

Immigration Enforcement Priorities: Secure Communities & Prosecutorial Discretion

By Kirk A. Carter, Esq.

Immigrant Enforcement has never been more vigorous than under the first year of the Obama Administration. For the year that ended September 2010 Immigration and Customs Enforcement (ICE) deported nearly 400,000 people, a record high. Last year Congress granted the Administration's request for an additional \$650 million to provide increased border resources, including more border agents, more surveillance equipment and technology improvements. One of the more controversial enforcement tools in ICE's arsenal, which has been in the news of late, is the Secure Communities Program.

Established in 2008, this program requires participating communities and states to transmit the fingerprints of any individual booked on a criminal offense to ICE. ICE reviews these to determine the immigration status of those booked and can then request a detainer if they determine that an individual is not legally in the US. Many communities have expressed concern over participating in this program because of the risk of racial profiling, the chilling effect it could have on their Community Policing efforts (which rely upon the involvement of immigrant communities), and concerns that individuals living within their communities might face deportation merely as a result of being stopped for minor violations. However, ICE convinced many communities to join the program by assuring them that information obtained through the program would primarily be used to seek out and deport serious criminals. After all the stated goal of the program is to target individuals who "pose a true public safety or national security threat."

In practice, however, nearly half of the individuals deported under the Secure Communities Program have been harmless people stopped for minor violations, such as traffic offenses or loitering, or for no offense at all. As a result many communities, including the city of Boston, are demanding explanations from ICE and are considering withdrawing from the program.

ICE has recently issued two new memos which update, consolidate, and clarify how and when deportation should be initiated and provide guidelines for "prosecutorial discretion." These memos and the concept of "prosecutorial discretion" were immediately attacked

by conservative elements and anti-immigrant groups as a form of amnesty. However, the policy does not grant anyone legal status, it merely reiterates ICE's existing enforcement priorities and gives guidance as to how and when to apply them in the field in a variety of setting from the moment an agent speaks to a person through the point of a prosecutors deciding whether or not to appeal a decision by a judge.

Everyday our nation's law enforcement officials make decisions about who to arrest, who to prosecute, and what sentences to seek. Given the limited resources that ICE has at its disposal (the ability to remove only 5% of those illegally present in the US), the fact that it costs the government approximately \$17,500 to remove or deport an immigrant, and the stated goals of this program, prioritizing makes sense. It should also go a long way in addressing some of the fears of many communities, such as Boston, that this program has been used as a dragnet for those who pose no risk to society and is having a negative effect on their community policing efforts. While it remains to be seen whether the adoption of this new policy will fully address the concerns of many communities, the adoption of these policies by ICE is certainly a move in a positive direction.

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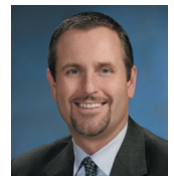
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