The *Bracero* Program continued into the early 1960s until it eventually stopped in 1964. The program became increasingly less necessary as American agribusiness "found itself far less dependent upon important contract labor" because the main crops like cotton and sugar beets in which the *braceros* worked in the Southwest were "mechanized by the early 1960s" (Ngai, 2004, p. 166). The program ended, but Mexican labor

continued to be necessary. In 1986 the Immigration Reform and Control Act (IRCA) was

passed by congress to extend amnesty to undocumented workers (Menchaca, 2011). This

was a policy designed to help Mexico during the economic depression of 1982-87 and

was part of a larger U.S. aid package where the U.S. loaned and arranged with

commercial banks a loan of 38 billion dollars to Mexico. The U.S. federal government

feared that if Mexico was not bailed out, its economy would collapse and have severe

economic repercussions in the U.S. (Boughton, 2001). In other words, the United States

was not granting amnesty to the undocumented Mexicans because it wanted to bring an

end to the history of being unwelcoming to them, but rather to ensure that American

investments were secure. Undocumented Mexican immigrants continued filing into the

United States throughout the twentieth century, and increased with the initiation of the

North American Free Trade Agreement in 1992.

In the early 1990s, the U.S. and Mexico began to negotiate the North American

Free Trade agreement or what it is commonly known as NAFTA. NAFTA is a free-trade

oriented economic agreement reached by the United States, Mexico, and Canada in 1992.

Because NAFTA was intended to boost the economies of all three countries, its

supporters argued that immigration from Mexico to the U.S. would subside after its

passage. But rather than an economic convergence between the two countries, there was

actually a divergence which ultimately led to increased immigration from Mexico to the

U.S. following 1994 (Weintraub, 2010). The fact that the American economy was

achieving high growth while the Mexican economy remained fairly stagnant led to a

rather large immigration spike into the U.S. from Mexico. The American government

had a difficult time passing any legislation at all in regards to immigration throughout the 1990s and the beginning of the 2000s (besides the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) as the issue reached a sort of political stalemate in the U.S. (Weintraub, 2010).[7]

During the 1990s, the rise of legal and undocumented Mexican immigration (this time other Latino groups joined them due to similar economic ties) was allowed to continue as the American economy was prospering. Between 1987 to 2004, approximately 2 million undocumented immigrants adjusted their unauthorized status and became permanent legal residents (Menchaca, 2011, p. 282). Likewise legal Mexican immigration continued and ranged from an average of 45,000 to 170,000 on an annual basis, many of whom were individuals adjusting their undocumented status (Department of Homeland Security, 2004). By 2004, around 40% of all people of Mexican descent were foreign born.

By 2007, there were an estimated 12 million undocumented immigrants living in the United States; this was a 3.6 million person increase from 2000 when there were an estimated 8.4 million undocumented immigrants—a forty three percent increase in seven years (Passel & Cohn, 2009). Once economic growth began to slow in the mid-2000s, however, Mexicans (and by this time most other Latinos) again became the target of racially based immigration policy, this time in the form of federal programs which

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[7] The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) which included the seldom-used 287(g) program was passed in 1996 as mentioned in Chapter 1 of this thesis. The intent of the program was to remove the entitlements immigrants were eligible for (i.e. social security and unemployment insurance) and to discourage immigrants from adjusting the status of their relatives, specifically their elderly parents (Menchaca, 2011).

allowed for state and local law enforcement officials to partake in the enforcement of immigration policy. These programs had historical precedent: when the U.S. economy stalls, immigration enforcement becomes more stringent and maintains a component of racial prejudice.

Chapter 3: Analysis of Available Data on Secure Communities

In order to determine whether or not the Secure Communities program has been successful in accomplishing its goal of making American communities safer, it is important to examine how the program is justified by those who established it and support it, and what kind of results they claim the program has rendered. Considering that the program will be enacted in every jurisdiction nationwide by the end of 2013 and that it continues to be widely implemented in various jurisdictions as of the writing of this thesis, there has to be a substantial base of support for it and this base would presumably have good reason, based on positive findings, to maintain support for S-Comm. Evaluating what evidence this base provides is crucial to this project's central focus of determining the effectiveness of the program.

ICE on Secure Communities

The following excerpt is how officials within the Department of Homeland Security characterize S-Comm.:

> ICE [principal investigative arm of DHS] prioritizes the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators.
>
> Secure Communities is a simple and common sense way to carry out ICE's priorities. It uses an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) that helps to identify criminal aliens without imposing new or additional requirements on state and local law enforcement. For decades, local jurisdictions have shared the fingerprints of individuals who are arrested or booked into custody with the FBI to see if they have a criminal record. Under Secure Communities, the FBI automatically sends the fingerprints to ICE to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the

United States or otherwise removable due to a criminal conviction, ICE takes enforcement action – prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors – as well as those who have repeatedly violated immigration laws (Immigration and Customs Enforcement, 2012, para. 2-3)

Reading this excerpt in its entirety is essential to understanding not only the purpose of the program and how it operates, but also the more deeply embedded agenda situated within its lexicon. With insidious word choice such as "criminal aliens," and "threat to public safety," the language of this program is written in a way that makes it rather difficult for the average American citizen to stand in opposition to it. After all, who would not want to see more criminals removed from their communities? And if one were to consider the raw data, which this project will shortly, of arrestees that S-Comm. has distributed without any deeper analysis it is likely that they would find themselves unable to find a reason to disapprove of S-Comm., especially when they claim to only target those considered to be "significant threats to public safety." As it turns out, the DHS takes significant measures in attempting to assure the public not only that the program will make American communities safer, but that the role of local law enforcement officials will not change in the process

Although this paper has shaped Secure Communities as a program which has incorporated local law officials into the process of enforcing immigration policy, it should be noted that the DHS does not concede to this point. Their website for S-Comm. lists the following:

FACT: Under Secure Communities, state and local law enforcement officers continue enforcing their state or local law in the same manner in which they always have. Under Secure Communities, state and local law enforcement

officers are not deputized, do not enforce immigration law, and are not tasked with any additional responsibilities. In fact, State and local law enforcement officers are asked to enforce the law in exactly the same manner as they did before Secure Communities was activated in their jurisdiction. In this program, only federal officers make immigration decisions, and they do so only after a completely independent decision by state and local law enforcement to arrest an individual for a criminal violation of state law separate and apart from any violations of immigration law (Immigration and Customs Enforcement, 2011, para. 4).

This proclamation is a vivid illustration of an attempt to minimize the involvement that local authorities have in S-Comm. by arguing that their job is essentially unaffected because their decision-making is minimal. It also emphasizes that the federal government is not placing any added burdens onto local law enforcement agencies and not necessarily involving them in regulating immigration policy. But simply because local authorities are not involved in the decision making process of whether or not to further detain and eventually deport an individual, to say that they are not involved at all or to say that they are able to continue enforcing the law in the same manner as before ignores the reality that is created when getting pulled over by a local law enforcement official can more easily lead to someone's deportation. Although local authorities are not supposed to have any input as to who gets deported, S-Comm. does not make them look favorably to immigrant communities. Acting as a mode of apprehension for eventual deportation causes local authorities to have a new, distinct role in the process of detaining and deporting undocumented immigrants. The effects of this new involvement of local law enforcement officials in the process of deporting undocumented immigrants will receive its due attention, but first we should consider some of the data that S-Comm. has provided to the public regarding their progress.

The numbers presented by S-Comm.'s website show the following in regards to the progress the program had made until the end of 2011:

> One important tool that ICE relies upon to advance this priority is Secure Communities, which facilitates ICE's ability to identify and remove aliens who pose a threat to public safety. Through Oct. 31, 2011, more than 110,000 immigrants convicted of crimes, including more than 39,500 convicted of aggravated felony (level 1) offenses like murder, rape and the sexual abuse of children were removed from the United States after identification through Secure Communities. These removals significantly contributed to an 89 percent increase in the overall percentage of convicted criminals removed by ICE, and a 29 percent reduction in the removal of people without a criminal conviction, from October 2008 until the end of FY 2011 (Immigration and Customs Enforcement, 2011a, para. 2).

These statistics on those deported through S-Comm. provide more questions than answers. First, it was noteworthy that ICE decided to compare the number of those "removed" or deported without a criminal conviction from the end of the fiscal year of 2011 to 2008 when the program was initiated. In other words, they are saying that the program has had a reduction in the deportation of non-criminals since its inception, but quantifying it as a 29% reduction is not clear enough. If the percent of people removed without a criminal conviction started at 65% (which could be possible considering they only mention that thirty five percent of those removed through S-Comm. were removed with an aggravated felony), for example, decreasing that number to 36% would still be atrocious considering the program is intended to pursue serious criminals. Through this method they are avoiding discussion of the more pressing topic of how many more non-criminals are being deported because of S-Comm. compared to before 2008. Also, it can be conceded that an 89% increase in the overall deportation of convicted criminals as a result of S-Comm. is a sign the program is working effectively, but if in the process of

increasing the deportations of serious criminals we are throwing in the lives of a substantial group of non-criminal undocumented immigrants as collateral damage, is the program worth it? Can society justify the deportation of a hardworking, honest, mother or father of three perhaps attempting to attain legal residence to get to the serious criminals? Surely there has to be a better way of tracking down the bad guys. Besides the potential removal of non-criminal undocumented immigrants—as some may argue that by virtue of their undocumented status they deserve deportation—how does S-Comm. affect those who are here legally? How does it affect the relationship that local law enforcement agencies have with their high-immigrant communities? These are questions that ICE seldom addresses, but are important in determining the program's effectiveness.   Fortunately, the Warren Institute of UC-Berkeley took on the effort of investigating just how effective the program has been in a manner that goes a long way towards answering these questions.

Warren Institute Study

The Warren Institute's publication was born out of concern that the American government is allowing the Secure Communities program to function despite claims of ineffectiveness and counter productiveness without them doing much to ensure it is working effectively. This is evident early on in the report when they claim that "despite the scrutiny that the program has generated in the public sphere, the federal government has conducted limited systematic analysis of its own data on individuals who are arrested under Secure Communities" (The Chief Justice, 2011, p. 2). This lack of "systematic

analysis" speaks to the relevance of such endeavors as this one and many others which are simultaneously asking that the federal government consider a more comprehensive review of the program, especially considering the findings of the Warren Institute's research report and the various examples of state and local political and law enforcement officials across the country who have witnessed the shortcomings of S-Comm. first hand and are currently speaking out against the program.

Let us examine four key findings of those detained through S-Comm. according to the Warren Institute report (these findings are from the modern inception of the program in October of 2008 until April of 2011, roughly a two and a half year period): (1) Latinos comprise 93% of individuals arrested through S-Comm. though they only comprise 73% of the undocumented population in the U.S. (2) 45% of all detainees who were scheduled for deportation were scheduled for no other reason than being "Present Without Admission" or PWA, meaning they had no criminal history other than crossing into the U.S. illegally. (3) Only 8% of all detainees scheduled for deportation had committed an aggravated felony. (4) Approximately 3,600 U.S. citizens have been apprehended by ICE for further detainment through S-Comm. These key findings answer questions about S-Comm. that the DHS has been reluctant to answer and help confirm that the program has not been successful in its principal goal of keeping American communities safer by deporting serious criminals.

First, profiling and harassment of Latinos is evident when observing that 93% of those arrested through S-Comm. are Latinos while only 77% of undocumented immigrants are Latino. This finding is a clear indicator that the Secure Communities

program is adversely affecting Latinos and unless we are to ignore the fact that Latinos are also members of American communities, we know that at least a sector which comprises 16.7% of the American demographic has become less secure as a result of S-Comm. (United States Census, 2011). Racial profiling should not be a part of providing security for it is inherently dangerous to those whom it profiles. Again, despite the fact that more serious criminal undocumented immigrants are being deported through S-Comm., can we spare the rights of equal protection under the law for this significant portion of the American population justifiably? But besides focusing on only 16.7% of the population, the second and third key findings mentioned speak to the security of all Americans and the overall ineffectiveness of the program.

If we consider that 45% of all detainees scheduled for deportation are being removed simply for not entering into the country legally, while 8% of deportees are scheduled because of aggravated felonies, it seems that the program is having difficulty getting rid of the serious "criminal aliens" they had set out to catch. This is especially true when considering that the report found that another 21% of scheduled deportees were there on other non-criminal immigration grounds and seven percent could somehow not be charged with anything. That means that in total, 73% of all scheduled deportees of those detained through S-Comm. have not committed any criminal acts not including crossing into the country illegally. How is a program that is only deporting one potentially dangerous criminal out of every four people it deports claim to be effective? These numbers affirm the idea that Secure Communities is not making American communities more secure because the Latino sector of these communities is being highly

targeted and therefore less secure and because such a low amount of potentially dangerous criminals are being deported regardless.

It must be clarified that, according to the researchers, the Warren Institute report was not able to determine the ultimate deportation fate of the 3600 U.S. citizens it approximates have been apprehended for further immigration proceedings by ICE because of limited record keeping ICE maintains on those it detains. All they could determine was that the 3600 U.S. citizens had detainers placed upon them in error by ICE, but not how many were deported before the mistake was discovered. Whether or not all 3600 were eventually funneled into criminal court or released rather than suffer deportation does not excuse such a gigantic blunder. The fact that S-Comm. has in the short span of three years called into question the citizenship of 3600 U.S. citizens sounds like the early chapters of a dystopian novel. And if ICE has good reason for these apprehensions, why not keep better record of the outcomes? Perhaps they felt that having less of a paper trail would help them cover up their mistakes. When considering that the report also found that program seems to be profiling Latinos and that 93% of arrests through S-Comm. have been of Latinos, one cannot help but wonder if the reason why 3600 U.S. citizens have been mistakenly targeted by ICE through the program has to do with racial profiling as well. If a program existed which was detaining Euro-Americans 93% of the time and over 3,000 of them had their citizenship questioned in a span of two and a half years, would it be tolerated? Either way, it is a sign of an ineffective program that has not only proven to be lackluster in accomplishing its goal of removing serious criminals from society but also has contributed to the harassment of undeserving U.S.

citizens. Given these shortcomings, how are local officials defending the use of the program? Reactions from state and local law officials demonstrate that they are largely not defending S-Comm., but rather opposing it.

State and Local Opposition to Secure Communities

Three state governors have already tried to block the implementation of Secure Communities. The governors of Illinois, Massachusetts, and New York have all challenged the use of S-Comm. in their states essentially for the flaws that the Warren Institute report identified in the program. This is captured well by a recent PBS Frontline article when it says:

> But when the governor's office looked at ICE's own statistics, it found that fewer than 20 percent of those deported from Illinois had been convicted of a serious crime. Gov. Quinn tried to back out of the program, as did Massachusetts Gov. Deval Patrick and New York Gov. Andrew Cuomo due to similar concerns. And some, including Lake County (Illinois) Sheriff Mark Curran, say the program creates a culture of fear between law enforcement and the community (Gavett, 2012, para. 6).

These three governors stated concerns about the fact that the program is under arresting serious criminals and therefore ineffective while Sheriff Mark Curran's argument deals more with the idea that Latinos are being unfairly targeted by S-Comm. Although he says "community," we know that it is the Latino community (ninety three percent of S-Comm. detainees) that has the most to fear. What the sheriff is referring to is a rift that is being formed in many communities across the country between local law enforcement and Latino community members that is compromising relationships between the two which were traditionally vital for local law enforcement to have insight into the Latino

community. How can police investigate crimes in these communities when nobody wants to talk to them due to a fear of their increased jurisdiction? Both concerns of under arresting serious criminals and undermining police ties with community members were echoed by Boston mayor Thomas Menino. The mayor's position on Secure Communities was presented in August of 2011 in a New York Times Article that stated:

> Mayor Thomas Menino, who often invokes his heritage as the grandson of an Italian immigrant, was one of the first local leaders in the country to embrace a federal program intended to improve community safety by deporting dangerous immigrant criminals. But five years after Boston became a testing ground for the fingerprinting program, known as Secure Communities, Mr. Menino is one of the latest local officials to sour on it and seek to withdraw. He found that many immigrants the program deported from Boston, though here illegally, had committed no crimes. The mayor believed it was eroding hard-earned ties between Boston's police force and its melting-pot mix of ethnic neighborhoods. Last month, Mr. Menino sent a letter to the program with a blunt assessment: 'Secure Communities is negatively impacting public safety' (Preston, 2011, para. 1-3).

Mr. Menino's position is compelling because he was originally a staunch supporter of the program and has since conceded that it fails for the same reason many others have posited that it fails in making communities safer. That same article goes on to mention that of the 313 immigrants deported from Boston under S-Comm. up to that point, more than half had no criminal convictions and many had been detained in traffic stops (Preston, 2011). These numbers are consistent with the findings of the Warren Institute report. Despite the fact that federal authorities maintain the decision-making power in who gets deported through S-Comm., they still seem to not get it right and because the average person interacts with local law officials more frequently than with federal immigration officials, deportations of non-criminals have increased dramatically. And with every deportation, the rift between immigrant-dense communities and their law

enforcement officials continues to grow. Boston is only one of many places throughout the U.S. in which local political and law enforcement officials have suffered the consequences of this poorly designed initiative and are now speaking out against the measure.

Chicago and Washington D.C., and the entire state of California have all recently taken a stance against Secure Communities and are challenging its implementation legislatively at the city and state levels. The fact that Chicago and Washington D.C. are the third largest city and the nation's capital, respectively, and that California is the most populated state in the country and has the second largest city in the country within its borders lends to their creditability as being representative of the nation as a whole. The fact that they are all notorious for containing high levels of criminal activity, the serious kind that S-Comm. boldly proclaims to target, makes them ideal regions for testing whether or not the initiative works. Rahm Emanuel, the Mayor of Chicago, proposed an ordinance named "Welcoming City," which would prohibit local police officers from turning over any undocumented immigrants to federal agents who have no outstanding criminal warrants or serious criminal convictions. In Washington D.C., the City Council approved a bill that will limit the amount of time and the circumstances in which local law enforcement can detain someone at the request of ICE officials or agents. California legislators recently passed the Trust Act, which prohibits local law enforcement from holding a person unless there were previous serious criminal convictions (Lilley, 2012). All three of these initiatives in some way interfere with the procedures that S-Comm. mandates of local authorities in the process of determining a detainee's immigrant status.

They all allow for a more active role to be played by their local officials in determining whether or not someone should continue to be held for deportation proceedings depending on how serious their crime is. Clearly, these state and local governments did not approve of the job that ICE was doing in determining whether or not a detainee should be deported and took it upon themselves to instead focus their resources on only serious criminals. If S-Comm. was truly successful in making American communities safer, it is highly unlikely that so many state and local officials would feel the need to take a stance against it and create initiatives to combat its enforcement. These officials have seen that the practical reality of S-Comm. (high deportation of non-criminals and a rift between immigrant community members and local law enforcement) does not make American communities safer, but rather, more vulnerable. But clearly there have to be supporters of S-Comm. within the realm of state and local political and law enforcement officials. A program so grossly unpopular would probably not have lasted as long as it already has otherwise. Examining the arguments made by these state and local officials is essential in attaining a holistic perspective of the program.

State and Local Support of Secure Communities

Perhaps because of the high level of scrutiny the program has received, ICE has a link on their website to a document entitled "What Others Are Saying…About Secure Communities" (Immigration and Customs Enforcement, 2011b) that would be better titled "What Supporters Are Saying…About Secure Communities." It is a two-page document with thirteen supportive quotes from state and local political and law officials

and one from the Washington Post. Although there is variation among the quotes as to why these individuals support S-Comm., none of them argue that this program makes their community safer. The quote by U.S. Representative David Price of North Carolina is the only one listed that somewhat touches on the subject of a safer community, but he sounds more hopeful than certain when he says: "I *believe* it can accomplish the task more efficiently to identify and remove dangerous criminals from our communities, which I think we very widely agree *should* be the main priority of immigration enforcement" (Immigration and Customs Enforcement, 2011b, p. 2). The italics are not in the original quote, but serve as a way of highlighting the how the congressman expresses hope in the program rather than an affirmation of its success. This list of quotes was released several months before the release of the Warren Institute report which explains why officials such as Representative Price were careful to not use definitive words in expressing support for S-Comm.; they were not sure if it was working. Even after the release of the Warren Institute report, however, some officials remain supporters of the program.

U.S. Senator Scott Brown from Massachusetts is a supporter of Secure Communities. He also is useful to consider since one of the three governors opposing S-Comm. is the governor of his same state of Massachusetts. Given that they both share a similar interest in keeping the citizens of their state as safe as possible, their differing view on S-Comm. captures the divide between the program's supporters and denouncers so well. On his website, Senator Brown has the following reasoning for his support of S-Comm.:

Over the last year, our state has experienced a series of violent crimes committed by illegal immigrants who had no business being in the country in the first place. Last summer, three tragic deaths in Brockton and Milford highlighted the clear need to identify and deport people who come here illegally and then commit new crimes. In Brockton, a woman and her child were murdered. In Milford, a man was killed by a drunken driver. In both cases, the perpetrators were in the country illegally and had previous run-ins with the law. If these individuals had been deported following their previous arrests, it's possible the lives of three people could have been saved. As a state, we need to make every effort to prevent tragedies like this from happening again. That is why I support Secure Communities, and believe that Massachusetts needs to be fully participating in this very important program (Brown, 2012, para. 3-5).

From this we can gather that Senator Brown supports S-Comm. because he believes that it is a necessary component of keeping his constituents free from violent tragedies. The problem with this line of reasoning is two-fold: The senator is disregarding the ways in which the Warren Institute report and the mayor of the largest city in his state have demonstrated that the program fails in its security ambitions and he is also seemingly ignoring the research that shows that foreign-born Americans are incarcerated at much lower rates than the native born (Rumbaut, 2006). In other words, the senator supports a program that is mostly deporting people who are not likely to commit violent crimes because he believes that they are likely to commit violent crimes when there is research which suggests that they are not. This research, performed by a group of professors from The University of California-Irvine, makes Senator Brown's assessment of the undocumented population seem misguided and provides a potential answer for why Secure Communities has been hard pressed to find serious criminals.

Lower Criminality among the Foreign-Born

As a part of the Migration Policy Institute—a nonpartisan, nonprofit organization which studies migration world wide—these UC-Irvine professors published an article in June of 2006 in which they found that the foreign-born American is incarcerated at a lower rate than the foreign born, across all American ethnic groups. They found that "in fact, the incarceration rate of the US born (3.51 percent) was four times the rate of the foreign born (0.86 percent). The foreign-born rate was half the 1.71 percent rate for non-Hispanic white natives, and 13 times less than the 11.6 percent incarceration rate for native black men" (Rumbaut, 2006, para. 25). While all undocumented immigrants are foreign-born, not all foreign-born Americans are undocumented immigrants and this study does not distinguish the undocumented from the documented foreign-born. This places limits on this research, but not entirely. For example, the study found that the group of foreign-born Latino immigrants that was incarcerated at the highest rate in the U.S. was Puerto Ricans—of which none could be undocumented because of Puerto Rico's status as a U.S. territory. The study also found that "the lowest incarceration rates among Latin American immigrants are seen for the least educated groups: Salvadorans and Guatemalans (0.52 percent), and Mexicans (0.70 percent). These are precisely the groups most stigmatized as 'illegals' in the public perception and outcry about immigration." If the foreign-born from the countries that attract the most undocumented immigrants to the U.S. are incarcerated a lower rate than the native-born, then why are they so targeted by S-Comm.? Although the data does not specify the incarceration rates of undocumented immigrants, considering that they are more easily deportable, one can propose that their crime rates might be even lower than that of the documented foreign-

born since they have more to lose. But while officials such as Senator Scott Brown are pointing to crimes committed by a group of people who most likely commit crimes at a lower rate than most, the majority of serious criminals can feel a sense of relief knowing that some attention has been removed from them and onto the undocumented.

Aside from what ICE, the Warren Institute and Migration Policy Institute study researchers, and state and local political and law enforcement officials have revealed about the shortcomings of S-Comm., a mountain of firsthand accounts of those who have been victimized by the program exists. Since the program is so new and has not kept comprehensive records of the proceedings occurring through it—according to the Warren Institute study—these oral accounts are critical in clarifying the limited numbers that ICE reports regarding S-Comm. detainees. I now turn to the oral accounts.

Chapter 4: Latino Reactions to Secure Communities

Numerous testimonies of those unjustifiably targeted by S-Comm. have appeared in congressional hearings, newspaper and journal articles, and television news stories which tell of the hardships inflicted upon a mostly Latino sector of the population and will be reviewed in this chapter in order to provide agency to those who this program has most let down. These stories point to a pattern of racial profiling embedded in S-Comm. that ultimately tells the tale of how the program has victimized members of the Latino community. Perhaps not so coincidentally, data from the Pew Hispanic Center demonstrates that during the time of S-Comm., Latinos have begun to feel more discriminated against and largely attribute it to people's concerns over immigration (Lopez, Morin, & Taylor, 2010). Stories of the program's failure ensue.

Arrested for Petty Crimes

Antonio Montejano, a U.S. Citizen from Los Angeles, is a prime example of shortcomings of Secure Communities. His story is fitting for this thesis as his story affirms two of the key findings of the Warren Institute study; he was flagged and detained through S-Comm. as part of the 93 percent of Latinos over targeted by the program and as one of the 3600 U.S. Citizens the study estimates the program has incorrectly detained. His story was reviewed in a meeting of the U.S. Senate, Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights

(Ending Racial Profiling, 2012) and a more detailed account of happened to him was documented by the American Civil Liberties Union in his own words:

> Like many people in Southern California, I have traveled to and from Mexico all my life with no problems. But in 1996, there was one time when my California driver's license wasn't enough to cross the border and I was detained. A judge then sent me to Mexico. That same day, I crossed back into America with no problems and have not had any problems ever again until earlier this month. On Saturday, November 5th, I went with my wife and three kids to Sears in Santa Monica to go shopping for clothes and other things the family needed before the holidays. While we were shopping, one of my kids asked if I will buy a 10 dollar bottle of perfume. I said sure. By accident, I put the perfume in a bag of merchandise that I had already paid for. During the few hours we were shopping, my kids also each took a candy bar off the shelf without asking my permission and began eating the chocolate. I'm sure many parents can relate to this. I saved the wrappers in my pocket to pay for the candy later. Though I spent about 600 dollars at Sears that day, I forgot to pay for the candy when I checked out. And as I was leaving, the store clerk stopped me, and pulled out the perfume bottle. I realized my mistakes right then and offered to pay. Instead, they called the Santa Monica police. When the police showed up, they said they had to arrest me and take me to the station for fingerprints. I didn't want my kids to see me like that. I asked the police if they could tell my wife to take the kids home so that my kids won't see me in handcuffs. They took me to the Santa Monica police station. They charged me with petty theft. I was detained in the Santa Monica police station for two nights until Monday, November 7. I pled to an infraction of petty theft. The judge said I did not have to pay the fine and ordered my release. But instead of being released, the police transferred me to the L.A. County Sheriff. When I arrived at the Los Angeles County jail, an officer asked me where I was born and if I was citizen. I said I was born in Los Angeles and was an American citizen. They didn't believe me, and they detained me on an immigration hold. For two nights, they detained me in the Inmate Reception Center. There was no bed, no mattress, no blanket, only a short bench. I did not sleep the entire time. They held me there until the morning on Wed., Nov. 9, after the ACLU sent my passport and birth certificate to ICE. As soon as I got out of that cell, I went straight to work to make up the lost pay (Montejano, 2011, para 3-11).

This testimony offered by Montejano speaks not only to how flawed S-Comm. is due to its high detainment of legal citizens, but also to how overbearing it is for those who may, in fact, be undocumented immigrants and committing "petty" crimes. It is disconcerting to think that a spot in the Los Angeles County jail would be occupied for two days by a

petty shoplifter considering that it is the busiest jail in the world and has itself paid for advice from private firms on how to reduce its occupancy (Vera Institute, 2011). It is even more troubling to think that these spots may be taken by U.S. Citizens whose own country has incarcerated them because they cannot figure out how to run a more efficient border security program that does not target those like him who are a different type of American citizen. Antonio Montejano is just one of the 3600 U.S. citizens that the Warren Institute estimates S-Comm. has incorrectly detained and he also represents the consistency in the program's pursuance of those committing minor crimes. There are cases in which the offenses were even more minor than that of Antonio and a few of them were captured well by journalist Maria Hinojosa in her recent PBS Frontline special entitled "Lost in Detention" which aired October of 2011 (Young, 2011).

The documentary produced by Maria Hinojosa centrally focuses on the shortcomings of recent immigration policy, including Secure Communities, with a specific focus on how recent policy has led to a rapid increase in deportations of both criminal and non-criminal immigrants. In part of her coverage of S-Comm., she tells the story of Susana Ramirez through an interview:

> **Maria Hinojosa:** But critics say Secure Communities is sweeping up more than just serious criminals. And in Illinois, one case in particular got a lot of attention. It started about 75 miles west of Chicago, in McHenry County, when local police made a routine traffic stop in March of 2010. The driver had changed lanes without signaling.

> **Susana Ramirez:** [*through interpreter*] All of a sudden, I saw the lights on the police car turn on. That's when the policemen stopped me. I didn't even know why until later on. He asked me for my driver's license and car insurance. I didn't have a license. He said I was going to be arrested, to call someone to pick up my truck and little girl. He simply put me in the car and took me to jail.

Maria Hinojosa: [*on camera*] What did you understand that you were being arrested for?

Susana Ramirez: [*through interpreter*] Because I didn't have a license.

Maria Hinojosa: [*voice-over*] When Susana Ramirez was booked into custody, her fingerprints were sent to ICE under the Secure Communities program. ICE quickly put a hold on her. She was in the country illegally.
[*on camera*] Have you ever been arrested before? Do you have a criminal record?

Susana Ramirez: [*through interpreter*] No, that was the only time. Not even in Mexico. This is the first time this has ever happened to me.

Maria Hinojosa: [*voice-over*] A single mom with two daughters, both American citizens, Ramirez says she fled the violence of Mexico's drug wars after being threatened with kidnapping in her hometown of Durango. She came to the U.S. legally in 2007 and found work in Illinois cleaning houses. Then she overstayed her visa and says she was afraid to return home (Young, 2011).

First of all, not having a driver's license is typically related to not having citizenship/legal residence. Aside from this offense, all Susana Ramirez did was switch lanes on the road without signaling. As a mother of two U.S. citizen children, Susana's case is of particular interest because her deportation would signal to a certain extent that America values its traffic laws more than keeping its families intact. While Secure Communities was reportedly created to make American communities safer by deporting serious criminal immigrants, it has instead become widely perceived as a program that divides families and harasses American citizens over minor offenses. Maria Hinojosa went on to report other stories similar to Susana's and ultimately argued that S-Comm. was failing in ridding America of serious criminals (Young, 2011). Even so, Susana Ramirez did commit the minor crimes of failing to utilize a traffic signal and of driving without a license and S-Comm. allows for this type of apprehension within its rules; perhaps more troubling yet are the stories of overzealous law enforcement officials who ignore the

guidelines of S-Comm. and proactively detain people discretionarily. And in more than one case, these overzealous officials have arrested victims of domestic abuse simply because the victims could not prove their citizenship status.

Difficulty in Recognizing Victims of Domestic Abuse

Isaura Garcia was a twenty year old undocumented mother of an infant child living in Los Angeles when she called the police in order to protect herself from her physically abusive boyfriend. When the police arrived, they interrogated her as to her citizenship status, and eventually processed her under S-Comm. She was subsequently scheduled for deportation because she appeared on the DHS' database as deportable due to crimes related to her illegal immigration. In other words, she had no criminal record including any of the serious crimes S-Comm. aspires to target. Largely because of public uproar and legal precedent, the deportation charges were eventually dropped but Isaura should not have been arrested in the first place because as the victim of domestic abuse, she has the right to apply for amnesty (Tumposky, 2011). Although the deportation proceedings against here were dropped, Garcia was left with this to say through an interpreter:

> After what happened to her, she will never call the police for help…Ricardo [her abusive boyfriend] could have killed her before she would have called the police. It makes her sad to think of all the women in similar situations who are in danger, who also can't trust police because of their fear of deportation (Stoltze, 2011, para 19-20).

Isaura's fear of calling the police is the sort of rift that Boston Mayor Thomas Menino expressed concerned about in regards to Secure Communities and the type of estranged

relationship it would create between law enforcement and immigrant communities. It is hard to keep American communities safer when so many crimes are going unreported out of fear of the police. But just how many Isaura Garcia's will there be as part of S-Comm. and how many will not be as lucky as to avoid deportation? As it turns out, there are many stories eerily similar to Isaura's, occurring throughout the country and S-Comm. is quickly gaining a reputation as an obstacle to police-community relations and an aid to domestic violence and division of American families. Some S-Comm. stories involve the aiding of *both* dividing American families *and* domestic violence.

Arturo Venegas Jr., a retired Sacramento Chief of Police and former Secure Communities Task Force member, shared the following testimony of such a story resulting from Secure Communities:

> In the city of Lodi, near my home of Sacramento, a woman called the police for assistance in stopping her brother-in-law from assaulting her sister. In defending herself, the woman's sister left visible marks on her attacker, which led to her being arrested in addition to her attacker. Through Secure Communities both were processed and identified as undocumented. Within days, with no criminal cases filed or prosecuted, they were both deported and their two infant American citizen children were separated from their parents. These are just two of thousands of incidents that make victims or witnesses of crimes fear the outcome of a call to the police. Should an individual rely on police intervention for serious crimes and public safety and risk their own deportation or the deportation of a loved one or a neighbor? These cases send waves of fear through immigrant communities, making the job of crime fighting in those same communities much more difficult (Is Secure Communities, 2012, p. 43).

In this case, this victim of domestic abuse was not lucky enough to avoid deportation. And although her attacker was also undocumented, a criminal proceeding might have been able to clear up the situation and perhaps the victim of domestic violence would not have been removed from her two American children. While this story is rather tragic in

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that a victim of domestic violence was subsequently removed from her children, and I had access to the congressional record documenting it, I could not find the name of this woman Venegas Jr. is referring to or a single news story published about her. The absence of easily accessible details about this woman's story provide a haunting reminder that there are children in America whose parents can be taken from them swiftly and unjustly while society turns a blind eye to them, instead celebrating their parents' removal as a triumph of national security laws. Also of particular importance in these words by former Sacramento Chief of Police Arturo Venegas Jr., is the idea he forwards that some S-Comm. cases are sending waves of fear throughout immigrant communities. The limited oral accounts gathered on the subject show that this is, in fact, the case.

Interviews on Secure Communities

A research study undertaken at Whitman College entitled, *Inmigracion, Seguridad, y Comunidad*, (Immigration, Security, and Community) The Effect of Secure Communities on Latinos and Local Law Enforcement in Eastern Washington State, does a great job of capturing testimonies of Latinos, both documented and undocumented, in regards to recent shifts in immigration policy and even more specifically on their perspective of Secure Communities (Peterson, Merritt, & May, 2012). Although this project was not undertaken at the post graduate level, it still provides tremendous insight into the perspective those most highly affected by S-Comm. have of their local law enforcement officials through a collection of interviews attained by the researchers in Walla Walla, Washington. The questions are set up to gain the interviewee's perspective

on both Secure Communities and their local law enforcement officials. Because undocumented immigrants are considered a vulnerable population, the researchers had to take steps in protecting the identity of their interviewees such as using pseudonyms in place of their real names, advising them of their rights as research participants, and never proactively inquiring as to anybody's immigration status. They used connections they had with an immigration research institute to identify people who may have been undocumented and according to the researchers, many of the participants proactively offered their citizenship status at some point and two of them were, in fact, undocumented (Peterson, Merritt, & May, 2012, p. 22-23 & 27). Regardless of whether or not each individual Latino interviewed was undocumented, with the ineffectiveness we have already seen with S-Comm., most Latinos feel the effects of the program at they are all potential targets of it. Their testimonies ultimately confirm that the former Chief of Police of Sacramento was accurate in his assessment that waves of fear were spreading throughout immigrant communities.

The study interviewed eight immigrant community members of Walla Walla Washington, of which seven were Latino. Of the eight interviewees in the study five were men and three were women. All interviewees had lived in Walla Walla for at least ten years. Among the Latino residents interviewed two were undocumented; the other five were either citizens or legal residents. Out of these participants all were first generation immigrants and all but one of the Latino community members were originally from Mexico (Peterson, Merritt, & May, 2012, p. 27). One of the interviewees given the pseudonym, "Carmen," is a first generation immigrant from a small town in Oaxaca

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(Peterson, Merritt, & May, 2012, p. 37), Mexico who herself is not undocumented but knows of some in her community that are and that face difficulties with interacting with the police. Carmen shares a story of one of her undocumented acquaintances:

> One young woman I know… told me about a case in which she did not want to report a domestic abuse. I suggested that she talk to the police that if she tried establishing a relation with the police they might be able to help her. She was afraid they'd ask for papers – she didn't call. That's the kind of thing I've heard from the people who have spoken with me (Peterson, Merritt, & May, 2012, p. 46).

This story falls in line with other cases we have reviewed in which domestic abuse was left unpunished because of fear of the police due to a rift between the community and the police force. One would hope that if this woman had called the police that they would have taken all measures to protect a victim of domestic violence, and they very well might have, but the fact that undocumented immigrants who are victims of domestic abuse are saying that they are more afraid of calling the police than suffering their abuse shows that the damage of S-Comm. is already done. And even if this particular story of domestic abuse and the others that Carmen claims to have heard similar to it, are not entirely true, the fact that they are circulating means that the community has developed some sort of a collective fear of the police because of the police force's ability to lead them to federal immigration authorities eventually. Carmen, who herself is not undocumented, admits that she would hesitate to call the police herself because of the rift caused by Secure Communities. This is clear when she says that she "wouldn't call the police if I wasn't sure of something. … If it's something that could be resolved without the police, I also wouldn't call them. Right now, with the situation with Secure Communities, it's very difficult" (Peterson, Merritt, & May, 2012, p. 45). Now, Claudia

admittedly knows about Secure Communities a little more than the average person might because she volunteers with a Latino nonprofit organization (Peterson, Merritt, & May, 2012, p. 57), but given that she works with a Latino nonprofit in her community her commentary is at least in part reflective of what she has seen and heard from other members in the community. Her responses clearly reflect this. Another immigrant interviewed by the research team is not as educated about S-Comm. as Claudia, but shares in her apprehension of calling the police for help while adding a different component to the discussion of S-Comm.'s efficacy.

Lluvia, another first generation immigrant woman from Mexico interviewed as a part of the study who works as custodial assistant (Peterson, Merritt, & May, 2012, p. 37) also admits to having doubts as to when to call the police as evidenced when she says "I'm unclear when I should call the police and when I shouldn't. I once called the police when my neighbor's tree fell on my car. They weren't able to help me get compensation. If I'm unsure if the police can help me I don't call the police" (Peterson, Merritt, & May, 2012, p. 45). But Lluvia admitted that, as did a couple of other interviewees, she would be willing to support a program like Secure Communities and local law enforcement if they actually did an efficient job in deporting criminals (Peterson, Merritt, & May, 2012). This is illustrated well when Lluvia says:

> I say that it's good that they deport criminals. Maybe that sounds bad, but if they are doing harm like drug dealers, it's fine if they deport those people, because they are poisoning our kids and other people. But aside from that I think they shouldn't deport hard-working people. I know lots of people who do not have papers …they work hard to not be maintained by the government, and almost everyone has their own house (Peterson, Merritt, & May, 2012, p. 58).

This comment, along with a couple others made by fellow interviewees, demonstrates that the idea of removing criminals in order to make communities safer is not one that Latino immigrants are themselves opposed to. In other words, they will not disapprove of a program like Secure Communities just for the sake of disapproving of it. They want to see that it does not work against members of their communities to the point in which non-dangerous, hard-working people are susceptible to a costly deportation at any turn. But as these interviewees have revealed, Latinos in America simply are feeling a disconnect from their local authorities and are beginning to question whether or not they or someone they know will become targeted as presumed undocumented immigrants. Data from the Pew Hispanic Center affirms that this has, in fact, become a trend in the Latino community in the U.S.

Latino Self-Perception Following Secure Communities

The Pew Hispanic Center conducted a study in 2010 which revealed that Latinos consider citizenship status as the area that they feel most discriminated against over the previous number one, language barrier. The report describes this shift in the following way:

> Today, more than six-in-ten (61%) Latinos say that discrimination against Hispanics is a 'major problem,' up from 54% who said that in 2007. Asked to state the most important factor leading to discrimination, a plurality of 36% now cites immigration status, up from a minority of 23% who said the same in 2007. Back then, a plurality of respondents—46%—identified language skills as the biggest cause of discrimination against Hispanics (Lopez, Morin, & Taylor, 2010, para. 4).

This shift strongly supports the idea that Secure Communities is contributing to the

fostering of an anti-Latino atmosphere that has Latinos worried about others constantly questioning their right to be in the country. With an increase in the amount of law officials who are now authorized to participate in the investigation of a person's citizenship status, Latinos are feeling less comfortable about others' perceptions of them. While perhaps Secure Communities may not be solely responsible for this finding, the collective testimonies of Latino immigrants, the results of the Warren Institute study, and the statements of opposition to the program made by a plethora of state and local political and law enforcement officials all signal that S-Comm. has contributed to creating a division in American society in which Latinos are again the focus of a hostile, race-based anti-immigrant movement that uses force to remove them. Reminiscent of the repatriation drives of the depression era and the 1950s ("Operation Wetback") in which millions of Mexicans were forcefully detained and deported as discussed earlier, Secure Communities has been more effective in the goal of ridding America of an unwanted Latino population than it has in its supposed goal of making American communities safer.

Chapter 5: Conclusion

In review, Secure Communities is arresting Latinos at a disproportionately high rate, 3600 U.S. citizens are estimated to have been detained through S-Comm. since the program's inception, very few (only 8%) of those deported through the program are aggravated felons, and almost half (45%) of all S-Comm. detainees scheduled for deportation were scheduled for no other reason than being "Present Without Admission" (The Chief of Justice, 2011). The testimonies of state and local law enforcement and political officials along with those of the many immigrants affected by the program definitively affirm that these troubling findings are being felt by the Latino community and help provide a human face to a conglomerate of numbers. At best, Secure Communities is a largely ineffective program that is too rash in deporting a largely non-threatening group of immigrants while only deporting serious criminals at a minimal rate. At worst, it is a continuation of the racist policy embedded in the history of immigration policy that continues to target the Latino population.

Ultimately, the transition to state and local law enforcement of immigration policy in the U.S. has accelerated in the 21st century and the effects of this process are far reaching. It is my view that the Secure Communities program was created with a reasonable intent, but not constructed in a just way with safeguards to ensure against overzealous law enforcement officials and both the ineffective federal agents and faulty equipment that flag and lead to the detaining of non-criminal immigrants and U.S. citizens. Because S-Comm.is not effective in treating American citizens fairly or ridding the U.S. of serious criminals, it should therefore be suspended in the short-term. And

although the high deportations that S-Comm. has led to falls in line historically, the federal government has a chance to take a different historical course at the present moment. In the long-term, passing a comprehensive immigration reform with an easier path to citizenship for the undocumented which also focuses on truly strengthening the economies of many of our highest sending countries is a way the U.S. government can attain the labor it needs while simultaneously keeping immigration at a reasonable rate. Although undocumented immigrants still might exist at lower rates with such a reform, their numbers would presumably decrease to a point in which programs such as Secure Communities would no longer be necessary, especially when considering that the foreign-born commit crimes at lower rates than the native-born (Rumbaut, 2006). Also, with less people remaining in our country identity-less, American communities would surely be safer and the finances previously spent on programs like S-Comm. can be instead allocated to state and local law enforcement agencies in order to allow the focus to be the tracking of serious criminals instead of non-criminal immigrants. Another huge accomplishment of this action of comprehensive reform would be that Latinos can return to being just another of the many ethnic groups in America instead of being as highly profiled and harassed as undesirable, undocumented immigrants. Without the undocumented target on their back, Latinos would be more open to communicating with law enforcement officials and police-community ties that took generations to build and were rapidly destroyed by S-Comm. can begin to redevelop.

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