

Congress of the United States
Washington, DC 20515

2/11/2016

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S Department of Homeland Security
3801 Nebraska Ave., NW
Washington, DC 20528

Dear Secretary Johnson:

As you are aware, under the U.S. Department of Homeland Security's (DHS) Secure Communities (SCOMM) program, U.S. Immigration and Customs Enforcement (ICE) issued immigration detainers, requesting that local jurisdictions hold inmates for transfer to ICE custody. In response to resistance to SCOMM from local jurisdictions, as well as ongoing litigation, on November 20, 2014, you issued a memorandum entitled Secure Communities (PEP Memorandum), which stated that Secure Communities would be discontinued and replaced with a new Priority Enforcement Program (PEP). We all share the goals of supporting local law enforcement's mission to promote community safety, and we are concerned that the SCOMM's failed policies continue unabated through PEP.

Unfortunately, it seems that since the release of the PEP Memorandum, DHS has not followed your instructions in letter or spirit. You wrote that SCOMM, as we know it, would be discontinued, and that "[a]s recommended by the Homeland Security Advisory Council Task Force, Secure Communities 'must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement.'"

As currently implemented, PEP is not accomplishing this goal. It seems that DHS has merely made minor stylistic changes to detainer requests and implemented those stylistic changes in jurisdictions that sought to limit their involvement with SCOMM. In remaining jurisdictions, it is our understanding that DHS continues the failed SCOMM program, albeit with a new name. There is little evidence that ICE is following the directives and priorities laid out in your memoranda, or that there is any oversight or accountability within the agency to follow the policies you established. Consequently, the lack of transparency has even precipitated a federal lawsuit from organizations seeking PEP records under the Freedom of Information Act (FOIA).¹

For example, ICE did not grant prosecutorial discretion to individuals with legitimate due process claims, such as a finding of civil rights violation by the Office of Civil Rights and Civil Liberties, until a coordinated, national campaign exerted immense public pressure to reverse

¹ Press Release, NDLOn, Breaking: DHS, ICE, and DOJ Sued in Federal Court Over Controversial Deportation Program (Jan. 19, 2016) <http://ndlon.org/en/pressroom/press-releases/item/1179-breaking-dhs-ice-and-doj-sued-in-federal-court-over-controversial-deportation-program>.

convictions instead of only arrests and yet in other jurisdictions, such as Fulton County, DHS promulgated a memorandum that allows the referral of individuals outside of the PEP priorities regardless of whether a conviction exists.³ Relatedly, DHS continues to expand the scope of PEP by employing so-called “conditional detainers”⁴ and the recently released Form I-274X, which allows jurisdictions to transfer individuals who fall *outside* of the PEP priorities.⁵ Even members of law enforcement have admitted that PEP “doesn’t operate any differently than Secure Communities did at all” and that DHS “just renamed it.”⁶ Disturbingly, even your own senior advisors have communicated that requests for notifications were never meant to completely supplant detainers, contrary to DHS’s assertion that it would effectively discontinue SCOMM.⁷

In the spirit of ensuring accountability within DHS and promoting trust between immigrant communities and local law enforcement, we respectfully request the agency provide the following:

1. The names and number of jurisdictions that: (a) DHS has prioritized for participation in PEP; (b) agreed to participate in PEP; (c) currently contemplating participation in PEP; and (d) refused to participate in PEP. Additionally, please provide clarity regarding what participation in PEP entails, and whether it is limited to detainer requests or includes additional ICE access to state and local jurisdictions. Please provide copies of all memorandums and other records formalizing participation in PEP by *all* jurisdictions.
2. Please provide data regarding the number of requests for notification *and* detainers issued by ICE, broken down by month, state, facility name, offense seriousness level, enforcement priority level, from November 2014 to present.
3. Please provide information regarding whether an immigrant subject to a request for notification or detainer has physical access to the form while in custody, as well as a

³ Letter from Members of the Georgia Not1More Coalition, to Esther Olavarria, Deputy Assistant Secretary, U.S. Department of Homeland Security, (Oct. 7, 2015), https://www.splcenter.org/sites/default/files/ga_not1more-fulton_county_mou-to_dhs.pdf (noting that the proposed memorandum provides that “ICE may . . . track ‘foreign nationals that are arrested . . . but do not meet current ICE guidelines . . .’” (emphasis added)).

⁴ Dave Boucher, *Nashville still aiding controversial deportation program*, THE TENNESSEAN, Nov. 12, 2015, <http://www.tennessean.com/story/news/politics/2015/11/11/nashville-still-aiding-controversial-deportation-program/75580732/> (“ . . . ICE also is asking for local law enforcement to help in cases in which immigrants have not been previously convicted. . . . If ICE notices someone who may eventually be of interest, Harcombe said, it will call the sheriff’s office or send over a detainer form that is incomplete. In some cases, the sheriff’s office is labeling these as ‘conditional detainers.’”).

⁵ Stephen Dinan, *Obama expands ICE powers to pursue illegal immigrants for deportation, angers activists*, THE WASHINGTON TIMES, Dec. 1, 2015, <http://www.washingtontimes.com/news/2015/dec/1/obama-expands-ice-powers-to-pursue-illegal-immigra/?page=all>.

⁶ Dave Boucher, *Nashville still aiding controversial deportation program*, THE TENNESSEAN, Nov. 12, 2015, <http://www.tennessean.com/story/news/politics/2015/11/11/nashville-still-aiding-controversial-deportation-program/75580732/>.

⁷ *Targeted Enforcement: Projecting the Effects of Executive Action on Deportations*, MIGRATION POLICY INSTITUTE, July 23, 2015, available at <http://migrationpolicy.podbean.com/e/targeted-enforcement-projecting-the-effects-of-executive-action-on-deportations/> (remarks during question and answer session by Esther Olavarria, Deputy Assistant Secretary and Mary Giovagnoli, Deputy Assistant Secretary for Immigration Policy, that DHS did not intend to abandon the use of detainers completely).

statistical breakdown of whether requests for notification/detainer are transmitted electronically, by paper, or by phone.

4. What training or guidance has DHS provided to ICE agents to understand and comply with PEP and other changes directed in the PEP Memorandum?
5. Please explain how ICE interprets PEP's requirement for probable cause to issue an immigration detainer and what guidance DHS issued to agents on the use of the "special circumstances" exception? Please list the jurisdictions where ICE continues to issue requests for detention instead of requests for notification.
6. Please provide more information regarding Director Sarah Saldaña's comments at the December 2, 2015 Senate Committee on the Judiciary oversight hearing where she stated that she is "currently considering whether or not it makes sense at this point . . . to expand 287(g) and the Secretary and [her] will be discussing that further."⁸ Please elaborate whether DHS plans on expanding the 287(g) program and whether that expansion would entail the resumption of the taskforce model, expansion of jail agreements, or both.
7. Please provide information whether ICE intends to comply with a March 5, 2015 FOIA request (2015-ICAP-00377) submitted by the Benjamin M. Cardozo School of Law, Asian Americans Advance Justice, and the National Day Laborer Organizing Network regarding records related to PEP. Please explain why the ICE FOIA unit has still not, nearly a year after the submission of the FOIA, provided the responsive records.

Thank you for your prompt attention to this very important matter. If you have any questions, please have your staff contact Norma Salazar at Norma.Salazar@mail.house.gov with Congressman Grijalva or Jeff Cruz at Jeff_Cruz@budget.senate.gov with Senator Sanders.

Sincerely,


Raúl M. Grijalva
Member of Congress


Bernard Sanders
United States Senator

⁸ *Oversight of the Administration's Criminal Alien Removal Policies Before S. Comm. on the Judiciary*, 114th Cong. (2015), available at <http://www.judiciary.senate.gov/meetings/oversight-of-the-administrations-criminal-alien-removal-policies>.

CC:

The Honorable Alejandro Mayorkas
Deputy Secretary of Department of Homeland Security

The Honorable Sarah Saldaña
Director of Immigration and Customs Enforcement