

September 23, 2011

The Honorable Patty Murray
Co-Chair
Joint Select Committee on Deficit Reduction
448 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeb Hensarling
Co-Chair
Joint Select Committee on Deficit Reduction
129 Cannon House Office Building
Washington, DC 20515

Re: **Cut wasteful and costly 287(g) and Secure Communities immigration programs**

Dear Joint Select Committee Members:

We, the undersigned organizations, urge the Joint Select Committee on Deficit Reduction to cut the Department of Homeland Security's (DHS) out-of-control spending on the Immigration and Customs Enforcement ("ICE") 287(g) and Secure Communities programs. Both programs have come under fire by state and local leaders as well as law enforcement around the country. Both programs are relatively recent inventions, created in 2002 (287(g)) and 2008 (Secure Communities).

Countless wrenching budgeting choices have to be made in the current fiscal crisis, but this is an easy one: Congress must rein in spending on the ICE 287(g) and Secure Communities programs. U.S. taxpayers can no longer foot the bill to the tune of **\$250 million annually** to fund programs that have been mired in waste, failure, controversy, or fraud.

I. Government Reports Have Concluded that ICE Has Operated the 287(g) Program in a Fiscally Irresponsible Manner, Unable to Assure Program Integrity and Accountability.

ICE 287(g) agreements, named after an Immigration and Nationality Act provision, deputize state and local police to enforce federal immigration laws. Expenditures on the 287(g) program have ballooned from \$5 million in 2006 to \$68 million in 2010. A total of \$251.6 million has been spent over the last six fiscal years.¹

In recent years the 287(g) program has been reviewed by the Government Accountability Office ("GAO") and the DHS Office of Inspector General ("OIG"). The 2009 GAO report concluded that the ICE 287(g) program **lacked key internal controls and performance objectives**.² A March 2010 OIG report, following a year-long review of the program, culminated in a lengthy and critical report setting forth 33 recommendations for ICE to address in order to ensure the program's integrity, economy, and efficiency.³ A September 2010 update by the OIG added 16 new recommendations, stressing that ICE had failed to remedy fundamental problems. A third OIG report on the 287(g) program is pending and expected to be released in the near future. These reports make clear that the 287(g) program is fraught with systemic problems which ICE has failed to fix.

Most significantly, in its September 2010 report the OIG found that “there is no assurance that funds allocated to the 287(g) program were used as intended” and that “ICE has not implemented procedures to ensure the integrity and accountability over 287(g) program resources.”⁴ The OIG went on to conclude that DHS’s administration of the program “may be in violation of the Purpose Statute, which requires that appropriations be used only for their intended purposes, and the Anti-deficiency Act, which prohibits agencies from spending in excess of available appropriations.”⁵

II. The Costly and Untested Secure Communities Program Is Not Operating Consistent with Congressional Directions to Deport People Convicted of Serious Crimes.

First introduced in 2008 by ICE to a few local jurisdictions, Secure Communities quickly ramped up and is now on course to be deployed nationwide by 2013, even over the vociferous objections of many state and local leaders across the country. Secure Communities requires every arrestee’s fingerprints sent by local authorities to the FBI to be run against immigration databases.

Congress has never passed legislation authorizing Secure Communities. The program originated in Congress’s instructions attached to the 2008 budget, requiring DHS to “improve and modernize efforts to identify aliens *convicted of a crime*, sentenced to imprisonment, and who may be deportable, and remove them.” Congress requested “a methodology U.S. Immigration and Customs Enforcement will use to identify and prioritize for removal *criminal aliens convicted of violent crimes.*”

DHS statistics show that as of July 31, 2011, 29 percent of those deported under Secure Communities were non-criminals, and an additional 30 percent convicted of misdemeanor offenses only. These DHS statistics show that nearly 60 percent of individuals deported under Secure Communities did not meet the standard specified by Congress – “criminal aliens convicted of violent crimes.” House Minority Leader Pelosi has described Secure Communities as “*a waste of taxpayer money*” because of its mismatched goals and results.⁶

Congress has provided total funding of nearly **\$750 million** for Secure Communities since FY 2008.⁷ For FY 2012 the administration has requested \$184 million for Secure Communities, an increase of 35 percent over FY 2011. The House Homeland Security appropriations bill for FY 2012, passed by the House earlier this summer, increased the Secure Communities appropriation by \$10 million to a total of \$194 million for FY 2012.

These dramatic funding increases have occurred at a time when Secure Communities has come under fire across the country. In 2011 three governors (Illinois, New York, Massachusetts) rejected participating in Secure Communities, and prominent law enforcement leaders across the country have criticized the program for damaging community policing and public safety in their localities. Illinois Governor Quinn cited “the conflict between the stated purpose . . . and the implementation of [Secure Communities].”⁸ New York Governor Cuomo criticized Secure Communities for “compromising public safety by deterring witnesses to crime and others from working with law enforcement.”⁹ And Massachusetts Governor Patrick raised concerns about

how Secure Communities “risks compromise, rather than enhance, public safety, according to the overwhelming volume of testimony we received from law enforcement and community members alike.” He added, “We run a serious risk of ethnic profiling and frankly fracturing incredibly important relationships in communities that are important for law enforcement.”¹⁰ In each of these states the gubernatorial announcement was accompanied by significant law enforcement support for ending Secure Communities: Governor Cuomo’s decision, for instance, was endorsed by the State Association of Chiefs of Police, the State Police Benevolent Association, and the State Sheriffs Association.¹¹

Like the 287(g) program, Secure Communities is now under review by both the GAO and DHS OIG. The OIG is pursuing a two-tracked audit, examining the usage of the \$750 million since the program’s inception as well as investigating serious allegations of ICE misrepresentation to Congress and state and local officials about the nature of the program.

Our country can no longer afford to continue paying for ICE programs that are not accountable to Congress and the public. Congress should uphold its core responsibility to ensure that taxpayers’ monies are not misspent on programs mired in waste, failure, controversy, or fraud. We urge the Joint Select Committee to make drastically-needed cuts to the 287(g) and Secure Communities programs. If you have any questions or would like additional information, please contact Alexsa Alonzo, Associate Director of Advocacy at the American Immigration Lawyers Association, at aalonzo@aila.org or 202-507-7645.

Sincerely,

National Organizations

The Advocates for Human Rights (*Minneapolis, MN*)
Allies of Peace (*Oakland, CA*)
American Civil Liberties Union (*Washington, DC*)
American Immigration Lawyers Association (*Washington, DC*)
Asian American Justice Center, member of Asian American Center for Advancing Justice (*Washington, DC*)
Asian American Legal Defense and Education Fund (AALDEF) (*New York, NY*)
Bill of Rights Defense Committee (*Northampton, MA*)
Black Alliance for Just Immigration (*Oakland, CA*)
Black Unity (*Nashville, TN*)
Blacks in Law Enforcement in America (*Washington, DC*)
The Citizens Foundation, USA (*Roselle, IL*)
Florida Immigrant Advocacy Center (*Miami, FL*)
Gender Rights Project (*Fullerton, CA*)
Justice Strategies (*Brooklyn, NY*)
Lutheran Immigration and Refugee Service (*Baltimore, MD*)
National Immigration Forum (*Washington, DC*)

National Immigration Law Center (*Los Angeles, CA*)⁴
National Latina Institute for Reproductive Health (*Washington, DC*)
National Network for Immigrant and Refugee Rights (*Oakland, CA*)
NWU (*Berkeley, CA*)
The Real Cost of Prisons Project (*Northampton, MA*)
Rights Working Group (*Washington, DC*)
SEIU (*Washington, DC*)
Student Action with Farmworkers (*Durham, NC*)
Teamster Defense Guard (*Calumet City, IL*)
VivirLatino.com (*New York, NY*)
Women's Refugee Commission (*Washington, DC*)

Regional/State/Local Organizations

Alianza Indigena Sin Fronteras (*Tucson, AZ*)
American Heritage Service, Inc. (*Brodhead, WI*)
Amigos Multicultural Services Center (*Eugene, OR*)
Asian Law Alliance (*San Jose, CA*)
Asian Law Caucus (*San Francisco, CA*)
Asian Pacific American Legal Center (*Los Angeles, CA*)
Cambridge United for Justice with Peace (*Cambridge, MA*)
Casa Esperanza (*Plainfield, NJ*)
Causa Justa::Just Cause (*Oakland, CA*)
CHISPAS (*Gainesville, FL*)
Coalition for Humane Immigrant Rights of Los Angeles (*Los Angeles, CA*)
CODEPINK Arizona (*Phoenix, AZ*)
Committee for Immigrant Rights (*Santa Rosa, CA*)
Community to Community Development (*Bellingham, WA*)
Comunidad Liberación/Liberation Community (*Denver, CO*)
Daya Inc. (*Houston, TX*)
Desis Rising Up & Moving – DRUM (*Jackson Heights, CA*)
The Ecotopian Society (*Brodhead, WI*)
The Farmworker Association of Florida (*Apopka, FL*)
Filipino Advocates for Justice (*Oakland, CA*)
Friends of the Guatemalan Tomorrow Fund (*Gainesville, FL*)
Georgia Rural Urban Summit (*Decatur, GA*)
Greater Houston Civic Coalition (*Houston, TX*)
Guyanese American Workers United (*New York, NY*)
Harvard Immigration Project (*Cambridge, MA*)
Hispanic Voter Coalition Mecklenburg County (*Charlotte, NC*)
Holy Innocents Episcopal Church (*Little Lake, MI*)
Houston United/Houston Unido (*Houston, TX*)
Human Rights Center (*Carrboro, NC*)
IDEPSCA (*Los Angeles, CA*)
Illinois Coalition for Immigrant & Refugee Rights Coalition (*Chicago, IL*)

Interfaith Coalition on Immigration, Minnesota (ICOM) (*St. Paul, MN*)⁵
IRATE & First Friends (*Elizabeth, NJ*)
Kentucky Coalition for Immigrant and Refugee Rights (*Louisville, KY*)
La Raza Centro Legal (*San Francisco, CA*)
Latin American Legal Defense & Education Fund (LALDEF) (*Princeton, NJ*)
Latinos and Supporters Advocating for Justice and Advancement (*Holland, MI*)
Latinos United for Change and Advancement (LUChA) (*Madison, WI*)
Law of the Heart (*Santa Monica, CA*)
Legal Aid Justice Center-Immigrant Advocacy Program – Virginia (*Charlottesville, VA*)
Literacy Council of Buncombe County (*Asheville, NC*)
Los Amigos del Parque (*Santa Fe, NM*)
LULAC-Syracuse Chapter (*Syracuse, NY*)
Maine People's Alliance (*Lewiston, ME*)
Malcolm X Day Committee (*Washington, DC*)
Massachusetts Immigrant & Refugee Advocacy Coalition (*Boston, MA*)
Migration and Refugee Services (*Trenton, NJ*)
Mississippi Immigrants Rights Alliance (*Jackson, MS*)
Moving Forward Gulf Coast, Inc. (*Slidell, LA*)
New Jersey Civil Rights Defense Committee (*Somerset, NJ*)
New York Immigration Coalition (*New York, NY*)
North Carolina Justice Center (*Raleigh, NC*)
Nowia (*Medford, OR*)
Ometeotl Ministries (*Wichita, KS*)
Oregon New Sanctuary Movement (*Portland, OR*)
Organizing for America (*Madison, WI*)
Pacific Southwest District / UUA (*Prescott, AZ*)
Pan Left Productions (*Tucson, AZ*)
Political Asylum / Immigration Representation Project (*Boston, MA*)
Pueblo Unido por la Dignidad (*Seattle, WA*)
Saint Louis Inter-Faith Committee on Latin America (*St. Louis, MO*)
Silicon Valley Alliance for Immigration Reform (*San Jose, CA*)
Sisters of Mercy West Midwest Justice Team (*Omaha, NE*)
Sisters of St. Joseph of Carondelet, St. Louis Province (*St. Louis, MO*)
Tenants and Workers United (*Alexandria, VA*)
Texas Criminal Justice Coalition (*Austin, TX*)
TX Greens (*Houston, TX*)
Unitarian Universalist Congregation (*Santa Rosa, CA*)
VIB Law (*San Jose, CA*)
WeCount! (*Homestead, FL*)
Westchester Hispanic Coalition (*White Plains, NY*)
Wilco Justice Alliance (*Williamson County, TX*)
Workers Interfaith Network (*Memphis, TN*)

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- ¹ DHS, Office of Inspector General, *The Performance of 287(g) Agreements: Report Update*. (Sept. 2010), 4 (emphasis added), available at http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_10-124_Sep10.pdf
- ² Government Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*. (Jan. 2009), available at <http://www.gao.gov/new.items/d09109.pdf>
- ³ DHS, Office of Inspector General, *The Performance of 287(g) Agreements*. (Mar. 2010), available at http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_10-63_Mar10.pdf
- ⁴ DHS, Office of Inspector General, *The Performance of 287(g) Agreements: Report Update*. (Sept. 2010), 11-12 (emphasis added), available at http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_10-124_Sep10.pdf
- ⁵ *Id.* at 7-8.
- ⁶ Pilar Marrero, “Comunidades Seguras recibe crítica de Pelosi.” *La Opinión* (June 10, 2011), available at <http://www.impre.com/laopinion/noticias/primera-pagina/2011/6/10/comunidades-seguras-recibe-cri-259564-1.html>
- ⁷ S.R. 112-74, Senate Appropriations Committee Report on the 2012 Department of Homeland Security Appropriations Bill (Sept. 7, 2011), 59, available at <http://www.gpo.gov/fdsys/pkg/CRPT-112srpt74/pdf/CRPT-112srpt74.pdf>
- ⁸ Letter from Governor Quinn to ICE’s Marc Rapp (May 4, 2011), available at <http://uncoverthetruth.org/wp-content/uploads/2011-05/interminate.pdf>
- ⁹ Governor’s Press Office, “Governor Cuomo Suspends Participation in Federal Secure Communities Program.” (June 1, 2011), available at <http://www.governor.ny.gov/press/06012011FederalSecureCommunitiesProgram>
- ¹⁰ Maria Sacchetti and Noah Bierman, “Patrick says he won’t sign Secure Communities program.” *Boston Globe* (June 6, 2011).
- ¹¹ See generally America’s Voice, Public Safety on ICE: How Do You Police a Community That Won’t Talk to You? (Aug. 2011), available at http://amvoice.3cdn.net/669182cf0231bbf4d6_kdm6bnsbj.pdf