

**Testimony before the Council of the District of Columbia
Committee on Public Safety and the Judiciary**

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Good afternoon, Council Members. My name is Shahid Buttar, and I lead the Bill of Rights Defense Committee as executive director. BORDC is a national grassroots network that organizes support at the local level for constitutional rights and liberties. Over the past decade, we have helped coordinate the passage of legislation in over 400 cities and towns across the country, as well as eight states.

I'm here today because the Secure Communities ("S-COMM") program promoted by the Immigration & Customs Enforcement agency ("ICE"), like the other 12 immigration programs included within the "ICE ACCESS" umbrella, is an invitation to racial profiling and the Council is right to oppose it through Bill 18-795. The Department of Homeland Security's own inspector general has already documented pervasive profiling under ICE's 287(g) program. Given the programs' shared aims and common institutional source, there is no reason to presume that S-COMM will respect the law given documented patterns of abuse by ICE and local partner agencies that facilitate its efforts around the country.

Collaborating with ICE would undermine constitutional rights.

The question before this Council does not pertain only to the rights of immigrants. Rather, declining to collaborate with ICE will ensure the civil rights of all DC residents, including US citizens. The presumption of innocence is a bedrock American commitment. It does not permit abrogation to satisfy political whims.

Yet the presumption of innocence will be dramatically curtailed without the legislation sought by advocates for affected communities. The S-COMM program, which this bill will prevent the Metropolitan Police Department (MPD) from considering for implementation here in DC, would allow ICE access to arrestees in DC *prior to their conviction* (i.e., on the unilateral authority of a police officer, without any judicial check or balance).

Arrestees who are never charged with an offense, perhaps because the evidence does not support prosecution, or perhaps was collected illegally, would remain subject to summary deportation. Pre-conviction penalties violate the norms of our justice system as a matter of principle, and invite pretextual arrests as a matter of practice.

Limitations on the standard ICE structure are unreliable.

MPD representatives may claim that ICE would prove receptive to certain limitations on S-COMM to better respect the rights of DC residents. Such claims lack credibility, however, given the Supremacy Clause of the U.S. Constitution and the lack of formal accountability of federal officials to local residents or authorities.

Regardless of its (or the MPD's) initial representations, ICE could potentially seek data about not just arrestees, but also witnesses and informants providing valuable information to police. Through what mechanism would—or could—the MPD decline to grant access to that information? Among the problems under the 287(g) program found by the DHS internal watchdog was a lack of oversight, without which ICE can not be relied upon to safeguard witnesses and victims of crime.

Whatever its contours, a Secure Communities program operating in the District would undermine the community trust needed by police to achieve their core public safety mission.

District officials need not concede participation in S-COMM to forestall its future imposition.

MPD officials reportedly fear the imposition of S-COMM in 2013. But MPD's purported foresight a mirage.

First, the federal policy with respect to immigration will likely change before 2013, and with it, the contours of the standard S-COMM agreement that governs local-federal collaborations in the program.

Second, the federal government faces certain constitutional limits when attempting to “commandeer” state and local authorities. The Department of Justice has already noted that states, like Arizona, that attempt to set their own immigration policy exceed their constitutional limits by invading a zone of exclusive federal authority. Reciprocally, ICE lacks the power to compel the MPD to comply with its edicts.

S-COMM will not necessarily become operational nationwide in 2013, nor could the federal government impose it, even if it did. The Council need not accept collaboration with ICE due to fear of a seeming inevitability.

The Council has further opportunities to protect the rights of DC residents.

Without oversight of the sort that has been conspicuously absent in other ICE programs—as documented by the federal government's own internal watchdog—ICE and local political departments that facilitate its immigration enforcement operations cannot simply be trusted to respect the law. This bill provides one opportunity to limit the agency's role in the District to protect the rights of DC residents.

Finally, I encourage the Council, after enacting this legislation, to consider further measures that would create enforceable rights to identify, document and stop potential profiling. By preventing profiling from recurring in the future, such measures could help ensure public trust in the MPD. Our organization is standing by and eager to share a proposed model for such reforms, and to support the Council in its efforts going forward to protect the rights of DC residents.

Thank you for this opportunity to submit our views for consideration by the Council.