



Written by [Joe Wolverton, II, J.D.](#) on August 9, 2011

Secure Communities Program: White House Edict Forces State Participation

On Friday, the Department of Homeland Security [informed Governors](#) that the SComm program does not require state ratification and that it would operate in those states with or without approval of the state government. Furthermore, state executives were told that any agreements entered into by DHS with states regarding the scope of the particular state's participation in the identification and tracking scheme were immediately null and of no legal effect.



"This change will have no effect on the operation of Secure Communities in your state," wrote ICE Director John Morton in a letter to the Governors. The letter was sent to 39 state houses as the Governors in the other 11 states had not executed participation agreements with DHS.

Expectedly, there arose immediately a chorus of opposition to this latest DHS decision. Adversaries of all stripes instantly decried it as an assault by the Obama administration against the 10th Amendment and the sovereignty of the several states.

Rep. Zoe Lofgren (D-Calif.) [called](#) the federal government's decision to nullify the agreements "astonishing." According to a story in the *Los Angeles Times*, "At Lofgren's request, the Homeland Security Department's inspector general is investigating how the Secure Communities program was pitched to local officials."

The ACLU joined in as well, calling the policy shift "an insult" to the Governors and "the latest in a long line of deceptive DHS theatrics."

John Morton [described](#) SComm as "the future of immigration enforcement" as it effectively "focuses our resources on identifying and removing the most serious criminal offenders first and foremost."

The heart of SComm is an integrated database that is shared among local and state law enforcement facilitating and enlarging the country's domestic deportation capacity.

As set out in [a report](#) provided to Congress in 2009, the goals of the program are:

1. IDENTIFY criminal aliens through modernized information sharing;
2. PRIORITIZE enforcement actions to ensure apprehension and removal of dangerous criminal aliens; and
3. TRANSFORM criminal alien enforcement processes and systems to achieve lasting results.

The Secure Communities program is no stranger to controversy. There have been numerous complaints



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filed against the government averring that non-criminal aliens are being targeted by ICE and local police agencies.

Of serious concern to constitutionalists is the fact that the program was created administratively and not as the result of any law passed by Congress. As a matter of fact, no regulatory scheme has been promulgated to manage the implementation of the program.

The program was [originally instituted](#) by President George W. Bush in 2008. Under the Bush administration, ICE established a presence in a total of 14 local jurisdictions. The first “partner” was the Harris County Sheriff’s Office in Texas.

Under President Barack Obama, the program [has insinuated](#) itself into over 1,210 jurisdictions. Not surprisingly, ICE wants to subsume all 3,141 jurisdictions (state, county, and local jails and prisons) under its command by 2013.

According to [published figures](#), through March 2011, 140,396 convicted criminal aliens have been booked into ICE custody resulting in 72,445 deportations.

Opponents say that forcing the states to participate in the controversial program regardless of the expressed wishes of the citizens of the states is more than just a violation of the principle of federalism; it is financially burdensome, as well.

While the exact cost of the program is difficult to calculate, [a story](#) in the *Houston Chronicle* from 2008 reported that, according to ICE officials, the “cost [is] between \$930 million and \$1 billion. Congress dedicated \$200 million for the program in 2008 and set aside \$150 million for fiscal year 2009.”

However, those resisting the program say that most egregious of all is the fact that SComm does not provide reimbursement to the states or local jurisdictions forcibly participating in the scheme.

Therefore, not only does the federal government force the states to participate, it adds insult to the injury by charging them for the privilege, making them shoulder the cost of enforcing the program’s unconstitutional mandates.

The DHS letter rescinding all previous agreements between the feds and the states is undoubtedly a reaction to the fact that Governors in California, Illinois, Massachusetts, and several other states have accused the program of casting too wide a net and leading to the incarceration and deportation of “thousands of minor offenders, including some who were arrested but not yet tried or convicted, and [detering] some crime victims from coming forward to aid police.”

As has been [reported](#) by The New American and other news sources, several Governors intend (intended) to exclude their states from participating in the program. Other state executives simply refused to ratify the proposed agreement in any form.

For example, Massachusetts Gov. Deval Patrick declined to participate in Secure Communities, calling the pronounced scope of the program “overly broad” and a possible deterrence to “the reporting of criminal activity.”

In Colorado, state officials spent months negotiating with DHS and ICE to “ensure it [SComm] included protection for victims of domestic violence who may be arrested by mistake and then identified as illegal immigrants.”

What is the fate of these previously agreed upon stipulations? The *L.A. Times* reports, “Those protections are now void, said a Homeland Security official, who spoke on condition of anonymity to



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discuss internal deliberations.”

Constitutionalists point out that President Obama has unilaterally declared the agreements void, and the principles of federalism and state sovereignty along with them.



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