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# INSECURE COMMUNITIES: HOW AN IMMIGRATION ENFORCEMENT PROGRAM ENCOURAGES BATTERED WOMEN TO STAY SILENT

RADHA VISHNUVAJALA\*

**Abstract:** Domestic violence is a pervasive problem in American society. Undocumented immigrant women suffer disproportionately from spousal abuse due to language and cultural barriers. Undocumented domestic violence victims often do not know how or where to seek help and fear deportation. That fear is not unfounded because Secure Communities, an immigration enforcement program run by Immigration and Customs Enforcement, requires participating local law enforcement agencies to cross-check fingerprints with a federal immigration database. Individuals that are matched and considered removable are subject to removal proceedings. Secure Communities makes undocumented immigrant women less likely to call for help because of the risk of being fingerprinted and then deported. This Note argues for a three-step process to provide protection for victims of domestic violence.

## INTRODUCTION

When Maria Bolanos called the police during a fight with her partner, she never imagined that a call for help could lead to her own deportation.<sup>1</sup> A police officer responded to the call from the twenty-eight-year-old Salvadoran undocumented immigrant, but ended up charging her with illegally selling a phone card to a neighbor.<sup>2</sup> The police later dropped the charge, but not before fingerprinting Bolanos.<sup>3</sup> Under the Secure Communities program, officers cross-referenced her fingerprints with a federal immigration database maintained by Immi-

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<sup>1</sup> Shankar Vedantam, *Destined for Deportation? Salvadoran Woman Targeted by Program Designed to Catch Undocumented Criminals*, WASH. POST, Nov. 1, 2010, at B1.

<sup>2</sup> *Id.*; Erin Pangilinan, *Domestic Violence Victim Calls Out ICE Assistant Director on her Deportation*, CHANGE.ORG (Nov. 29, 2010), <http://news.change.org/stories/domestic-violence-victim-calls-out-ice-assistant-director-on-her-deportation>.

<sup>3</sup> Vedantam, *supra* note 1.

gration and Customs Enforcement (ICE).<sup>4</sup> Because Bolanos had been previously fingerprinted after customs officials caught her illegally entering the United States, she was flagged for deportation.<sup>5</sup>

Secure Communities was designed to improve public safety by identifying and removing criminal aliens.<sup>6</sup> ICE claims that Secure Communities “prioritiz[es] the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators,” but Bolanos’ current predicament may prove otherwise.<sup>7</sup> Even though police later dropped the phone card charge, Bolanos’ fingerprints were the first step toward deportation proceedings.<sup>8</sup> Bolanos’ story demonstrates how Secure Communities not only removes dangerous criminals from communities, but also is used as a widespread immigration enforcement tool.<sup>9</sup>

Using Secured Communities as a broad enforcement mechanism undermines the relationship between undocumented immigrants and local law enforcement by making victims of crime hesitant to ask for help.<sup>10</sup> In instances of domestic violence, the risk of contacting the police is further compounded by barriers of language, culture, and dependency on documented, abusive partners.<sup>11</sup> Undocumented domes-

<sup>4</sup> *Id.*; Erin Pangilinan, *Mother Battles Secure Communities and Deportation*, CHANGE.ORG (Dec. 29, 2010), <http://news.change.org/stories/mother-battles-secure-communities-and-deportation>.

<sup>5</sup> Vedantam, *supra* note 1.

<sup>6</sup> *See id.*; *Secure Communities*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, [http://www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities) (last visited Nov. 1, 2011).

<sup>7</sup> *Secure Communities*, *supra* note 6; *see* Vedantam, *supra* note 1.

<sup>8</sup> Vedantam, *supra* note 1.

<sup>9</sup> *See id.*

<sup>10</sup> *See* Katerina Shaw, Note, *Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women*, 15 CARDOZO J.L. & GENDER 663, 678 (2009); Sarah M. Wood, Note, *VAWA’s Unfinished Business: The Immigrant Women Who Fall Through the Cracks*, 11 DUKE J. GENDER L. & POL’Y 141, 151–52 (2004); Vedantam, *supra* note 1. Strong relationships between police officers and the communities they are in charge of protecting are necessary for effective law enforcement. *See* Jason G. Idilbi, *Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(g) Authority?*, 86 N.C. L. REV. 1710, 1728–29 (2008). Not only does the community depend on the police for protection, but the police depend on the community to report crimes and serve as witnesses. *Id.* at 1728; *see* David Hensch, *Building Trust vs. Checking for Visas: Making Police Enforce Immigration Laws Could Actually Detract from Crime Fighting, Some Officials Say*, PORTLAND PRESS HERALD, Mar. 29, 2004, at 1B.

<sup>11</sup> *See* Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT’L L.J. 1, 12 (1999). One study indicated that among immigrant Latina women in Washington, D.C., seventy-seven percent were victims of abuse. *Id.*; *see* H.R. REP. NO. 103-395, at 26–27 (1993). Immigrant women, and especially undocumented women, are at particular risk for violence because they already face language and cultural barriers to receiving social services. Teran, *supra*, at 12; *see*

tic violence victims—mostly women—are less likely to report abuse than documented or non-immigrant victims because they fear being reported to immigration authorities.<sup>12</sup> Undocumented women are especially vulnerable when their abusive partners are documented because a documented abuser has no fear of deportation and therefore has another element of power.<sup>13</sup> Abusers may exert their control by threatening deportation or blocking their victims from obtaining lawful status.<sup>14</sup>

This Note argues that Secure Communities should only cross-check fingerprints of those accused of serious crimes, thereby preserving the relationship between police and undocumented victims of domestic violence.<sup>15</sup> Part I describes the problem of domestic violence

Leslye E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 316–17 (1995); Susan Girardo Roy, Note, *Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women*, 9 GEO. IMMIGR. L.J. 263, 267 (1995) (citing Christine Whalen & Martha King, *Abuse in a New Land: Immigrant Wives Often Isolated, Vulnerable*, SEATTLE TIMES, Aug. 8, 1994, at A1). Undocumented women are especially deterred from seeking help from law enforcement because they lack “the legal status or the employment authorization necessary to support themselves and their children.” Teran, *supra*, at 12; accord H. REP. NO. 103-395, at 26–27. Undocumented women also face threats of deportation from their partners and loss of child custody, making them less likely to seek help from law enforcement regarding an abusive partner. Teran, *supra*, at 12; see H.R. REP. NO. 103-395, *supra*, at 26–27.

<sup>12</sup> Molly Dragiewicz & Yvonne Lindgren, *The Gendered Nature of Domestic Violence: Statistical Data for Lawyers Considering Equal Protection Analysis*, 17 AM. U. J. GENDER SOC. POL’Y & L. 229, 256 (2009); Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL’Y 245, 293 (2000); Nat Stern & Karen Oehme, *Increasing Safety for Battered Women and Their Children: Creating a Privilege for Supervised Visitation Intake Records*, 41 U. RICH. L. REV. 499, 501 n.11 (2007); Teran, *supra* note 11, at 12; Shaw, *supra* note 10, at 678; Juliette Terzieff, *More Services Reach Abused Immigrant Women*, WOMEN’S ENews, 1, 3 (Aug. 11, 2005), <http://www.ncdsv.org/images/moreservicesreachabuseimmigrantwomen.pdf>. In one study, sixty-five percent of battered immigrant women reported that their batterer had threatened them with deportation. Shaw, *supra* note 10, at 666; see Giselle Aguilar Hass et al., *Battered Immigrants and U.S. Citizen Spouses*, LEGAL MOMENTUM, 1, 3 (Apr. 24, 2006), <http://www.legalmomentum.org/assets/pdfs/wwwbatteredimmigrantsanduscsponsors.pdf>.

<sup>13</sup> See Teran, *supra* note 11, at 12. If the man is documented and the woman is not, she may perceive him to be less resistant to calling immigration authorities because he would have no fear of deportation himself. See Hass et al., *supra* note 12, at 3–4.

<sup>14</sup> Idilbi, *supra* note 10, at 1732 n.125; Hass et al., *supra* note 12, at 3; see Gail Pendleton, *Local Police Enforcement of Immigration Laws and Its Effects on Victims of Domestic Violence*, A.B.A. COMMISSION ON DOMESTIC VIOLENCE, 1, 1, [http://www.nationalimmigrationproject.org/legal\\_archives/Archive\\_Local%20Enforcement%20and%20Domestic%20Violence-1.doc](http://www.nationalimmigrationproject.org/legal_archives/Archive_Local%20Enforcement%20and%20Domestic%20Violence-1.doc) (last visited Sept. 26, 2011).

<sup>15</sup> This Note focuses on domestic violence in heterosexual relationships, where women tend to be victims and men their abusers. This is not always the case, but studies show that women are at greater risk of violence from male partners than men are from their female partners. Dragiewicz & Lindgren, *supra* note 12, at 256; Stern & Oehme, *supra* note 12, at 501 n.11. There are relatively few cases involving men as victims with women as perpetrators and,

against undocumented immigrants, the importance of trust between law enforcement and the immigrant community, and language barriers that immigrants face in seeking assistance. Part II describes the Secure Communities program, including the history of collaboration between local and federal law enforcement and the impetus for the program. Finally, part III argues that ICE must decisively reform the Secure Communities program to protect those victims of domestic violence by using a proposed three-step process.

## I. DOMESTIC VIOLENCE, UNDOCUMENTED IMMIGRANTS, AND LOCAL LAW ENFORCEMENT

Undocumented women face barriers in the form of society at large, the culture and customs of their native countries, and often times their inability to communicate effectively in the English language.<sup>16</sup> These barriers can create a rift between law enforcement officials and the undocumented immigrant community that they serve.<sup>17</sup> These factors, in combination with a fear of deportation, make undocumented women reluctant to ask for help.<sup>18</sup>

### A. Domestic Violence Perpetrated Against Immigrant Women

Immigrants, especially those perceived to be undocumented, are frequently victims of crime.<sup>19</sup> Undocumented immigrants are easy prey

in those cases, “much of female violence is committed in self-defense and inflicts less injury than male violence.” Stern & Oehme, *supra* note 12, at 502 n.11; accord Dragiewicz & Lindgren, *supra* note 12, at 256.

<sup>16</sup> See Karin Wang, *Battered Asian American Women: Community Responses from the Battered Women’s Movement and the Asian American Community*, 3 *ASIAN L.J.* 151, 162–63 (1996); Shaw, *supra* note 10, at 665; Wood, *supra* note 10, at 150–52; see Idilbi, *supra* note 10, at 1728–29.

<sup>17</sup> See Wang, *supra* note 16, at 162–63.

<sup>18</sup> See Dutton et al., *supra* note 12, at 293; Idilbi, *supra* note 10, at 1728–29.

<sup>19</sup> Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 *IOWA L. REV.* 1449, 1450–55 (2006); Christopher Carlberg, Note, *Cooperative Noncooperation: A Proposal for an Effective Uniform Noncooperation Immigration Policy for Local Governments*, 77 *GEO. WASH. L. REV.* 740, 748 (2009); Wang, *supra* note 16, at 162–63; Shaw, *supra* note 10, at 665; Wood, *supra* note 10 at 150–52; see, e.g., Matt Hughes, *Leaders: Learn from Hate*, *TIMES LEADER*, Jan. 29, 2011, at 1A (describing the 2008 beating that led to the death of an undocumented Mexican immigrant); Sarah Netter, *Hating Hispanics: Has Arizona Ignited Firestorm After Decade of Simmering Tension?*, *ABC NEWS* (July 19, 2010), <http://abcnews.go.com/US/hating-hispanics-arizona-ignited-firestorm-decade-simmering-tension/story?id=11179708>; *Staten Island Teen to Serve Time for Attack on Mexican Immigrant*, *NY1 NEWS*, [http://www.ny1.com/content/top\\_stories/134218/staten-island-teen-to-serve-time-for-attack-on-mexican-immigrant](http://www.ny1.com/content/top_stories/134218/staten-island-teen-to-serve-time-for-attack-on-mexican-immigrant) (last updated Feb. 18, 2011, 5:44PM).

because they are reluctant to report crimes to police.<sup>20</sup> Therefore, criminals perceive them as having no source of protection and they are likely to be repeatedly victimized.<sup>21</sup>

This police-averse mentality also enters the home, where domestic violence against undocumented immigrants often goes unreported and unresolved.<sup>22</sup> Domestic violence is an increasingly pervasive problem in American society—“a woman is assaulted by her partner every fifteen seconds and each year 1500 women are killed as a result of domestic violence.”<sup>23</sup> These numbers, however, only reflect reported domestic violence incidents.<sup>24</sup>

Domestic violence statistics show a stark divide when examined by immigration status.<sup>25</sup> Immigrant women are the most vulnerable group among victims of domestic violence.<sup>26</sup> Estimates show that nearly sixty percent of married immigrant women are in abusive relationships.<sup>27</sup> They are also less likely to report abuse than documented or non-immigrant women.<sup>28</sup> While fifty-five percent of all domestic violence victims report their abuse to law enforcement officials, only thirty per-

<sup>20</sup> Kittrie, *supra* note 19, at 1451–52; Carlberg, *supra* note 19, at 748.

<sup>21</sup> See Carlberg, *supra* note 19, at 748–49.

<sup>22</sup> See *id.*; see, e.g., Laura Jontz, Note, *Eighth Circuit to Battered Kenyan: Take a Safari—Battered Immigrants Face New Barrier When Reporting Domestic Violence*, 55 DRAKE L. REV. 195, 196 (2006).

<sup>23</sup> Jontz, *supra* note 22, at 196–97.

<sup>24</sup> *Id.* According to one 2009 report, twenty-seven percent of domestic violence victims in the prior year did not report the incident to police. Ramsey Hanafi, *Over One-Fourth of Domestic Violence Incidents Go Unreported*, LEGAL MATCH (Apr. 22, 2009), <http://lawblog.legalmatch.com/2009/04/22/over-one-fourth-of-domestic-violence-incidents-go-unreported>. Accurate statistics, however, are difficult to obtain. See C. J. Newton, *Domestic Violence Statistics: Prevalence and Trends*, FINDCOUNSELING.COM (Feb. 2001), <http://www.findcounseling.com/journal/domestic-violence/domestic-violence-statistics.html>.

The precise incidence of domestic violence in America is difficult to determine for several reasons: it often goes unreported, even on surveys; there is no nationwide organization that gathers information from local police departments about the number of substantiated reports and calls; and there is disagreement about what should be included in the definition of domestic violence. “One study estimated that more than 3% (approximately 1.8 million) of women were severely assaulted by male partners or cohabitants over the course of a year, while other studies indicate the percentage of women experiencing dating violence . . . ranges as high as 65%.

*Id.* (quoting Joy D. Osofsky, *The Impact of Violence on Children*, 9 FUTURE OF CHILD., Winter 1999, at 33, 34).

<sup>25</sup> See Shaw, *supra* note 10, at 663.

<sup>26</sup> Kerry Abrams, *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV. 1625, 1696 (2007); Shaw, *supra* note 10, at 663; see Hass et al., *supra* note 12, at 3.

<sup>27</sup> Jontz, *supra* note 22, at 197.

<sup>28</sup> Shaw, *supra* note 10, at 678.

cent of documented immigrants turn to law enforcement for help and the number drops to fourteen percent for undocumented women.<sup>29</sup> Many undocumented victims indicate that fear of being reported to immigration authorities is one of their primary reasons for remaining in an abusive relationship.<sup>30</sup>

## 1. Social Barriers

Abusive partners often tend to socially isolate their undocumented victims from society.<sup>31</sup> An undocumented woman is especially vulnerable when her abusive partner is documented because her immigration status then becomes another form of leverage that abuser may use to isolate her.<sup>32</sup> Abusers frequently exploit their partners' immigration status to exert further control by threatening deportation or creating barriers during victims' attempts to gain lawful status.<sup>33</sup> Undocumented victims may then feel reliant on abusers, especially when American laws are difficult to comprehend and victims do not know of, understand, or trust legal aid programs.<sup>34</sup>

Abusers often prohibit contact with friends and family or forbid the victim to work or attend school.<sup>35</sup> Isolation furthers domestic violence because the undocumented victim is cut off from potential sources of support and assistance.<sup>36</sup> For example, a woman named Luisa came to the United States illegally from Mexico.<sup>37</sup> She initially had the support of her friends and family, but this changed after she married her hus-

<sup>29</sup> *Id.*

<sup>30</sup> Dutton et al., *supra* note 12, at 293 (stating that 21.7% of the surveyed battered immigrant women listed fear of being reported to immigration officials as one of their primary reasons for remaining in the abusive relationship).

<sup>31</sup> See Margot Mendelson, *The Legal Production of Identities: A Narrative Analysis of Conversations with Battered Undocumented Women*, 19 BERKELEY WOMEN'S L.J. 138, 163 (2004).

<sup>32</sup> See Shaw, *supra* note 10, at 665.

<sup>33</sup> Hass et al., *supra* note 12, at 3.

<sup>34</sup> Mendelson, *supra* note 31, at 183. This lack of education tends to persist until a woman receives legal status because many undocumented women are too afraid to enroll in school and feel uncomfortable dealing with people outside their homes. *Id.* The legal system, and immigration law in particular, is very complex. Linda Kelly Hill, *The Right to Be Heard: Voicing the Due Process Right to Counsel for Unaccompanied Alien Children*, 31 B.C. THIRD WORLD L.J. 41, 62 (2011). This complexity seriously undermines the ability of unrepresented individuals to navigate the system. *Id.* When litigants must rely on attorneys, immigrants who do not speak English are at an even greater disadvantage than other unrepresented persons. See *id.*

<sup>35</sup> Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 81 (2003); see Shaw, *supra* note 10, at 665.

<sup>36</sup> Orloff et al., *supra* note 35, at 81.

<sup>37</sup> Mendelson, *supra* note 31, at 163.

band, who was a U.S. citizen.<sup>38</sup> He became abusive and possessive, causing her to feel isolated from the community and unable to seek help.<sup>39</sup>

Although abuse initially causes the isolation, friends and family may worsen a situation by warning victims not to leave abusive partners because life would be too hard as a single, undocumented immigrant.<sup>40</sup> For example, another undocumented and abused woman, Leticia, found herself in a social network comprised entirely of her husband's friends and relatives with no support of her own.<sup>41</sup> Her mother-in-law exacerbated the situation by threatening to call the police and have her deported if she complained about her husband's violence.<sup>42</sup>

An undocumented immigrant from El Salvador was so desperate to leave her abusive boyfriend that she tried to jump out of a moving car.<sup>43</sup> He then grabbed her and beat her in the street, but she never reported the incident because of her illegal status.<sup>44</sup> One undocumented woman from Mexico married a U.S. citizen and spent five years in an abusive relationship with him.<sup>45</sup> Her husband repeatedly raped her and even threatened to kill their two children, but she failed to report the abuse in fear of deportation.<sup>46</sup> Without support outside of abusive relationships, many undocumented victims remain unaware that domestic violence is a crime in the United States or that there are services available.<sup>47</sup>

## 2. Cultural Barriers

In addition to the social barriers that isolate undocumented domestic violence victims, there are also cultural barriers—norms and customs—that discourage women from standing up to domestic violence.<sup>48</sup>

In many Asian cultures, society is centered around groups.<sup>49</sup> Families are the most important social units, and members of many Asian communities are expected to put the needs of the family above their

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 164–65.

<sup>41</sup> *Id.* at 164.

<sup>42</sup> Mendelson, *supra* note 31, at 164.

<sup>43</sup> Jontz, *supra* note 22, at 196.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See, e.g., Wang, *supra* note 16, at 162–63.

<sup>48</sup> See *id.* at 168–72; Wood, *supra* note 10, at 151–52.

<sup>49</sup> Wang, *supra* note 16, at 168.



own.<sup>50</sup> Traditionally, many Asian cultures consider women secondary to men, as evidenced by marriage customs.<sup>51</sup> Women would stay at home while men worked to support the family, thereby merging a woman's identity with that of her family.<sup>52</sup>

When this subordinate role persists in modern times, women may be reluctant to break out of the traditional family unit in an effort to stop domestic violence.<sup>53</sup> These norms make women feel that they must protect the family reputation at their own expense because one family member's guilt or shame extends to the rest of the family.<sup>54</sup> One example of this strong sense of family reputation is the story of Kim Seng, a Cambodian woman murdered by her abusive husband.<sup>55</sup> Just one week before the murder, Seng's family organized an intervention to ask her husband to stop his beatings and encourage them to stay together.<sup>56</sup> Seng's mother later admitted, "I didn't sense the danger because I was so focused on the shame my daughter's actions would bring in the Cambodian community' . . . . 'And I was thinking about my daughter's children and the importance of their having a family.'"<sup>57</sup> This same family-centric culture precludes the option of divorce because it would break up the family unit and bring shame to the family.<sup>58</sup>

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<sup>50</sup> Evelyn Lee, *Overview: The Assessment and Treatment of Asian American Families, in WORKING WITH ASIAN AMERICANS: A GUIDE FOR CLINICIANS* 7 (Evelyn Lee ed., 1997); Tam B. Tran, *Using DSM-IV to Diagnose Mental Illness in Asian Americans*, 10 J. CONTEMP. LEGAL ISSUES 335, 342-43 (1999); Wang, *supra* note 16, at 168-69; see Carolyn Jin-Myung Oh, *Questioning the Cultural and Gender-Based Assumptions of the Adversary System: Voices of Asian-American Law Students*, 7 BERKELEY WOMEN'S L.J. 125, 167 (1992).

<sup>51</sup> Wang, *supra* note 16, at 169. In many Asian cultures, marriages "were frequently pre-arranged [and] often involved an exchange of money from the groom's family to the bride's family," much like in a sale, indicating that the wife would be subject to the will of the husband. *Id.*; see Christine K. Ho, *An Analysis of Domestic Violence in Asian American Communities: A Multicultural Approach to Counseling*, 9 WOMEN & THERAPY 129, 131 (1990). Although these traditions seem outdated, they still exist to some extent in modern times in the United States. See Ho, *supra*, at 136-37; Wang, *supra* note 16, at 169 n.105. "In a study in Seattle on domestic violence, Vietnamese men expressed a sense of ownership over their wives and Vietnamese, Laotian, and Khmer women all said that they could not refuse their husbands' requests for sex without a good excuse." Wang, *supra* note 16, at 169 n.105; see Ho, *supra*, at 141.

<sup>52</sup> Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311, 1318 (1991); Wang, *supra* note 16, at 169.

<sup>53</sup> Wang, *supra* note 16, at 169-72.

<sup>54</sup> Ho, *supra* note 51, at 134; Wang, *supra* note 16, at 169.

<sup>55</sup> Geeta Anand, *Mother's Regret Raises Abuse Issue*, BOS. GLOBE, May 8, 1994, at 29.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> See Wang, *supra* note 16, at 170.

Similarly powerful social norms about how a wife and mother should behave exist in the Latino immigrant community.<sup>59</sup> This dynamic can be illustrated by one commentator's description:

Within the Latino community, Latinas' identities are defined on the basis of their roles as mothers and wives. By encouraging definitions of Latinas as interconnected with and dependent upon status within a family unit structure, the Latino patriarchy denies Latinas individuality on the basis of gender. For Latinas, cultural norms and myths of national origin intersect with these patriarchal notions of a woman's role and identity. The result is an internal community-defined role, modified by external male-centered paradigms.<sup>60</sup>

These cultural norms, even without considering the possibility of deportation, can make women increasingly reluctant to report violence.<sup>61</sup> In a survey of battered Latina immigrant women, 48.2% chose to stay with their abusers in fear of losing their children, 41.2% did not want to separate their children from their father, 18.8% cited the perception that a good wife and mother does not leave her family, and 18.8% would not leave for religious reasons.<sup>62</sup> Each of these cultural norms about the role of a woman as a wife and mother create a barrier between battered women and the assistance they need.<sup>63</sup>

### 3. The Language Barrier

Battered women may also be unable to seek help from abusive relationships when a language barrier hinders effective communication with law enforcement officers.<sup>64</sup> When an officer cannot understand

<sup>59</sup> Orloff et al., *supra* note 35, at 82; Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 240–41 (1994); Wood, *supra* note 10, at 151.

<sup>60</sup> Rivera, *supra* note 59, at 241; accord Wood, *supra* note 10, at 151–52.

<sup>61</sup> See Orloff et al., *supra* note 35, at 82; Wood, *supra* note 10, at 151–52.

<sup>62</sup> Orloff et al., *supra* note 35, at 82 (citing Dutton et al., *supra* note 12, at 245 (discussing a study conducted from 1992 to 1995)).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 75; Wood, *supra* note 10, at 150. Foreign languages are often spoken at home, and one study on Asian-American immigrant communities indicates that over seventy-five percent speak their native language at home. Wang, *supra* note 16, at 164. A 1993 book, commissioned by the Social Science Research Council's National Committee for Research on the 1980 Census, reports that 79.5% of Chinese immigrants, 63.8% of Filipino immigrants, 76.8% of Korean immigrants, 60.1% of Asian Indian immigrants, and 83.4% of Vietnamese immigrants speak their native language at home. HERBERT R. BARRINGER ET

the victim and either ignores or fails to resolve her underlying issue, she may be less likely to seek help in the future.<sup>65</sup> A language barrier prevents police from effectively protecting the entire community.<sup>66</sup> This creates a danger of marginalizing entire immigrant populations.<sup>67</sup> For example, according to one study, seventy-two percent of foreign-born Latinos in the United States consider Spanish their dominant language, while only twenty-four percent consider themselves bilingual.<sup>68</sup> Additionally, fifty-five percent of foreign-born Latinos have less than a high school education, thereby making communication of complex legal procedures even more difficult.<sup>69</sup>

Likewise, law enforcement agencies do not always have bilingual staff sufficient to serve those lacking proficiency in English—especially outside of large metropolitan areas.<sup>70</sup> Therefore, when police cannot communicate with domestic violence victims, they may instead interview others at the scene.<sup>71</sup> Without direct communication with the victim, however, officers will likely be confronted with the cultural barriers that cause witnesses to downplay or deny abuse.<sup>72</sup> Law enforcement efficacy further deteriorates when only the abuser speaks English, as he is not likely to incriminate himself.<sup>73</sup> Furthermore, if the police do not arrest the abuser, he may retaliate against the victim after the police leave.<sup>74</sup>

For example, one survey of Latino domestic violence victims reported that in nearly one third of domestic violence police responses, officers did not speak directly to the victim.<sup>75</sup> Furthermore, eleven percent of respondents indicated that police only spoke to the abuser, and thirty-four percent said an officer spoke to them in Spanish.<sup>76</sup> Overall, less than one quarter of respondents could communicate in English

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AL., ASIANS AND PACIFIC ISLANDERS IN THE UNITED STATES 187 (1995); Wang, *supra* note 16, at 164.

<sup>65</sup> Orloff et al., *supra* note 35, at 75.

<sup>66</sup> *Id.*; Carlberg, *supra* note 19, at 742; see, e.g., Mendelson, *supra* note 31, at 170; *infra* notes 87-110.

<sup>67</sup> See Orloff et al., *supra* note 35, at 75.

<sup>68</sup> Wood, *supra* note 10, at 150-51.

<sup>69</sup> See *id.* at 151.

<sup>70</sup> *Id.*

<sup>71</sup> See Orloff et al., *supra* note 35, at 90-91.

<sup>72</sup> See *id.*

<sup>73</sup> See *id.* at 54 n.51.

<sup>74</sup> See *id.*

<sup>75</sup> *Id.* at 90-91. The survey was a large-scale research project conducted from 1992 to 1995 and participants were immigrant Latinas in the Washington, D.C. metropolitan area. *Id.* (citing Dutton et al., *supra* note 12, at 245 (discussing the study conducted from 1992 to 1995)).

<sup>76</sup> Orloff et al., *supra* note 35, at 90-91.

and over twenty-five percent stayed with their abusers because of their inability to speak English.<sup>77</sup> These results are not unique to the Latino community and are likely attributable to the language barrier between victims and police officers, too few of whom are bilingual.<sup>78</sup>

This communication hindrance can lead to the police arresting the victim instead of the abuser.<sup>79</sup> For example, an Asian immigrant named Ling called the police when her husband attacked her with a chair.<sup>80</sup> She used a fish knife to defend herself and her husband cut himself on the knife while attacking her—when the police arrived, Ling’s husband accused her of attacking him.<sup>81</sup> He spoke English well but she did not, and the language barrier ultimately resulted in the police arresting Ling instead of her attacker.<sup>82</sup> In these situations, the language barrier is even more harmful to the victim because the police may be more likely to believe the party with more proficiency in the English language.<sup>83</sup>

Language barriers also negatively affect immigrant domestic violence victims when they seek social services or legal protection.<sup>84</sup> Victim advocates may not be able to effectively convey concepts of confidentiality or even indicate what services are available to domestic violence victims.<sup>85</sup> The resulting feeling of hopelessness, coupled with a fear of

<sup>77</sup> *Id.* at 82–83. In the survey, 93.8% of the battered immigrant women requesting police assistance experienced “severe physical abuse.” *Id.* at 71. Additionally, all respondents reported injury at the time of the call and nearly sixty percent had visible injuries when police arrived. *Id.* Over half reported physical evidence of domestic violence present on the crime scene—property in disarray, torn clothing, and violence or threats of abuse in the presence of police. *Id.*

<sup>78</sup> *See id.* at 74, 90–91 (“The need for bilingual police officers and/or interpreters working with police forces in communities with significant immigrant populations has long been recognized.”); Wang, *supra* note 16, at 164; *supra* note 64.

<sup>79</sup> Wang, *supra* note 16, at 165.

<sup>80</sup> *Id.* at 162.

<sup>81</sup> Margaretta Wan Ling Lin & Cheng Imm Tan,  *Holding Up More Than Half the Heavens: Domestic Violence in Our Communities, A Call for Justice, in THE STATE OF ASIAN AMERICA: ACTIVISM AND RESISTANCE IN THE 1990S*, at 321, 327 (Karin Aguilar-San Juan ed., 1994); Wang, *supra* note 16, at 162, 164–65.

<sup>82</sup> Lin & Tan, *supra* note 81, at 327; Wang, *supra* note 16, at 162–63.

<sup>83</sup> *See* Wang, *supra* note 16, at 164–65; *see, e.g.*, Lin & Tan, *supra* note 81, at 323.

<sup>84</sup> *See* Orloff et al., *supra* note 35, at 71.

<sup>85</sup> *See* Wood, *supra* note 10, at 151. Furthermore, the myriad public and private agencies devoted to helping victims of domestic violence can be so daunting that a woman may decide to not bother contacting each organization because, by contacting multiple agencies for different services, she could potentially reveal her immigration status to multiple people. *See* Orloff et al., *supra* note 35, at 90–91. Examples of public and private domestic abuse victim advocacy agencies include medical facilities, counseling centers, shelters, and hotlines. Wang, *supra* note 16, at 165.

revealing illegal immigration status, creates an atmosphere where victims are unlikely to seek help.<sup>86</sup>

### B. *The Relationship Between Undocumented Immigrants and Law Enforcement*

These social, cultural, and language barriers make it especially important that immigrant victims of domestic violence have trust in local law enforcement.<sup>87</sup> Cultural notions of authority and fear of deportation may weaken the relationship between law enforcement officers and the community they police.<sup>88</sup> Conversely, certain law enforcement initiatives, such as community policing and noncooperation policies, may strengthen the relationship.<sup>89</sup>

#### 1. A Weakened Relationship Between Police and the Community

Some refugees and other recent immigrants may distrust U.S. law enforcement officers by equating them with the corruption, brutality, and insensitivity of police in their native countries.<sup>90</sup> For example, Mexico, the former home of many U.S. immigrants, ranked 72nd out of 180 in the 2008 Corruption Perception Index.<sup>91</sup> One survey shows that four out of five Mexicans believe police are generally corrupt and take ad-

<sup>86</sup> Wang, *supra* note 16, at 165.

<sup>87</sup> Orloff et al., *supra* note 35, at 46–47; Wang, *supra* note 16, at 172–73; *see, e.g.*, Mendelson, *supra* note 31, at 170.

<sup>88</sup> Orloff et al., *supra* note 35, at 46–47; Wang, *supra* note 16, at 172–73; *see, e.g.*, Mendelson, *supra* note 31, at 170.

<sup>89</sup> *See* Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1513 (2002); Orloff et al., *supra* note 35, at 85; Carlberg, *supra* note 19, at 742.

<sup>90</sup> KI-TAEK CHUNG & NADJA ZALOKAR, U.S. COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990s 53 (1992), *available at* <http://www.eric.ed.gov/PDFS/ED343979.pdf>; POLICE EXEC. RESEARCH FORUM, COMMUNITY POLICING: THE PAST, PRESENT, AND FUTURE 134 (Lorie Fridell & Mary Ann Wycoff, eds., 2004), *available at* <http://www.policeforum.org/library/community-policing/CommunityPolicingReduced.pdf>; Orloff et al., *supra* note 35, at 47. United States law enforcement officers, too, are not always trustworthy: in 1991, New York City traffic police severely beat a Chinese immigrant because he misunderstood a request for his registration and got out of his car. CHUNG & ZALOKAR, *supra*, at 53. Police insensitivity also took root in 1989 in a small California town through “a general pattern of harassment of Filipino” youth, where officers frequently searched their car trunks and asked them if they were members of gangs. *Id.* at 54.

<sup>91</sup> Luz E. Nagle, *Corruption of Politicians, Law Enforcement, and the Judiciary in Mexico and Complicity Across the Border*, 21 SMALL WARS & INSURGENCIES 95, 97 (2010). Mexico was given a “weak” rating in 2007 by Global Integrity, a non-profit organization that tracks corruption trends. *See Global Integrity Report: Mexico: 2007*, GLOBAL INTEGRITY, <http://report.globalintegrity.org/Mexico/2007> (last visited Oct. 27, 2011). In 2009, Mexico’s Global Integrity rating rose to the level of “moderate.” *Global Integrity Report: Mexico: 2009*, GLOBAL INTEGRITY, <http://report.globalintegrity.org/Mexico/2009> (last visited Oct. 27, 2011).

vantage of citizens.<sup>92</sup> Also, many Mexican parents teach their children not to trust the police, and television programs in Mexico portray police “as corrupt and incompetent oafs or sinister antagonists.”<sup>93</sup> In cases where the victims are women and children, such as domestic violence, Mexicans generally believe authorities are more willing to protect perpetrators than victims.<sup>94</sup>

These perceptions of law enforcement may stay with immigrants as they enter the United States, especially the undocumented immigrants who may already be distrustful from fear of deportation.<sup>95</sup> Those undocumented immigrants predisposed to alienation may further distrust law enforcement officers who openly collaborate with federal immigration enforcement agencies.<sup>96</sup> Undocumented immigrants are unlikely to cooperate in criminal investigations or report crimes if they believe doing so would subject them to deportation.<sup>97</sup> The end result may be to undermine community safety through the added difficulty in charging criminals or obtaining convictions.<sup>98</sup> Therefore, communities are best served by encouraging communication between undocumented immigrants and local law enforcement officers.<sup>99</sup>

## 2. Strengthening Relationships Between Police and the Community

Local governments have tried to increase communication and trust between immigrant communities and law enforcement by enacting noncooperation policies.<sup>100</sup> These policies limit the local government’s relationship with federal law enforcement, usually by ensuring that local law enforcement agents do not inquire into immigration

<sup>92</sup> See Nagel, *supra* note 91, at 99.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 100.

<sup>95</sup> See, e.g., Idilbi, *supra* note 10, at 1731; Nagle, *supra* note 91, at 99; Wang, *supra* note 16, at 173. For example, one undocumented woman spent eight years living in fear of deportation and would not even leave her own house lest she be arrested and deported. Mendelson, *supra* note 31, at 170. For that reason, she did not call the police when her husband violently abused her. Mendelson, *supra* note 31, at 170.

<sup>96</sup> See, e.g., Mendelson, *supra* note 31, at 170.

<sup>97</sup> Carlberg, *supra* note 19, at 741, 749; see, e.g., Mendelson, *supra* note 31, at 170.

<sup>98</sup> Carlberg, *supra* note 19, at 741–42; see, e.g., Mendelson, *supra* note 31, at 170. Domestic violence can increase in frequency and severity over time, making it especially important that law enforcement officials and courts respond forcefully after an initial incident. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 7 (1999); Julia Weber, *Domestic Violence Courts: Components and Considerations*, 2 J. CENTER FOR FAMILIES, CHILD. & COURTS 23, 24 (2000).

<sup>99</sup> Carlberg, *supra* note 19, at 741–42.

<sup>100</sup> *Id.* at 742.

status or withholding immigration information from federal authorities.<sup>101</sup> Some such policies, however, have been preempted by federal statute, making some cooperation with federal enforcement officials compulsory.<sup>102</sup>

Alternatively, community policing programs are an effective way to strengthen the relationship between law enforcement officers and the community.<sup>103</sup> Community policing often relies on traditionally marginalized groups, such as the immigrant community, to report crimes and other problems.<sup>104</sup> The public helps law enforcement by looking

<sup>101</sup> *Id.*

In 1989, the Mayor of New York City, Edward Koch, issued Executive Order No. 124, which prohibited any city employee from reporting the immigration status of any individual to federal authorities, unless: (1) it was required by law, (2) the individual authorizes the immigration information to be transmitted to federal authorities, or (3) the individual had been engaging in criminal behavior.

*Id.* at 747; accord City of N.Y., Exec. Order No. 124 (Aug. 7, 1989), available at [http://courts.state.ny.us/library/queens/PDF\\_files/Orders/ord124.pdf](http://courts.state.ny.us/library/queens/PDF_files/Orders/ord124.pdf); see also City of New York v. United States, 179 F.3d 29, 31–32 (2d Cir. 1999). Similarly, Maine passed a noncooperation law that provides for disclosure of immigration status to federal authorities only if:

i. the individual to whom such information pertains is suspected . . . of engaging in illegal activity, other than mere status as an undocumented alien; or ii. the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, other than mere status as an undocumented alien; or iii. such disclosure is necessary in furtherance of an investigation of potential terrorist activity; or iv. such disclosure is required by law.

John E. Baldacci, Governor of Maine, *An Order Concerning Access to State Services By All Entitled Maine Residents* (Apr. 9, 2004), available at <http://www.maine.gov/portal/government/governor> (select the “Policy Initiatives” hyperlink, then select the “Executive Orders” hyperlink, then select the “Executive Order Archive” hyperlink, then select “An Order Concerning Access to State Services By All Entitled Maine Residents” hyperlink); Carlberg, *supra* note 19, at 752.

<sup>102</sup> *City of New York*, 179 F.3d at 36–37; Carlberg, *supra* note 19, at 746. In 1996, Congress enacted section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act and section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act, which were enacted to prevent localities from enacting their own noncooperation laws. Carlberg, *supra* note 19, at 746; see H.R. REP. NO. 104-725, at 383 (1996) (Conf. Rep.); Huyen Pham, *The Constitutional Right Not to Cooperate?: Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373, 1374–76 (2006). In *City of New York v. United States*, the Second Circuit explained that “the City [did] not dispute that Congress has plenary power to legislate on the subject of aliens.” 179 F.3d at 34. The City therefore challenged the statutes on both the Tenth Amendment and the Guarantee Clause of the U.S. Constitution. *Id.* at 34, 36. The court, however, found that the statutory interference with New York’s executive order was permissible and upheld the statutes. *Id.* at 37.

<sup>103</sup> See Kahan, *supra* note 89, at 1513; Orloff et al., *supra* note 35, at 85.

<sup>104</sup> See Kahan, *supra* note 89, at 1513–15.

for suspicious behavior, being aware of empty homes, and learning how to handle different emergencies.<sup>105</sup> Programs are tailored to the needs of each particular community, but the underlying goal is to create a relationship that helps identify and stop crime and disorder.<sup>106</sup>

Community policing occurs incrementally by increasing a community's trust in law enforcement.<sup>107</sup> Law enforcement officers build trust not only with victims, but also with their social peers so that friends and family members will encourage victims to seek help.<sup>108</sup> Local police departments may also develop stronger relations with communities by meeting with various immigrant groups to discuss their needs and issues.<sup>109</sup> Because leaders of immigrant community groups are predominantly male, law enforcement officials may also need to contact women's or domestic violence victim's organizations in an attempt to learn the needs of those communities.<sup>110</sup>

## II. COOPERATION BETWEEN FEDERAL AND STATE LAW ENFORCEMENT

The federal government controls immigration law in the United States.<sup>111</sup> Section 287(g) of the Immigration and Nationality Act (INA), however, allows federal law enforcement to enter into agreements with local law enforcement to enforce federal immigration law.<sup>112</sup> Such agreements have strained the relationship between undocumented immigrants and community police officers, especially since the implementation of the Secure Communities program.<sup>113</sup>

<sup>105</sup> *Understanding the Responsibilities of an Officer and the Rights of a Civilian*, COMMUNITY-POLICING.ORG, <http://www.communitypolicing.org/officers-and-civilians> (last visited Oct. 27, 2011) [hereinafter COMMUNITY POLICING].

<sup>106</sup> Suzanne Meiners, Comment, *A Tale of Political Alienation of Our Youth: An Examination of the Potential Threats on Democracy Posed by Incomplete "Community Policing" Programs*, 7 U.C. DAVIS J. JUV. L. & POL'Y 161, 170 (2003); COMMUNITY POLICING, *supra* note 105.

<sup>107</sup> See Orloff et al., *supra* note 35, at 85.

<sup>108</sup> *Id.* at 85–86.

<sup>109</sup> *Id.* at 85.

<sup>110</sup> See *id.*

<sup>111</sup> Yule Kim, *The Limits of State and Local Immigration Enforcement and Regulation*, 3 ALBANY GOV'T L. REV. 242, 244 (2010); see *Fong Yue Ting v. United States*, 149 U.S. 698, 705 (1893); *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875); *Henderson v. Mayor of New York*, 92 U.S. 259, 270 (1875).

<sup>112</sup> Immigration and Nationality Act § 287(g), Public Law No. 82-414, 8 U.S.C. § 1357 (2006); Kim, *supra* note 111, at 251.

<sup>113</sup> See Jennifer M. Chacón, *A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 DUKE L.J. 1563, 1584–85; see, e.g., Morgan Johnson, *New Police Chief Named After Immigration Policy Dispute*, BROWN DAILY HERALD, Mar. 10, 2011, at 12 (quoting Providence, Rhode Island Public Safety Commissioner Steven Pare in discussing the implementation of the Secure Communities program in Providence).



### A. *History of Cooperation Between Federal and Local Law Enforcement*

Immigration in the United States is controlled by the federal government and, as the Supreme Court has recognized, regulation of immigration is “unquestionably exclusively a federal power.”<sup>114</sup> Therefore, states and localities are limited in their abilities to regulate immigration matters, though they may enforce criminal provisions of federal immigration laws.<sup>115</sup> Congress may, however, authorize state officers to enforce immigration laws.<sup>116</sup> Congress may not compel states or commandeer state officers to enforce such laws, but it can prevent states from refusing to share immigration information with federal authorities.<sup>117</sup>

Section 287(g) of INA expressly authorizes the Secretary of Homeland Security to enter into agreements with states and localities to enforce federal immigration law.<sup>118</sup> These agreements must dictate the specific functions state or local officers are required or allowed to perform.<sup>119</sup> Section 287(g) agreements are limited to investigation, arrest, and detention; they do not authorize removal.<sup>120</sup> Between the enactment of section 287(g) in 1996 and December of 2009, ICE “signed sixty-three memoranda of agreement (MOAs) with state and local law enforcement agencies.”<sup>121</sup>

Many of these agreements are limited in scope and only allow jail officials to report immigration violators to ICE.<sup>122</sup> Others are broader, allowing local law enforcement officers to directly enforce immigration laws after a specified training period.<sup>123</sup> Allegations surfaced, however, claiming that law enforcement officers were arresting immigrants solely

<sup>114</sup> Kim, *supra* note 111, at 244 (quoting *DeCanas v. Bica*, 424 U.S. 351, 354 (1976)); see *Fong Yue Ting*, 149 U.S. at 705; *Chy Lung*, 92 U.S. at 280; *Henderson*, 92 U.S. at 270.

<sup>115</sup> See *Gonzales v. City of Peoria*, 722 F.2d 468, 474–75 (9th Cir. 1983); Kim, *supra* note 111, at 244–45, 247–48.

<sup>116</sup> Kim, *supra* note 111, at 251.

<sup>117</sup> *City of New York v. United States*, 179 F.3d 29, 32–33 (2d Cir. 1999); *Gonzales*, 722 F.2d at 474–75; H.R. REP. NO. 104-725, at 383. Local governments are also restricted by federal statute in their discretion to use information that their officers collect regarding an individual’s immigration status. *City of New York*, 179 F.3d at 32–33.

<sup>118</sup> Kim, *supra* note 111, at 251; Immigration and Nationality Act § 287(g).

<sup>119</sup> See Kim, *supra* note 111, at 252.

<sup>120</sup> *Id.*

<sup>121</sup> Chacón, *supra* note 113, at 1582.

<sup>122</sup> *Id.* at 1583–84; see also *Memorandum of Agreement*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, at 21, [http://www.ice.gov/doclib/detention-reform/pdf/287g\\_moa.pdf](http://www.ice.gov/doclib/detention-reform/pdf/287g_moa.pdf).

<sup>123</sup> Chacón, *supra* note 113, at 1584; *Memorandum of Agreement*, *supra* note 122, at 4. The sample MOA on the ICE website includes a section on training for performance of immigration officer functions. *Memorandum of Agreement*, *supra* note 122, at 4, 17.

to initiate investigations and removal proceedings.<sup>124</sup> In 2009, Department of Homeland Security (DHS) Secretary Janet Napolitano responded to those allegations by announcing that law enforcement agencies acting pursuant to 287(g) agreements must pursue all criminal charges originally causing an immigrant's arrest.<sup>125</sup>

### B. *Secure Communities*

Local enforcement of federal immigration laws has strained the relationship between undocumented immigrants and community police officers.<sup>126</sup> Section 287(g) agreements are one cause of this tension, but the Secure Communities program has further exacerbated the problem since its implementation.<sup>127</sup> Secure Communities is a formal program where state and local governments sign MOAs with ICE, agreeing to cross-check fingerprints against a federal database in an attempt to identify undocumented immigrants.<sup>128</sup> Secure Communities began in 2008 under President George W. Bush, funded through DHS.<sup>129</sup> Initially, the program focused on removable noncitizens in prisons and jails, charging state and local officials with identifying them by running fingerprint data against DHS's immigration databases.<sup>130</sup> Secure Communities soon expanded, "ma[king] the identification and removal of criminal aliens a top priority . . ." <sup>131</sup> Although intended to identify and remove dangerous criminals, participating agencies screen all arrested immigrants regardless of whether they are ultimately convicted.<sup>132</sup> For example:

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<sup>124</sup> *Id.*

<sup>125</sup> Chacón, *supra* note 113, at 1584–85.

<sup>126</sup> *See id.*; Johnson, *supra* note 113.

<sup>127</sup> *See* Chacón, *supra* note 113, at 1584–85. In a letter to ICE, the Providence, Rhode Island Public Safety Commissioner, Steven Pare, wrote, "The Secure Communities program will create fear and mistrust between the community and law enforcement—thus undermining our community policing model and risking the public safety of our capital city." Johnson, *supra* note 113.

<sup>128</sup> Chacón, *supra* note 113, at 1595.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Testimony of David Venturella, Executive Director, Secure Communities, Immigration and Customs Enforcement, Before the House Appropriations Committee Subcommittee on Homeland Security, "Priorities Enforcing Immigration Law," U.S. DEPARTMENT OF HOMELAND SECURITY, [http://www.dhs.gov/ynews/testimony/testimony\\_1239800126329.shtm](http://www.dhs.gov/ynews/testimony/testimony_1239800126329.shtm) (last visited Oct. 30, 2011); *see* Chacón, *supra* note 113, at 1595–96.*

<sup>132</sup> Chacón, *supra* note 113, at 1595–96; *More Questions Than Answers About the Secure Communities Program*, NAT'L IMMIGR. L. CENTER 1, 1–2 (Mar. 2009), <http://www.nilc.org/immlawpolicy/LocalLaw/secure-communities-2009-03-23.pdf>; *Secure Communities: Get the*

In December, Mesa police arrested Roberto Gonzalez-Corona, 42, a Mexican immigrant, on a disorderly-conduct charge. He was booked into the Mesa jail, where his fingerprints were run through the criminal and immigration databases.

The checks showed that Gonzalez-Corona had been removed from the United States nine times. Gonzalez-Corona also had numerous misdemeanor and felony convictions in California on charges related to drug possession and grand-theft auto.

After being verified by an ICE center in Vermont, which can take several hours, the information was sent electronically through a secure law-enforcement network to ICE's field office in Phoenix. By then, Mesa police had released Gonzalez-Corona after charging him with disorderly conduct.

But ICE agents tracked him down with information received from Mesa police. ICE agents arrested him on Jan. 27. Gonzalez-Corona is now being held in federal custody facing felony charges of illegally re-entering the United States.<sup>133</sup>

The Secure Communities program is extensive and rapidly growing: by November 2009, ninety-five cities and counties in eleven states were participants.<sup>134</sup> As of September 2011, 1595 jurisdictions in forty-four states and territories were participants.<sup>135</sup> Nationally, "5.6 million people have been screened, resulting in the deportation of more than 21,500 immigrants convicted of major crimes, or about 26 percent of the 81,489 immigrants deported overall."<sup>136</sup> ICE plans to require every jurisdiction in the country to participate in the program by 2013.<sup>137</sup>

Several local governments have questioned the Secure Communities program's negative impact on community relations.<sup>138</sup> Localities are concerned that Secure Communities will put an extra burden on

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*Facts*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, [www.ice.gov/secure\\_communities/get-the-facts.htm](http://www.ice.gov/secure_communities/get-the-facts.htm) (last visited Oct. 30, 2011).

<sup>133</sup> Daniel González, *ICE Project Mainly Nets Low-Level Criminals*, ARIZ. REPUBLIC, Mar. 9, 2011, at A1.

<sup>134</sup> Chacón, *supra* note 113, at 1596.

<sup>135</sup> *Activated Jurisdictions*, ICE SECURE COMMUNITIES, <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf> (last visited Oct. 30, 2011).

<sup>136</sup> González, *supra* note 133.

<sup>137</sup> Julia Preston & Kirk Semple, *U.S. Hardens Its Stance on an Immigrant Policy*, N.Y. TIMES, Feb. 18, 2011, at A20; *see Activated Jurisdictions*, *supra* note 135.

<sup>138</sup> *See* Shankar Vedantam, *Reversals by Immigration Officials Are Sowing Mistrust*, WASH. POST, Nov. 22, 2010, at A4.

local police departments that are already working with limited funds.<sup>139</sup> Local government officials have also questioned the program because it may target both legal and undocumented immigrants.<sup>140</sup> Secure Communities may negatively impact the number of immigrants reporting crimes or seeking medical attention, thereby endangering public safety.<sup>141</sup> The association between local law enforcement and immigration officials can discourage community cooperation and undermine cooperative community policing programs.<sup>142</sup>

Immigrant advocacy groups have also criticized Secure Communities because it fails to prioritize Level 1 offenders—those convicted of serious drug offenses or violent crimes.<sup>143</sup> Data supports this concern, as most of the immigrants who have been removed through Secure Communities are low-level offenders.<sup>144</sup> Of all Secure Communities jurisdictions, Maricopa County, Arizona has the highest number of immigrants both arrested and deported.<sup>145</sup> Sixty-six percent of Maricopa County deportees, however, are either low-level criminals or have no criminal history at all.<sup>146</sup> Nationally, sixty percent of Secure Communities deportees are low-level criminals or have no criminal history.<sup>147</sup>

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<sup>139</sup> Ken Green, *Denver Mayor Candidate Mejia Joins Linkhart in Opposing 'Secure Communities,'* EXAMINER.COM, Feb. 17, 2011, <http://www.examiner.com/top-news-in-denver/denver-mayor-candidate-mejia-joins-linkhart-opposing-secure-communities>.

<sup>140</sup> Gloria Pazmiño & Debralee Santos, *Opposition Grows Against Secure Communities Immigration Program,* MANHATTAN TIMES, Nov. 23, 2010, <http://www.manhattantimesnews.com/2010/opposition-grows-against-secure-communities-immigration-program.html>.

<sup>141</sup> *Id.*

<sup>142</sup> See Pazmiño & Santos, *supra* note 140; Carlberg, *supra* note 19, at 741–42.

<sup>143</sup> Pazmiño & Santos, *supra* note 140; Preston & Semple, *supra* note 137; Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns,* IMMIGR. POL'Y CENTER, Nov. 2009, at 3–4, available at [http://www.immigrationpolicy.org/sites/default/files/docs/Secure\\_Communities\\_112309.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Secure_Communities_112309.pdf). Level 1 offenders are “[i]ndividuals who have been convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery, and kidnapping.” Waslin, *supra*, at 3. Level 2 offenders are “[i]ndividuals who have been convicted of minor drug offenses and property offenses such as burglary, larceny, fraud, and money laundering.” *Id.* Level 3 offenders are “[i]ndividuals who have been convicted of other offenses.” *Id.*

<sup>144</sup> See Preston & Semple, *supra* note 137. From the time of the program’s inception until November 2009, Secure Communities had identified over 111,000 criminal aliens in local custody. Waslin, *supra* note 143, at 4. Of those, “more than 11,000 were charged with or convicted of Level 1 crimes, while more than 100,000 had been convicted of Level 2 and 3 crimes.” *Id.*

<sup>145</sup> Gonzalez, *supra* note 133.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

Secure Communities has broadened far beyond its mission of identifying and deporting dangerous criminals.<sup>148</sup> It may empower law enforcement officers to act as deportation agents by making pre-textual arrests just to obtain fingerprints.<sup>149</sup> This was the case for Maria Bolanos, who police arrested but never prosecuted for illegally selling a phone card to a neighbor.<sup>150</sup>

Despite these criticisms, DHS Secretary Janet Napolitano announced in 2010 that communities would not be able to opt-out of the program.<sup>151</sup> This, however, is a departure from Napolitano's previous statements that participation is optional.<sup>152</sup> ICE planned to achieve uniform participation by isolating and pressuring communities that objected to the program.<sup>153</sup> ICE initially advertised the program as "voluntary," but actually only intended for one narrow provision of the program to be voluntary.<sup>154</sup> In April of 2010, the National Day Labor

<sup>148</sup> *Id.*; *Secure Communities: Get the Facts*, *supra* note 132.

<sup>149</sup> Waslin, *supra* note 143, at 4. "[T]he program has come under increasing criticism from immigrant advocates who say it also encourages police to engage in unconstitutional racial profiling and discriminatory arrests so they can run fingerprints through the immigration databases as part of Secure Communities." González, *supra* note 133.

<sup>150</sup> Vedantam, *supra* note 1; see Waslin, *supra* note 143, at 4.

<sup>151</sup> Vedantam, *supra* note 138; see Suzanne Gamboa, 'Voluntary' Immigration Program Not so Voluntary, MSNBC (Feb. 16, 2011 1:50:56 PM), [http://www.msnbc.msn.com/id/41625585/ns/us\\_news-security](http://www.msnbc.msn.com/id/41625585/ns/us_news-security); Preston & Semple, *supra* note 137.

<sup>152</sup> Vedantam, *supra* note 138; see Gamboa, *supra* note 151; Preston & Semple, *supra* note 137. In September of 2010, United States Secretary of Homeland Security Janet Napolitano sent a letter to Zoe Lofgren, Chairwoman of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the House Judiciary Committee, stating that "[a] local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program" and that "[i]f a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens." Letter from Janet Napolitano, Sec'y, U.S. Dep't of Homeland Sec., to The Honorable Zoe Lofgren, Chairwoman, Subcomm. on Immigration, Citizenship, Refugees, Border Sec., & Int'l Law (Sept. 7, 2010), available at <http://www.nilc.org/immlawpolicy/LocalLaw/s-comm-opt-out-ltr-USDOJ-DHS-2010-09-08.pdf>; accord Vedantam, *supra* note 138.

<sup>153</sup> Preston & Semple, *supra* note 137. One such method of pressure involves creating a ring around the resistant jurisdiction by bringing all nearby communities into the program. *Id.*

<sup>154</sup> *Preliminary Briefing Guide: Newly Released Documents Chronicle Agency's Deception About Opting-Out of "Secure Communities" Program*, CENTER FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/files/foiabrief.pdf> [hereinafter *Preliminary Briefing Guide*]; see *Secure Communities: Get the Facts*, *supra* note 132.

A jurisdiction may choose not to receive the identifications that result from processing the fingerprints through DHS's biometric system that are provided to the local ICE field office. In the past, this option has been mischaracterized as a mechanism for a jurisdiction to opt out of the program. In fact, a jurisdic-

Organizing Network, the Center for Constitutional Rights, and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law filed a complaint for the release of ICE documents to clarify the scope and enforceability of Secure Communities.<sup>155</sup> Then, in the fall of 2010, ICE clarified its compliance requirements, thereby dispelling community perceptions that they could opt-out of sharing fingerprints.<sup>156</sup>

The 2010 clarification came after several months of vague and contradictory statements from ICE about the program.<sup>157</sup> For example, in July 2010, a regional coordinator for the Secure Communities program sent an e-mail to the New York State Division of Criminal Justice Services (“the Division”) that said “[n]o jurisdiction will be activated if they oppose [Secure Communities] . . .” and that ICE would “do everything [it] can to work with a N.Y. law enforcement agency to satisfy its concerns but at the end of the day, if they are opposed, [it] won’t go forward.”<sup>158</sup> A spokesman for the Division stated several days later that he learned it was “the position of the federal government that it can require participation.”<sup>159</sup>

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tion's decision not to receive this information directly does not affect whether the local ICE field office in that jurisdiction will or will not take enforcement action based on those results.

*Secure Communities: Get the Facts*, *supra* note 132.

<sup>155</sup> Complaint for Declaratory and Injunctive Relief at 1, 25, Nat’l Day Laborer Org. Network v. Immigration & Customs Enforcement, (S.D.N.Y. filed Apr. 27, 2010) (No. 10 Civ. 3488), *available at* [http://ccrjustice.org/files/SC\\_Complaint\\_REAL\\_FINAL.pdf](http://ccrjustice.org/files/SC_Complaint_REAL_FINAL.pdf).

<sup>156</sup> Preston & Semple, *supra* note 137; Kirk Semple, *Program to Have Police Spot Illegal Immigrants Is Mired in Confusion*, N.Y. TIMES, Nov. 10, 2010, at A26; *Preliminary Briefing Guide*, *supra* note 154.

<sup>157</sup> Vedantam, *supra* note 138; Semple, *supra* note 156.

<sup>158</sup> Semple, *supra* note 156.

<sup>159</sup> *Id.* Several organizations sought documents pursuant to a Freedom of Information Act (FOIA) request that highlight the internal confusion and deception regarding the availability of an opt-out option for states and localities. Press Release, Ctr. for Constitutional Rights, *Newly Released Secure Cmty. Documents Signal Opening for Local Opt-Out* (Feb. 16, 2011), *available at* <http://ccrjustice.org/newsroom/press-releases/newly-released-secure-communities-documents-signal-opening-local-opt-out>; *Preliminary Briefing Guide*, *supra* note 154. This confusion was ongoing in the aftermath of the release of information pursuant to the FOIA request. *See* Letter from Chris Newman, Legal Director, National Day Laborer Organizing Network, to Deval Patrick, Governor, Commonwealth of Massachusetts (Mar. 21, 2011), *available at* <http://ndlon.org/pdf/patrickletter.pdf>. In March 2011, legal advocates from the National Day Laborer Organizing Network, the Center for Constitutional Rights, and the Cardozo Immigrant Justice Clinic advised Massachusetts Governor Deval Patrick that he could prevent statewide participation in Secure Communities. *Id.*

ICE then publicly announced in June 2011 that Secure Communities would be mandatory and universally implemented by 2013.<sup>160</sup> ICE also acknowledged that “some of [its] past public statements led to confusion about whether state and local jurisdictions can opt out of the program.”<sup>161</sup> This change began through the abolition of state MOAs—the agreements setting forth the bounds of Secure Communities in each locality.<sup>162</sup> Communities therefore lost the little bargaining power afforded by MOAs that allowed them to tailor Secure Communities to their needs.<sup>163</sup>

### III. A PROPOSED SOLUTION FOR ICE

Secure Communities undermines protections for domestic violence victims by encouraging silence through fear of deportation.<sup>164</sup> Because domestic violence perpetrators often use their partners’ undocumented status as a means of control, victims will be less likely to call for help if they know that police will share their biometric data with immigration enforcement.<sup>165</sup> Undocumented women are further deterred from calling for help because any arrest, regardless of whether the charge is later dropped, may allow local law enforcement to obtain their fingerprints.<sup>166</sup>

ICE should therefore modify Secure Communities to allow for adequate protections of domestic violence victims in three distinct steps.<sup>167</sup> First, the program should mandate delayed reporting until af-

<sup>160</sup> *Preliminary Briefing Guide*, *supra* note 154.

<sup>161</sup> *Secure Communities: Get the Facts*, *supra* note 132.

<sup>162</sup> Leslie Berestein Rojas, *The Letter from ICE Terminating ‘All Existing’ S-Comm Agreements*, MULTI-AMERICAN, Aug. 5, 2011, <http://multiamerican.scp.org/2011/08/the-letter-from-ice-terminating-all-existing-secure-communities-moas>.

<sup>163</sup> *Id.* “In order to clarify that a memorandum of agreement between ICE and a state is not required to operate Secure Communities for any jurisdiction, today, ICE Director John Morton sent a letter to Governors terminating all existing Secure Communities MOAs to avoid further confusion.” Leslie Berestein Rojas, *ICE Rescinds Secure Communities MOAs, Program Continues*, MULTI-AMERICAN, Aug. 5, 2011, <http://multiamerican.scp.org/2011/08/ice-rescinds-secure-communities-moas-allowing-controversial-program-to-continue> (quoting statement of Nicole Navas, ICE spokeswoman) (emphasis omitted).

<sup>164</sup> See Vedantam, *supra* note 1; *Fact Sheet: Intersection of Domestic Violence & The Secure Communities Program*, COLO. COALITION AGAINST DOMESTIC VIOLENCE, <http://www.leg.state.co.us/CLICS/CLICS2011A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/b95c4f7f945b961c8725783700727d81/%24FILE/0214f1seLocalAttachH.pdf> (last visited Oct. 30, 2011) [hereinafter *Fact Sheet*].

<sup>165</sup> *Fact Sheet*, *supra* note 164.

<sup>166</sup> See Vedantam, *supra* note 1; Waslin, *supra* note 143; *Fact Sheet*, *supra* note 164.

<sup>167</sup> See Orloff et al., *supra* note 35, at 84 (discussing the importance of communicating the availability of battered women’s services to immigrant populations); Tim Hoover, *May OK*

ter those arrested during domestic violence incidents are convicted.<sup>168</sup> Second, ICE should limit the program to sharing only those fingerprints obtained through felony charges and misdemeanor convictions.<sup>169</sup> Finally, ICE should encourage local officials to communicate these changes to the public.<sup>170</sup>

The benefits to these changes are two-fold: protecting vulnerable women from violence and preserving the relationship between undocumented immigrants and local police.<sup>171</sup> The Bolanos incident, like others, underscores how the program has departed from its alleged original intent of removing dangerous criminals from communities.<sup>172</sup> ICE and the states should narrowly tailor Secure Communities to protect victims of domestic violence while still removing dangerous criminals.<sup>173</sup>

### A. ICE's Attempt to Acknowledge the Problem

ICE changed Secure Communities in the summer of 2011.<sup>174</sup> John Morton, the Director of ICE, sent a memorandum to Field Office Directors, Special Agents in Charge, and Chief Counsel to outline the re-

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*Illegal-Immigrant Checks*, DENVER POST, Jan. 4, 2011, at 3B; *States Without "Secure Communities" Already Face Problems with Police-ICE Collaboration*, DEPORTATION NATION, Dec. 7, 2010, <http://www.deportationnation.org/2010/12/states-without-secure-communities-already-face-problems-with-police-ice-collaboration> [hereinafter *States Without "Secure Communities"*]; *Updated: Colorado May Limit Immigrants Targeted by "Secure Communities,"* DEPORTATION NATION, Jan. 4, 2011, <http://www.deportationnation.org/2011/01/colorado-may-limit-immigrants-targeted-by-secure-communities> [hereinafter *Updated: Colorado*] (giving suggestions for an MOA that would be sensitive to domestic violence issues).

<sup>168</sup> See COLO. REV. STAT. ANN. § 29-29-103 (West 2011); *Updated: Colorado*, *supra* note 167.

<sup>169</sup> See Hoover, *supra* note 167; Letter from Damian J. Arguello, President, Colo. Hispanic Bar Ass'n, to Honorable Bill Ritter, Jr., Governor, State of Colo., (Aug. 4, 2010), *available at* <https://crocodoc.com/yuGj2i> [hereinafter CHBA letter].

<sup>170</sup> See Orloff et al., *supra* note 35, at 84 (discussing the importance of communicating the availability of battered women's services to immigrant populations).

<sup>171</sup> See Kittrick, *supra* note 19, at 1482–83; Carlberg, *supra* note 19, at 741–42.

<sup>172</sup> *Secure Communities: Get the Facts*, *supra* note 132; *see, e.g., Vedantam, supra* note 1. In addition to Bolanos, Prince George's County Police officers arrested Florida Faviola Lorenzo-Desimilian for the same crime, namely selling phone cards without a license. Pangilinan, *supra* note 4. Lorenzo-Desimilian entered the country legally, but then overstayed her work visa. *Id.*

<sup>173</sup> See Carlberg, *supra* note 19, at 742; *Secure Communities: Get the Facts, supra* note 132; *see, e.g., Hoover, supra* note 167.

<sup>174</sup> Memorandum from John Morton, Dir., ICE, to All Field Office Dirs., All Special Agents in Charge, & All Chief Counsel, ICE (June 17, 2011), *available at* <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf> [hereinafter Morton Memorandum]; Elise Foley, *Secure Communities Agreements Canceled, Participation Still Required*, HUFFINGTON POST (Aug. 5, 2011), [http://www.huffingtonpost.com/2011/08/05/secure-communities-update-department-of-homeland-security\\_n\\_919651.html](http://www.huffingtonpost.com/2011/08/05/secure-communities-update-department-of-homeland-security_n_919651.html).



vised policy on prosecutorial discretion.<sup>175</sup> In his memorandum, Morton sets forth a new policy regarding prosecutorial discretion in “cases involving the victims and witnesses of crime, including domestic violence . . . .”<sup>176</sup> Morton claims:

The vast majority of state and local law enforcement agencies do not generally arrest victims or witnesses of crime as part of an investigation. However, ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure Communities program or another ICE enforcement program, may come to the attention of ICE.<sup>177</sup>

Morton then advises officers, agents, and attorneys “to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime . . . .”<sup>178</sup>

While attempting to recognize the domestic violence issue, this aspirational memorandum does not ensure that immigrant victims of domestic violence will not be subjected to racial profiling or subsequent removal proceedings.<sup>179</sup> ICE justifies Secure Communities by noting that the lack of discretion protects the community from racial profiling.<sup>180</sup> Because police lack discretion, many consider Secure Communities a better alternative to an Arizona-like law that allows police to choose whom to ask for proof of citizenship.<sup>181</sup> Because Secure Com-

<sup>175</sup> See generally Morton Memorandum, *supra* note 174.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> See CHBA letter, *supra* note 169, at 1; Morton Memorandum, *supra* note 174.

<sup>180</sup> See Morton Memorandum, *supra* note 174; *Secure Communities: Get the Facts*, *supra* note 132.

<sup>181</sup> Jefferson Dodge, *Crackdown: 'Dragnet' May Fend Off Arizona-Style Immigration Law*, BOULDER WKLY., Jan. 27, 2011, <http://www.boulderweekly.com/article-4298-i-support-the-states-participation-of-secure-comm.html>; *Secure Communities: Benefitting Law Enforcement Throughout the United States*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <http://www.ice.gov/doclib/secure-communities/pdf/lea-benefits.pdf> (last visited Oct. 30, 2011) (justifying the Secure Communities program because it gives police less discretion, thereby reducing the possibility of racial profiling). Arizona's immigration program, S.B. 1070, became law in 2010. David A. Selden et al., *Placing S.B. 1070 And Racial Profiling into Context, and What S.B. 1070 Reveals About the Legislative Process in Arizona*, 43 ARIZ. ST. L.J. 523, 526 (2011). The law requires police officers who have a reasonable suspicion that someone is in the country illegally to

munities applies to all fingerprints, the police do not have to decide who might be an undocumented immigrant and unfair implementation is a non-issue.<sup>182</sup> ICE's memorandum, however, contradicts its attempt to be fair, instead using prosecutorial discretion as protection from racial profiling and pretextual arrests.<sup>183</sup> ICE should therefore establish clear guidance to fully protect victims of domestic violence because, without it, "prosecutorial discretion" may further enable pretextual arrests.<sup>184</sup>

### B. *A Three-Step Process to Protecting Victims of Domestic Violence and Increasing Community Safety*

Discretion alone will likely not solve the problem of pretextual arrests that prevent abused women from calling for help.<sup>185</sup> Instead, ICE should implement three specific changes to protect victims of domestic violence.<sup>186</sup> First, ICE should modify Secure Communities to specify that reporting of arrestees pursuant to domestic violence incidents is not required until conviction.<sup>187</sup> Second, ICE should limit the program to felony charges and misdemeanor convictions.<sup>188</sup> Third, ICE should work with states and localities to implement a public relations cam-

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stop, detain, or arrest that person to check immigration status. *Id.* at 525; see ARIZ. REV. STAT. ANN. § 11-1051 (2010), *invalidated by* United States v. Arizona, 641 F.3d 339, 354 (2011).

<sup>182</sup> Dodge, *supra* note 181, at 14; *Secure Communities: Benefitting Law Enforcement Throughout the United States*, *supra* note 181; *Secure Communities: Get the Facts*, *supra* note 132.

<sup>183</sup> See Morton Memorandum, *supra* note 174; Dodge, *supra* note 181, at 14; *Secure Communities: Benefitting Law Enforcement Throughout the United States*, *supra* note 181; *Secure Communities: Get the Facts*, *supra* note 132.

<sup>184</sup> See Dodge, *supra* note 181, at 14; CHBA Letter, *supra* note 169; Morton Memorandum, *supra* note 174; *Secure Communities: Benefitting Law Enforcement Throughout the United States*, *supra* note 181; *Secure Communities: Get the Facts*, *supra* note 132.

<sup>185</sup> Compare Dodge, *supra* note 181, at 14 (noting that reducing police discretion may reduce racial profiling), with Morton Memorandum, *supra* note 174, (advocating for discretion as a means to protect victims). See also *Secure Communities: Benefitting Law Enforcement Throughout the United States*, *supra* note 181 (claiming that Secure Communities "reduces the possibility for allegations of racial or ethnic profiling because the fingerprints of every individual arrested . . . are checked against immigration records"); *Secure Communities: Get the Facts*, *supra* note 132 ("Under Secure Communities, the fingerprints of every single individual arrested and booked into custody, including U.S. citizens and legal permanent residents, are checked against immigration records—reducing the risk of discrimination or racial profiling.").

<sup>186</sup> See Orloff et al., *supra* note 35, at 84; Hoover, *supra* note 167; *States Without "Secure Communities," supra* note 167; *Updated: Colorado*, *supra* note 167.

<sup>187</sup> See COLO. REV. STAT. ANN. § 29-29-103 (West 2011); Hoover, *supra* note 167; *Updated: Colorado*, *supra* note 167.

<sup>188</sup> See Hoover, *supra* note 167; CHBA letter, *supra* note 169.

paign that communicates these changes.<sup>189</sup> This final step would ensure that all residents—documented and undocumented—understand the program’s scope and that they can contact law enforcement without fear of deportation.<sup>190</sup>

Colorado’s former MOA had already implemented a framework similar to this first step, specifying that reporting is not required until conviction for those arrested as a result of a domestic violence incident.<sup>191</sup> It did this by specifically referencing Colorado statutory language that mirrored this first step.<sup>192</sup> Furthermore, Colorado’s MOA stated that “ICE offers protection and assistance to victims of trafficking and violence, regardless of their immigration status. This protection or assistance applies to those who might have been arrested for a crime and subsequently determined to be a victim, not a perpetrator.”<sup>193</sup>

ICE should implement this first step because, as it already acknowledges, police sometimes arrest both domestic violence victims and perpetrators.<sup>194</sup> Because Secure Communities requires local police to send all fingerprint data to ICE before conviction, those victims who are arrested but not charged or prosecuted still face the risk of deporta-

<sup>189</sup> See Kahan, *supra* note 89, at 1525 (explaining that trust in law enforcement depends on the public’s perception of the fairness and legitimacy of police procedures); Orloff et al., *supra* note 35, at 84–85; Carlberg, *supra* note 19, at 755; see, e.g., Vedantam, *supra* note 1 (publicizing the ill effects of Secure Communities on domestic violence victims).

<sup>190</sup> See Kahan, *supra* note 89, at 1525; Orloff et al., *supra* note 35, at 84–85; Carlberg, *supra* note 19, at 755; see, e.g., Vedantam, *supra* note 1.

<sup>191</sup> See Memorandum of Agreement between U.S. Dep’t of Homeland Sec. Immigration & Customs Enforcement and Colo. Dep’t of Public Safety 3 (Jan. 6, 2011), available at [http://www.ice.gov/doclib/foia/secure\\_communities-moa/colorado-sc-moa.pdf](http://www.ice.gov/doclib/foia/secure_communities-moa/colorado-sc-moa.pdf) [hereinafter *Colorado MOA*]; Updated: *Colorado*, *supra* note 167.

<sup>192</sup> COLO. REV. STAT. ANN. §§ 18-6-800.3, 29-29-103; *Colorado MOA*, *supra* note 191, at 3. The following is Colorado’s statute regarding reporting when the arrestee is charged with a domestic violence offense:

(I) A peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the United States shall report such arrestee to the United States immigration and customs enforcement office if the arrestee is not held at a detention facility. If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff shall report such arrestee to the federal immigration and customs enforcement office.

(II) This subsection (2) shall not apply to arrestees who are arrested for a suspected act of domestic violence as defined by section 18-6-800.3, C.R.S., until such time as the arrestee is convicted of a domestic violence offense.

COLO. REV. STAT. ANN. § 29-29-103(2) (a).

<sup>193</sup> *Colorado MOA*, *supra* note 191, at 3.

<sup>194</sup> See CHBA Letter, *supra* note 169; Morton Memorandum, *supra* note 174.

tion.<sup>195</sup> A decisive policy against reporting fingerprint data before conviction, however, may protect domestic violence victims.<sup>196</sup>

Then, ICE should implement the second step of limiting the program to felony charges and misdemeanor convictions.<sup>197</sup> This step would prevent situations like that of Maria Bolanos—charged but never tried for selling phone cards without a license.<sup>198</sup> Doing this would act to return Secure Communities to its original purpose while protecting undocumented women who call for help from being charged pretextually with a misdemeanor.<sup>199</sup>

The Colorado Hispanic Bar Association (CHBA) detailed its concerns about Secure Communities's implementation in Colorado.<sup>200</sup> Though targeted at Colorado, these concerns may be applicable to other communities, and addressing them may in turn help prioritize the targeting of dangerous criminals while protecting more victims.<sup>201</sup> CHBA criticized the ability of law enforcement officials to make pretextual arrests solely to obtain fingerprints that are then checked against the federal immigration database.<sup>202</sup> The Bolanos case arguably gives credibility to these concerns, as her arrest may have been pretextual.<sup>203</sup>

Restricting Secure Communities to felony charges and misdemeanor convictions may also help strengthen community policing programs.<sup>204</sup> When immigrants no longer fear calling the police, they may be more willing to communicate with police about crimes to which they are witnesses.<sup>205</sup>

Modifying Secure Communities, however, may not be enough if victims do not know they can call the police without fear of that call leading to deportation.<sup>206</sup> Therefore, ICE should implement the third

<sup>195</sup> See, e.g., Vedantam, *supra* note 1; CHBA letter, *supra* note 169.

<sup>196</sup> See COLO. REV. STAT. § 29-29-103; Hoover, *supra* note 167; *Updated: Colorado*, *supra* note 167.

<sup>197</sup> See Hoover, *supra* note 167; CHBA letter, *supra* note 169.

<sup>198</sup> See Hoover, *supra* note 167; Vedantam, *supra* note 1; CHBA letter, *supra* note 169.

<sup>199</sup> See Hoover, *supra* note 167; Pangilinan, *supra* note 2.

<sup>200</sup> CHBA letter, *supra* note 169.

<sup>201</sup> See Chacón, *supra* note 113, at 1596; Vedantam, *supra* note 1; CHBA letter, *supra* note 169.

<sup>202</sup> CHBA letter, *supra* note 169.

<sup>203</sup> See Pangilinan, *supra* note 2; Vedantam, *supra* note 1; CHBA letter, *supra* note 169.

<sup>204</sup> See Kahan, *supra* note 89, at 1513; Orloff et al., *supra* note 35, at 85; Vedantam, *supra* note 1.

<sup>205</sup> See Kahan, *supra* note 89, at 1513; Orloff et al., *supra* note 35, at 85; Vedantam, *supra* note 1 (quoting Maria Bolanos as saying, "You would have to be crazy to call the police . . . I would never call the police again.").

<sup>206</sup> See Kahan, *supra* note 89, at 1525; Orloff et al., *supra* note 35, at 84–85; Carlberg, *supra* note 19, at 755.

step of working with state and local authorities to communicate these changes to the immigrant communities.<sup>207</sup> Communication would help ensure that residents understand how the program is implemented and that they may contact law enforcement without fear of deportation.<sup>208</sup> Without this, undocumented residents may continue to be cautious and hesitant to contact law enforcement.<sup>209</sup> This phenomenon of hesitance already occurs in communities with unpublicized noncooperation agreements that limit communication with federal law enforcement.<sup>210</sup>

An effective communication campaign would ensure that victims can find resources in their native languages so as to mitigate the effect of language barriers.<sup>211</sup> In addition to communicating these changes, police departments should educate the public that domestic violence is a crime.<sup>212</sup> This may also help alleviate some of the social and cultural pressure women face and make them more comfortable with seeking help.<sup>213</sup>

Proponents of Secure Communities might argue that its scope is irrelevant and that undocumented immigrants should be deported regardless of their crime's severity.<sup>214</sup> A narrow scope for the program, however, gives it legitimacy and community support.<sup>215</sup> Immigrants and non-immigrants alike do not wish to live among violent criminals and drug dealers.<sup>216</sup> Limiting the scope of Secure Communities would likely

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<sup>207</sup> See Kahan, *supra* note 89, at 1525; Orloff et al., *supra* note 35, at 87; Carlberg, *supra* note 19, at 755.

<sup>208</sup> See Kahan, *supra* note 89, at 1525; Orloff et al., *supra* note 35, at 87; Carlberg, *supra* note 19, at 755.

<sup>209</sup> Orloff et al., *supra* note 35, at 87; Carlberg, *supra* note 19, at 755.

<sup>210</sup> Kittrie, *supra* note 19, at 1483 (noting that "victimized unauthorized aliens who are confused as to how the policy in their jurisdiction operates are likely to play it safe and not report the crime"); Carlberg, *supra* note 19, at 755–56.

<sup>211</sup> See Orloff et al., *supra* note 35, at 74; Wang, *supra* note 16, at 162–63.

<sup>212</sup> See Orloff et al., *supra* note 35, at 84.

<sup>213</sup> See *id.* at 84–85.

<sup>214</sup> See Vedantam, *supra* note 1 (quoting ICE spokesman Brian Hale as saying that "ICE cannot and will not turn a blind eye to those who violate federal immigration law . . . . While ICE's enforcement efforts prioritize convicted criminal aliens, ICE maintains the discretion to take action on any alien it encounters.").

<sup>215</sup> See *Secure Communities: Benefitting Law Enforcement Throughout the United States*, *supra* note 181.

<sup>216</sup> See Chacón, *supra* note 113, at 1596; *Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, available at <http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf> (last visited Oct. 30, 2011).

sharpen its focus and effectiveness, thereby removing those criminals that no community wants in its midst.<sup>217</sup>

### CONCLUSION

Domestic violence perpetrated against undocumented women is a pervasive problem. Many undocumented victims of domestic violence indicate that fear of immigration authorities is their primary reason for remaining in abusive relationships. Language and cultural barriers only compound these difficulties by preventing women from seeking assistance outside the home. Trust in local law enforcement facilitates solving the problem of domestic violence against undocumented immigrants.

These severe problems illustrate a need for change in the way ICE operates the Secure Communities program. There have been many documented instances of abuse of Secure Communities, especially as it affects victims of domestic violence. Therefore, ICE should implement a three-step reform: requiring delay of reporting until conviction for domestic violence arrestees; limiting the program to felony charges and misdemeanor convictions; and working with states and localities to notify immigrant communities of these changes.

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<sup>217</sup> See Chacón, *supra* note 113, at 1596; *Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens*, *supra* note 216. *But see* CHBA Letter, *supra* note 169.