



Homeland
Security

December 2, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith:

I am writing in response to your November 18, 2011 letter regarding the recidivism of removable criminal aliens who were brought to the attention of U.S. Immigration and Customs Enforcement (ICE) but who were not removed or taken into custody.

The Department of Homeland Security (DHS) respects the Committee's role in conducting oversight of the Department's enforcement of immigration laws, and understands its interest in analyzing recidivism among removable criminal aliens who were brought to the attention of ICE through the Secure Communities program and were not taken into custody or placed in removal proceedings for discretionary reasons. We regret if processing delays and miscommunication on our part have left the Committee with the impression that the Department does not intend to work with the Committee on these issues. To the contrary, as we have throughout this process, the Department will continue to work with the Committee to provide information to accommodate the Committee's inquiry.

As the Committee is aware, the Department's highest immigration enforcement priority is the identification and removal of criminal aliens. In FY 2011, ICE removed 216,000 convicted criminal aliens, an 89 percent increase from FY 2008. As Secure Communities allows ICE to quickly identify individuals who have been arrested and booked into state and local jails for violating criminal laws, it has been one of our best tools for identifying and removing criminal aliens and those who pose a public safety threat. Secure Communities has also proved to be an effective tool for identifying those who repeatedly violate our immigration laws. As such, I can assure you that ICE prioritizes for removal the majority of those identified through Secure Communities.

In previous correspondence, you have stated that you intend to use the immigration enforcement information provided by DHS to seek from the Federal Bureau of Investigation (FBI) individual criminal histories for the aliens at issue, in order to assess recidivism rates. In order to facilitate the Committee's investigation, DHS will work, with the FBI's assistance, to provide these individual criminal histories for the category of aliens of interest to the Committee,

despite the substantial burden it will place on Department resources. We are in close and ongoing consultation with the FBI, which agrees this is the most efficient approach.

In addition to efficiency and speed, this proposed approach avoids creating unnecessary risks to individual privacy that would be created by disseminating information that could be used to identify individuals through widely accessible databases. The Committee has recognized the validity of concerns regarding the security of personally identifiable information, and the Department shares this view. We believe the approach proposed here best protects those interests while still providing the Committee with the information it needs to conduct its analysis.

ICE is still compiling this information, but to date has determined that, of the 431,955 subjects with FBI numbers identified through Secure Communities matches, approximately 73,000 cases appear to fall into the category of subjects identified as potentially removable but where no enforcement action appears to have been taken. As ICE has explained, while the Secure Communities data on cases where action has been taken is extensive, the data on cases where no action appears to have been taken is lacking. As a result, these cases will require extensive further review in order to determine whether, in fact, enforcement action was taken through another program like Criminal Alien Program (CAP), and if not, the reason why enforcement action was not taken. The reasons could include cases where the subject was released by local authorities before ICE could lodge a detainer or where ICE made a decision to exercise prosecutorial discretion.

Although more focused, this process remains labor intensive. We anticipate that the information will be collected in approximately 30 days. In the interim, however, we would like to meet with the Committee staff to discuss protocols for querying and providing criminal history information for those aliens we have already identified who do fall into the categories of interest to the Committee. We would also like to discuss potential sampling methods that would provide the Committee with sufficient information more quickly and with diminished burden to our immigration enforcement resources.

The approach we propose here is consistent with that taken by the Department of Justice (DOJ) in its February 25, 2000 response to the Committee's subpoena of August 4, 1999 during the 106th Congress, which you have referenced in your prior correspondence. In that matter, DOJ did not provide personally identifiable information for aliens who had a FBI number but for whom DOJ did not know whether a criminal conviction occurred after release from Immigration and Nationalization Services (INS) custody (the majority of individuals at issue). DOJ did provide such information for individuals whom it could determine had been convicted of a crime after INS release. DOJ also agreed with the Committee on a sampling methodology that reduced the burden and time needed to respond to the request. This approach was sufficient for the Committee to conduct the statistical analysis of recidivism rates that was reported in House Report 106-1048.

In sum, we believe our proposed approach to the Committee's request will provide the Committee with the relevant information in the most efficient and timely way, while minimizing risks to the security of personally identifiable information. We will continue to follow up with

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Committee staff and update them on the progress of ICE's review of the approximately 73,000 cases where enforcement action was not taken and to discuss sampling methodologies and protocols for querying and providing criminal history information for those aliens who do fall into the categories of interest to the Committee.

We look forward to our continued work with the Committee and its request for information regarding the Department's immigration enforcement record.

Respectfully,

A handwritten signature in blue ink, appearing to read 'N. Peacock', with a large, sweeping flourish extending to the right.

Nelson Peacock
Assistant Secretary for Legislative Affairs

cc: The Honorable John Conyers, Jr.
Committee on the Judiciary