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Goodlatte: Implementation of Priority Enforcement Program Endangers Our Communities

Washington, D.C. – The House Judiciary Committee recently learned that the Obama Administration has begun to implement its Priority Enforcement Program (PEP), which replaces the successful Secure Communities program and allows significant numbers of criminal aliens to remain in the United States. PEP is part of the unilateral changes to the U.S. immigration system announced by President Obama on November 20, 2014.

Although Obama Administration officials claim that they are prioritizing immigration enforcement through executive action to focus on criminal aliens, they scrapped Secure Communities – a congressionally mandated tool that identifies criminal aliens booked in jails across the United States so that federal law enforcement officials can prioritize their removal – and replaced it with an untested, new program that is riddled with loopholes.

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) issued the following statement on the Obama Administration’s Priority Enforcement Program.

“The only priority contained in the Priority Enforcement Program is to ensure that our immigration laws are not enforced in the interior of the United States. By scrapping a law enforcement tool that keeps our communities safe and replacing it with a new program that permits the release of criminal aliens, President Obama is needlessly endangering our communities. It’s past time for the Obama Administration to get its priorities straight and protect the American people instead of their political interests. The House Judiciary Committee will examine this new program at next month’s Department of Homeland Security oversight hearing.”

Here are the Facts about the Administration’s “Priority Enforcement Program”:

- ✓ ***PEP Permits Significant Numbers of Criminal Aliens to Remain in the United States:*** Obama Administration officials claim that PEP will continue to rely on biometric data to identify criminal aliens, but ICE will only be permitted to transfer aliens from the custody of state and local law enforcement through the new program when an alien has been *convicted* of certain, but not all, of the offenses in the Administration’s new, so-called immigration enforcement “priorities.” These “priorities” ignore entire categories of removable criminal aliens defined by Congress in the Immigration and Nationality Act. After the implementation of PEP, DHS will not pursue the vast majority of criminal aliens who commit the following offenses: fraud or material misrepresentation in the immigration process; drug possession offenses; most theft offenses, including identity theft; nearly all crimes

involving moral turpitude; and, aliens who have misdemeanors that the Administration does not deem to be “significant.”

- ✓ ***Even Aliens Who Have Been Charged or Arrested for Serious Criminal Offenses Will Not be Pursued under PEP:*** If an unlawful immigrant commits a crime, but is able to be released from state or local custody before the conclusion of the criminal proceedings, DHS will turn a blind eye to allow the unlawful immigrant to remain on the streets until that alien has an actual *conviction*. Note, this is even a departure from the previous priorities issued by former Director Morton. For DHS, permitting the criminal alien to remain on the streets overrides protecting the community.
- ✓ ***Not Only Does PEP Ignore Criminal Aliens, but PEP Also Ignores Aliens Defined as a “Priority” for Removal by DHS in Secretary Johnson’s November 20, 2014 Memorandum:*** The “priorities” that DHS created on November 20, 2014 are ignored for the purposes of PEP implementation, meaning that DHS will not attempt to take custody of these individuals if they are arrested by state and local law enforcement:
 - **Priority (1)(b) Recent border crossers:** “Aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States” are not subject to PEP.
 - **Priority 2(c) Aliens who enter the U.S. unlawfully or reenter after being removed or returned:** “Aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014,” are not subject to PEP.
 - **Priority 2(d): Aliens who “significantly abuse the terms of their visas”:** “Aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs are not subject to the PEP program.” When asked, the Administration could not provide a definition of the term “significantly abused the visa or visa waiver programs.”
 - **Priority (3) Aliens with final orders of removal:** Even aliens “who have been issued a final order of removal on or after January 1, 2014,” are not subject to PEP.
- ✓ ***Through PEP and the Administration’s Enforcement “Priorities,” DHS Implicitly Asserts that Enforcement of Our Immigration Laws Does Not Serve an Important Federal Interest:*** DHS states that nothing in its priority memos, “should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein. However, resources should be dedicated, to the greatest degree possible, to the removal of aliens described in the priorities set forth above, commensurate with the level of prioritization identified. Immigration officers and attorneys may pursue removal of an alien not identified as a priority herein, provided, in the judgment of an ICE Field Office Director, removing such an alien *would serve an important federal interest*.” This term is not defined anywhere in the guidance that implements PEP, and remains completely open-ended. Apparently, DHS takes the position that enforcing clearly defined immigration laws enacted by Congress does not serve an important federal interest.
- ✓ ***PEP Authorizes Sanctuary City Policies:*** Not only does the Obama Administration end the Secure Communities program as we know it, it also ends ICE detainers in nearly all situations, meaning that ICE will no longer have the ability to pick up and process removable aliens encountered by law enforcement.

- **PEP ratifies sanctuary jurisdictions by allowing states and localities to ignore detainer requests:** Rather than defending its detainer authority and clarifying that detainers are mandatory, ICE will instead issue “*Requests for Voluntary Notification of Release of Suspected Priority Aliens*” to state and local law enforcement jurisdictions. This effectively leaves states and localities responsible regarding the decision of immigration enforcement: they can refuse to comply with the requests for notification should they choose to do so. Indeed, ICE has engaged in a significant campaign to bring sanctuary jurisdictions on board with any form of PEP, with little success. So far, only Los Angeles County has agreed to join – and it is unclear to what extent they plan to adhere to PEP.
- **PEP only permits the issuance of an actual detainer in extremely limited circumstances:** In extremely limited circumstances, ICE can issue a detainer and then issue a form entitled “*Immigration Detainer - Request for Voluntary Action.*” However, this document contains a stringent checklist, which requires DHS to tell a state or local jurisdiction which of DHS’s enforcement priorities the alien fits into – as if it has to explain to state and local jurisdictions why it wants to enforce federal immigration law.

Learn more about the Obama Administration’s lax immigration record [here](#).

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