



Statement Delivered as Part of the United States Government's Universal Periodic Review  
Follow-up Consultations with Civil Society

by  
Chandra Bhatnagar, Staff Attorney, ACLU Human Rights Program

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My name is Chandra Bhatnagar, I am an attorney with the Human Rights Program of the ACLU. I thank you for the time to address the important issue of racial profiling in immigration enforcement today.

As you are aware in September of 2009, the UN CERD Committee sent a follow up letter to the Obama Administration urging urgent action on the issue of racial profiling<sup>1</sup>, the UN Human Rights Committee has also addressed the issue in the past, as has the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance. In November 2010, during the UPR session, after a number of member states (including Guatemala, Bolivia, and Mexico among several others) expressed serious concerns about racial profiling in relation to immigration enforcement issues, the U.S. delegation assured the Council that it condemns racial and ethnic profiling in all of its forms, and claimed to be “conducting a thorough review of policies and procedures to ensure that none of its law enforcement practices improperly target individuals based on race or ethnicity”. In the context of immigration enforcement, the United States recognized “concerns regarding racial and ethnic profiling by local law enforcement officials and reaffirmed its commitment and recent actions to combat profiling through significantly strengthened protections and training against such discrimination”.<sup>2</sup>

Let me first address the representation that the U.S. is “conducting a thorough review of policies and procedures to ensure that none of its law enforcement practices improperly target individuals based on race or ethnicity.”

As you are aware, last year, the Department of Homeland Security (DHS) Office of Inspector General (OIG) issued two reports (in April and September 2010) discussing dozens of systemic

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<sup>1</sup> Letter from Fatimata-Binta Victoire Dah, Chairperson of the Committee on the Elimination of Racial Discrimination, U.N. High Commission for Human Rights (Sept. 28, 2009), *available at* [http://www.aclu.org/files/pdfs/humanrights/uncerdresponse\\_racialdiscrimination.pdf](http://www.aclu.org/files/pdfs/humanrights/uncerdresponse_racialdiscrimination.pdf).

<sup>2</sup> *Report of the U.S. Working Group on the Universal Periodic Review*, U.N. Doc. A/HRC/WG.6/9/L.9, 9<sup>th</sup> Sess., (Nov. 10, 2010), *available at* [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A\\_HRC\\_WG.6\\_9\\_L.9\\_USA.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A_HRC_WG.6_9_L.9_USA.pdf).

problems regarding the Immigration and Customs Enforcement (ICE) 287(g) program, which allows certain state and local law enforcement agencies to engage in immigration enforcement activities, provided they are adequately trained and supervised by ICE.<sup>3</sup>

The OIG reports affirmed serious concerns that the ACLU and many other human rights organizations have had for years that the 287(g) program has contributed to racial profiling and civil rights abuses, that the program is fundamentally flawed and incompetently administered, and that it has unleashed a slew of unmonitored state and local law officers across the country – many of whom are using federal immigration authority as a cloak to engage in racial profiling.<sup>4</sup>

The reports documented a lack of ICE oversight, training and other systemic failures in the 287(g) program, made clear that the program does not have adequate safeguards against racial profiling and other civil rights abuses, and illustrated that many state and local law enforcement agencies accepted for the program have a documented history of serious allegations of constitutional violations.<sup>5</sup>

One notorious example is the Maricopa County Sheriff's Office ("MCSO") in Arizona which is being investigated by the Department of Justice Civil Rights Division for alleged civil rights abuses, including racial profiling, while remaining an active participant in the 287(g) program with ICE, despite MCSO's documented history of human rights violations.

Of the dozens of programmatic recommendations set forth by the OIG, to date, ICE has implemented only a handful of them. Instead of focusing on reforming the program, the Obama administration has opted to expand the 287(g) program to 71 total jurisdictions, as of October 2010, exceeding the total number of agreements operating under the prior administration.<sup>6</sup>

Secondly, the ICE program referred to as Secure Communities (S-Comm) has become the subject of a nationwide controversy. In jurisdictions where S-Comm has been activated, any time an individual is arrested and booked into a local jail for any reason, his or her fingerprints are electronically run through ICE's immigration database. This allows ICE to identify noncitizens—including lawful immigrants and permanent residents—and to initiate deportation proceedings against them. Because it targets people at the time of arrest by state and local police, S-Comm captures people who will never be charged with a state crime—including crime victims, witnesses, and individuals arrested erroneously or in violation of the Constitution.

Local community members and officials across the country have raised concerns about S-

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<sup>3</sup> Department of Homeland Security 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](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_10-63_Mar10.pdf); See also *The Performance of 287(g) Agreements Report Update* (Sep. 2010), available at [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_10-124\\_Sep10.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_10-124_Sep10.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> ACLU, Press Release, "ACLU Calls for Immediate Termination of ICE 287(g) Program," Apr. 2, 2010, available at <http://www.aclu.org/immigrants-rights/dhs-report-confirms-serious-civil-rights-problems-local-immigration-enforcement-pr>.

<sup>6</sup> U.S. Immigration and Customs Enforcement, *Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, available at <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa>.

Comm's impacts on civil liberties, noting among other things that it (1) deters immigrants from reporting crimes and otherwise receiving equal protection of the laws; (2) creates the risk of unlawful detention without criminal charges or a hearing; and (3) invites racial profiling by state and local law enforcement.

In light of these very widespread and pervasive reports of abuse in both the 287(g) and Secure Communities programs, in light of the United States' human rights obligations' and the administration's commitment to "conducting a thorough review of policies and procedures to ensure that none of its law enforcement practices improperly target individuals based on race or ethnicity", and most importantly in light of the recommendations of member states of the HRC to eliminate racial profiling in immigration enforcement, the ACLU calls on the administration to require that:

- 1) ICE halt expansion of the ICE 287(g) program, and terminate all current 287(g) agreements that have been materially breached by state and local law enforcement agencies, as mandated by congressional appropriators' budgetary prohibition against use of funds "to continue a delegation of law enforcement authority authorized under section 287(g) of the Immigration and Nationality Act if the Department of Homeland Security Inspector General determines that the terms of the agreement governing the delegation of authority have been violated."
- 2) ICE halt expansion of Secure Communities to more jurisdictions, unless and until the DHS Office for Civil Rights and Civil Liberties conducts a civil liberties impact assessment of the program.
- 3) All ICE ACCESS programs regularly collect and make public, directly or by means of required data collection by state and local partners: (a) the circumstances and basis for contacts with individuals who are issued immigration detainers and/or placed in deportation proceedings, including persons interviewed in jail; (b) the race and ethnicity of those contacted; and (c) the prosecutorial and judicial disposition of arrests that lead to detainers and/or deportation proceedings.
- 4) ICE conduct a comprehensive analysis of anti-racial profiling policies, training procedures, and institutional history for each new local law enforcement agency before it is approved for participation in an ICE ACCESS program. No agency in breach of an ICE ACCESS agreement should be approved for participation in any other ICE ACCESS program.
- 5) ICE limit its ICE ACCESS programs to apply only to individuals convicted of deportable offenses.
- 6) ICE institute a robust and well-publicized complaint and investigation procedure to respond to individuals alleging racial profiling, and decline to initiate removal proceedings against individuals shown to have been subjected to racial profiling.
- 7) All U.S. policies related to immigration enforcement comply with US human rights obligations, particularly under the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD").