

Nov. 21, 2014

For Immediate Release

Contact:

Angela Chan, Policy Director and Senior Staff Attorney
Advancing Justice - Asian Law Caucus
angelac@advancingjustice-alc.org

Jon Rodney, Communications Manager
California Immigrant Policy Center
jrodney@caimmigrant.org

B. Loewe, Communications Director
National Day Laborer Organizing Network
bloewe@ndlon.org

Civil Rights Orgs Celebrate the End of S-Comm, Caution Against the Replacement “PEP-Comm” Program

Just Like Its Predecessor S-Comm, PEP-Comm Puts Community Policing At Risk

San Francisco - Advancing Justice - Asian Law Caucus, California Immigrant Policy Center, and National Day Laborer Organizing Network celebrate President Obama's decision to end ICE's controversial and roundly denounced Secure Communities (“S-Comm”) mass deportation program while expressing serious concern about its replacement program.¹ The decision comes after years of grassroots organizing, with undocumented leaders, law enforcement leaders, and elected officials blasting S-Comm for undercutting community policing, encouraging racial profiling, and subjecting immigrants to harsh double punishment. These efforts, coupled with passage of the TRUST Act in California and federal court decisions finding that ICE holds violate the Fourth Amendment of the Constitution have spurred approximately 300 jurisdictions nationally to adopt policies refusing ICE hold requests - a new reality which the Department of Homeland Security was forced to recognize by replacing the program.

However, civil rights groups voice strong concern that the Priority Enforcement Program (“PEP-Comm”), which will replace S-Comm, contains similar pitfalls.

Fingerprints Continue to be Checked at Booking

According to DHS, ICE will continue to obtain and check the fingerprints of every individual arrested by local law enforcement at the point of booking. This means that fingerprints will still be sent to ICE prior to individuals receiving any due process in the criminal matter - before they have a first hearing or are appointed an attorney.

¹ See DHS Memorandum on Secure Communities, Nov. 20, 2014:
http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

Notification Instead of Detention Still Undercuts Community Policing

What may change is that rather than triggering an ICE hold request, which results in the prolonged *detention* of an individual without probable cause or judicial review, these fingerprint checks will lead to a request that local law enforcement *notify* ICE when an individual is to be released. Notification rather than detention still means some immigrants will be transferred into ICE custody after contact with local police, and therefore many immigrant communities will still fear reporting crime to local police. In California, implementation of the TRUST Act beginning on January 1, 2014, has led to sharp declines in ICE hold requests and detentions.² However, in several counties, Sheriff's Departments have tried to undercut the purpose of the TRUST Act through notifying ICE when an individual is to be released. These misguided policies and practices have further eroded trust between immigrant communities and local police, thereby undercutting public safety for everyone.

Prioritization of Deportation Has Not Worked

Under PEP-Comm, request for notification should only occur if individuals are convicted of specified offenses or pose national security risks. However, we have seen this attempt at prioritization before in the form of several memos from then ICE Director Morton.³ And we know from countless stories of deported community members and studies finding that deportations of individuals for low-level offenses has actually increased⁴ that ICE agents have thus far not adhered to this guidance. Moreover, the list of specified priority offenses includes low-level and vague categories, such as "significant misdemeanor," which could be interpreted broadly by ICE.

Like ICE holds, the Prioritized Enforcement Program Must Be Voluntary

The good news is similar to ICE holds, PEP-Comm also must be voluntary. The 10th Amendment of the Constitution prohibits the federal government from commandeering local law enforcement to engage in civil immigration enforcement. Local law enforcement can simply say no to undercutting community policing and no to wasting local resources to tear apart immigrant families.

While we welcome the end of S-Comm, we do not welcome its replacement. S-Comm must be shut down altogether and not rebranded into another program that contains the similar downfalls.

###

² See Amy Taxin and Elliot Spagat, Huffington Post, "California Immigration Holds Drop Significantly Under Trust Act" (June 6, 2014), http://www.huffingtonpost.com/2014/04/06/california-immigration_n_5100854.html.

³ See Morton Memo (Dec. 21, 2012), <http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>, Morton Memo (June 15, 2012), <http://www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-young-people-morton.pdf>, and Morton Memo (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

⁴ See Syracuse TRAC Program, "Secure Communities and ICE Deportation: A Failed Program?", April 8, 2014, <http://trac.syr.edu/immigration/reports/349/>.