

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Janet Napolitano, Secretary, Department of Homeland Security

You are hereby commanded to be and appear before the Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
of the House of Representatives of the United States at the place, date and time specified below.

- to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2138 Rayburn House Office Building; Washington, D.C. 20515

Date: November 10, 2011

Time: 12:00 pm

To any authorized staff member or a U.S. Marshals Service agent

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 4th day of November, 2011.

Attest:

Karen L. Haas
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Janet Napolitano, Secretary, Department of Homeland Security

Address 3801 Nebraska Avenue, N.W.

Washington, D.C. 20528

before the Committee on the Judiciary

Subcommittee on Immigration Policy and Enforcement

*U.S. House of Representatives
112th Congress*

Served by (print name) CRYSTAL R. JEZIERSKI

Title Chief Counsel for Oversight and Investigations, Committee on the Judiciary

Manner of service Via electronic mail, per agreement; Nelson Peacock, Assistant Secretary,

Office of Legislative Affairs; Department of Homeland Security; Nelson.Peacock@hq.dhs.gov

Date November 4, 2011

Signature of Server 

Address 2138 Rayburn House Office Building; Washington, D.C., 20515

SCHEDULE

In accordance with the attached schedule instructions, you are required to produce in unredacted form all records described below:

- 1) Documents sufficient to determine the names, fingerprint identification numbers, and alien registration numbers of any and all aliens arrested between November 1, 2008 and October 31, 2011 about whom U.S. Immigration and Customs Enforcement ("ICE") was notified (whether via Secure Communities or otherwise) but of whom ICE did not take custody.
- 2) Documents sufficient to determine the names, fingerprint identification numbers, and alien registration numbers of any and all aliens arrested between November 1, 2008 and October 31, 2011 about whom U.S. Immigration and Customs Enforcement ("ICE") was notified (whether via Secure Communities or otherwise) but who ICE declined to put in removal proceedings.

Schedule Instructions

1. In complying with this Subpoena, you shall produce all responsive documents that are in your possession, custody, or control.
2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
4. Each document produced shall be produced in a form that renders the document capable of being copied.
5. When you produce documents, you shall identify the paragraph or clause in the Committee's subpoena to which the documents respond.
6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.
7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the subpoena to which the documents are responsive, shall be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
9. If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), you shall consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format shall also be produced in a searchable format.
10. In the event that a document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This subpoena is continuing in nature and applies to any newly-discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.
14. All documents shall be bates-stamped sequentially and produced sequentially.
15. Two sets of documents shall be delivered, one set to the majority staff and one set to the minority staff. The majority set shall be delivered to the majority staff in Room 2138 of the Rayburn House Office Building and the minority set shall be delivered to the minority staff in Room B-351 of the Rayburn House Office Building. You shall consult with Committee staff regarding the method of delivery prior to sending any material.
16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meeting or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody; or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships,

syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.

7. The term "Secure Communities" means the program that relies on the existing federal information-sharing partnership between U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Investigation (FBI) to identify removable criminal aliens and under which the FBI automatically sends the fingerprints of individuals arrested by Federal, state, and local law enforcement officials to ICE to check against its immigration databases. Under this program ICE then determines whether an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction.