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May 22, 2014

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, DC 20850

Dear Secretary Johnson,

I write to request information about removable immigrants brought to the attention of U.S. Immigration and Customs Enforcement (ICE) via Secure Communities or other means but who were not removed by the Department of Homeland Security (DHS) from August 1, 2011 to May 1, 2014.

Secure Communities relies on the existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) to identify removable immigrants. Under Secure Communities, 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. ICE determines whether an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction.

ICE states that in determining whether to take custody of such immigrants and effect their removal, it prioritizes individuals who ICE believes present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors. ICE unequivocally states that it does not remove all removable immigrants identified by the agency through Secure Communities or by other means. Specifically, through ICE's detainer policy and prosecutorial discretion, all aliens encountered by the agency are not removed.

The risks to the American people of ICE's strategy have been made apparent by information this Committee has twice obtained by subpoena. Large numbers of removable aliens who have been released from immigration detention or who ICE has declined to seek to remove after their arrest by local law enforcement have subsequently been charged with committing crimes post release. While the crimes have varied from murder to DUI to "lesser" crimes, they all were avoidable. If ICE had adhered to its immigration enforcement mission and processed these aliens for removal and had kept them in detention, further victimization of U.S. citizens

and immigrants would have been avoided. Of course, placing criminal aliens in alternatives to detention (ATD) does not prevent them from preying on their communities.

In 1999, the House Judiciary Committee subpoenaed the Department of Justice (“DOJ”) for information on inadmissible or deportable aliens who were released from U.S. Immigration and Naturalization Service (“INS”) custody and then subsequently convicted of additional crimes. The resulting information revealed that of the 35,318 criminal aliens INS released between 1994 and 1999, 37% had been convicted of another crime in the United States by 2000.

On August 22, 2011, former Chairman of the Judiciary Committee, Lamar Smith, made a formal request to DHS for information about removable aliens brought to the attention of ICE via Secure Communities or other means who were not removed.

After DHS failed to provide this information to the Committee, on November 4, 2011 Elton Gallegly, the Chairman of the Subcommittee on Immigration Policy and Enforcement, issued a subpoena to compel submission of the requested documents. The terms of the subpoena required DHS to produce all documents sufficient to determine the name, Federal Identification Number (FIN), and alien registration number of any and all aliens arrested between November 1, 2008, and October 31, 2011, about whom ICE was notified through Secure Communities or otherwise but did not take custody of or declined to put in removal proceedings.

Ultimately, in December of 2011, DHS provided the information requested based upon the subpoena. The data provided by DHS to the Committee included 276,412 records of charges against unlawful and criminal immigrants identified by Secure Communities between October 27, 2008 and July 31, 2011. There were 159,286 unique individuals in the database and 205,101 unique arrest incidents. The Congressional Research Service (CRS) in cooperation with the Committee, cross-checked the subpoenaed data to determine if the unlawful and criminal immigrants released by ICE have gone on to commit more crimes. Of note CRS found the following facts in their research:

- Of those released, CRS found that about 17% of unlawful and criminal immigrants, or 26,412, were rearrested on criminal charges. These 26,412 recidivists accounted for a total of 42,827 arrests and 57,763 alleged violations.
- The categories of crimes charged included DUIs; drug violations; major criminal offenses (which include murder, assault, battery, rape, and kidnapping); theft; and other violent crimes, (which include carjacking, child cruelty, child molestation, domestic abuse, lynching, stalking, and torture).
- Of those rearrested, nearly 30%, or 7,283, were unlawful immigrants.

A recent report by the Center for Immigration Studies reveals through a review of internal ICE metrics for 2013 that hundreds of thousands of removable aliens who were identified in the interior of the country were released instead of removed under the Administration’s “prosecutorial discretion” policies. According to those reports, in 2013, ICE reported 722,000 encounters with potentially removable aliens, most of whom came to their

attention through Secure Communities after arrests by local law enforcement. Yet DHS only issued immigration charges for 195,000 of these aliens.¹

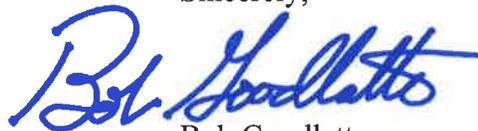
As a subset of this released population, many of the aliens ignored by ICE were convicted criminals. In 2013, ICE agents released 68,000 aliens with criminal convictions, or 35 percent of all criminal aliens they encountered. These numbers represent individuals who ICE deliberately decided not to place in the removal process.

Similar to the 2011 subpoenaed information, I request that you provide me with a list of all the potentially removable immigrants about whom ICE was notified whether notification was through Secure Communities or other means, but either did not take custody of or declined to remove from August 1, 2011 to May 1, 2014. I request that this information be provided in the same format in which it was provided in 2011; hence, it should include information sufficient to determine the name, FIN, and alien registration number of these aliens. We would also like reports on their corresponding criminal histories.

Additionally, a recent report indicates that DHS released about 36,000 aliens with criminal convictions from DHS custody who were in fact undergoing the removal process (unlike the group of 68,000 aliens who were never processed for removal).² Please provide us with the same information for those 36,000 released aliens while breaking out the following criteria in a chart format: country of origin; crimes committed; where the alien is in the process - final orders, fugitive, etc.; release authority – prosecutorial discretion, *Zadvydas*, etc.; reason for release; release method – on recognizance, order of supervision, bond, ATD (please describe what service level), etc.; location of release; whether they were charged with additional crimes post-release (please describe those crimes), and whether after being charged with additional crimes they were returned to law enforcement custody.

We recognize that you will not be able to respond to this query before you testify before the Committee at our DHS oversight hearing on May 29, 2014. However, please confirm that you will provide this information and that DHS will work with my staff to provide the information to the Committee in a prompt and timely manner. If you have any additional questions or concerns regarding this issue please contact Committee Counsel Dimple R. Shah at 202-225-3926. Thank you for your attention to this request.

Sincerely,



Bob Goodlatte
Chairman

Cc. The Honorable John Conyers, Jr.

¹ Jessica Vaughan, *Catch and Release: Interior Immigration Enforcement in 2013*, Center for Immigration Studies (2014).

² Jessica Vaughan, *ICE Document Details 36,000 Criminal Alien Releases in 2013*, Center for Immigration Studies (2014).