

**REQUEST FOR VOLUNTARY NOTIFICATION OF RELEASE OF SUSPECTED PRIORITY ALIEN**

Subject ID:  
Event #:

File No:  
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (DHS Office Address)

Name of Subject: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Suspected Citizenship: \_\_\_\_\_ Sex: \_\_\_\_\_

**1. DHS SUSPECTS THAT THE SUBJECT IS A REMOVABLE ALIEN AND THAT THE SUBJECT IS AN IMMIGRATION ENFORCEMENT PRIORITY BECAUSE HE/SHE** (mark at least one option below, or skip to section 2):

- has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;
- has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is at least 16 years old and intentionally participated in an organized criminal gang to further its illegal activities;
- has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the alien's immigration status;
- has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43) at the time of conviction;
- has been convicted of a "significant misdemeanor," as defined under DHS policy; and/or
- has been convicted of 3 or more misdemeanors, not including minor traffic offenses and state or local offenses for which immigration status was an essential element, provided the offenses arise out of 3 separate incidents.

**2. DHS TRANSFERRED THE SUBJECT TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION.**

- Upon completion of the proceeding or investigation for which the subject was transferred to your custody, DHS intends to resume custody of the subject to complete processing.

**IT IS THEREFORE REQUESTED THAT YOU:**

- Provide **notice as early as practicable** (at least 48 hours, if possible) before the subject is released from your custody to allow DHS an opportunity to determine whether there is probable cause to conclude that he or she is a removable alien. **This voluntary notification request does not request or authorize that you detain the subject beyond the time he or she is currently scheduled for release from your custody. This request arises from DHS authorities and should not impact decisions about the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.**
- As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling  U.S. Immigration and Customs Enforcement (ICE) or  U.S. Customs and Border Protection (CBP) at \_\_\_\_\_. If you cannot reach a DHS official at the number(s) provided, please contact the ICE Law Enforcement Support Center at: (802) 872-6020.
- Notify this office in the event of the subject's death, hospitalization or transfer to another institution.
- If checked: Please disregard the notification request related to this subject previously submitted to you on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer)

\_\_\_\_\_  
(Signature of Immigration Officer)

**Notice:** If the subject is taken into DHS custody, he or she may be removed from the United States. If the subject may be the victim of a crime, or if you want the subject to remain in the United States for a law enforcement purpose, please notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS by mailing, emailing, or faxing a copy to \_\_\_\_\_.

Local Booking/Inmate #: \_\_\_\_\_ Est. release date/time: \_\_\_\_\_ Date of latest criminal charge/conviction: \_\_\_\_\_

Latest offense charged/convicted: \_\_\_\_\_

\_\_\_\_\_  
(Name and title of Officer)

\_\_\_\_\_  
(Signature of Officer)

# OFFICE OF ENFORCEMENT AND REMOVAL OPERATIONS PRIORITY ENFORCEMENT PROGRAM (PEP)



U.S. Immigration  
and Customs  
Enforcement

## ABOUT PEP

The Department of Homeland Security's (DHS) Priority Enforcement Program (PEP) enables DHS to work with state and local law enforcement to take custody of individuals who pose a danger to public safety before those individuals are released into our communities. PEP was established at the direction of DHS Secretary Jeh Johnson in a November 20, 2014 memorandum, entitled Secure Communities, that discontinued the Secure Communities program. PEP focuses on convicted criminals and others who pose a danger to public safety.

## HOW IT WORKS

PEP begins at the state and local level when an individual is arrested and booked by a law enforcement officer for a criminal violation and his or her fingerprints are submitted to the FBI for criminal history and warrant checks. This same biometric data is also sent to U.S. Immigration and Customs Enforcement (ICE) so that ICE can determine whether the individual is a priority for removal, consistent with the DHS enforcement priorities described in Secretary Johnson's November 20, 2014 Secure Communities memorandum. Under PEP, ICE will seek the transfer of a removable individual when that individual has been convicted of an offense listed under the DHS civil immigration enforcement priorities, has intentionally participated in an organized criminal gang to further the illegal activity of the gang, or poses a danger to national security.

## WHAT ARE DHS' PRIORITIES FOR REMOVAL?

PEP builds upon the enforcement priorities set forth in the November 20, 2014 Memorandum from DHS Secretary Jeh Johnson entitled Policies for the Apprehension, Detention and Removal of Undocumented Immigrants.

The memorandum can be found at:

[http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

## HOW IS PEP DIFFERENT FROM SECURE COMMUNITIES?

PEP focuses on targeting individuals convicted of significant criminal offenses or who otherwise pose a threat to public safety. Under prior policy, detainers could be issued when an immigration officer had reason to believe the individual was removable and fell within one or more enumerated priorities, which included immigration-related categories and having been convicted of or charged with certain crimes.

Under PEP, ICE will only seek transfer of individuals in state and local custody in specific, limited circumstances. ICE will only issue a detainer where an individual fits within DHS's narrower enforcement priorities and ICE has probable cause that the individual is removable. In many cases, rather than issue a detainer, ICE will instead request notification (at least 48 hours, if possible) of when an individual is to be released. ICE will use this time to determine whether there is probable cause to conclude that the individual is removable.

Under PEP, DHS will no longer use the Form I-247 (Immigration Detainer - Notice of Action) and will instead use two new forms:

### Form I-247N, Request for Voluntary Notification of Release of Suspected Priority Alien.

The Form I-247N requests the receiving local law enforcement agency (LEA) notify ICE of the pending release from custody of a suspected priority removable individual at least 48 hours prior to release, if possible. The Form I-247N does not request or authorize the LEA to hold an individual beyond the point at which he or she would otherwise be released. Additionally, on the Form I-247N, ICE must identify the enforcement priority under which the individual falls.

### Form I-247D, Immigration Detainer - Request for Voluntary Action.

The Form I-247D requests the receiving LEA maintain custody of the priority individual for a period not to exceed 48 hours beyond the time when he or she would have otherwise been released from custody. On this form, ICE must identify the enforcement priority under which the individual falls, as well as the basis for its determination of probable cause. The LEA must also serve a copy of the request on the individual in order for it to take effect.

## PUBLIC INFORMATION

ICE's Enforcement and Removal Operations (ERO) is committed to a transparent process and to resolving concerns as promptly as possible. For this reason, concerns or questions regarding ICE practices, policies and/or programs should first be directed to the local field liaison. Stakeholders can reach out to their local ERO field office using the following website address: <http://www.ice.gov/contact/ero>.

OFFICE OF ENFORCEMENT AND REMOVAL OPERATIONS  
**PRIORITY ENFORCEMENT PROGRAM (PEP)**



U.S. Immigration  
 and Customs  
 Enforcement

**COMPARISON OF SECURE COMMUNITIES AND THE PRIORITY ENFORCEMENT PROGRAM**

SECURE COMMUNITIES	PRIORITY ENFORCEMENT PROGRAM
<p>Relied on fingerprint based biometric data submitted during bookings by state and local law enforcement agencies to the FBI for criminal background checks.</p>	<p>Continues to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies to the FBI for criminal background checks.</p>
<p>Prior to December 21, 2012, the only policy limitations on detainer issuance were that: (1) a law enforcement agency (LEA) had exercised its independent authority to arrest the individual; and (2) the immigration officer had reason to believe that the individual was subject to ICE detention for removal or removal proceedings.</p> <p>Circumstances under which a detainer could be issued were narrowed by a December 12, 2012 policy memorandum, but still included individuals charged, but not yet convicted, of criminal offenses, in addition to individuals with no criminal history, such as individuals with final orders of removal from an immigration judge. Detainers could also be issued in circumstances in which ICE determined an individual posed a significant risk to national security, border security, or public safety.</p>	<p>A November 20, 2014 memorandum from DHS Secretary Jeh Johnson significantly narrows the category of individuals for whom DHS will seek transfer from LEA custody and prioritizes individuals who pose a threat to public safety. Under PEP, ICE will no longer seek transfer of individuals with civil immigration offenses alone, or those charged, but not convicted of criminal offenses.</p> <p>Instead, ICE will seek transfer where a removable individual has been convicted of specifically enumerated crimes, has intentionally participated in criminal gang activity, or poses a danger to national security.</p>
<p>Requested that LEAs detain an individual beyond his or her scheduled release date.</p>	<p>In many cases, ICE will simply request notification of when an individual who falls within the PEP priorities is to be released—rather than issue a request for detention beyond that point.</p> <p>Under PEP, detainers may only be issued in limited circumstances, when ICE indicates on the form that the individual is both a PEP enforcement priority and that there is probable cause to believe that the subject is removable (such as a final order of removal).</p>
<p>Detainer form <u>requested</u> that LEA provide a copy to the individual subject to the detainer.</p>	<p>Detainer form <u>requires</u> that LEA provide a copy to the individual subject to the detainer <u>in order for the request to be effective</u>.</p>
<p>Request to maintain custody was limited to 48 hours, excluding Saturdays, Sundays, and holidays.</p>	<p>Request to maintain custody is limited to 48 hours. Saturdays, Sundays, and holidays are no longer excluded.</p>
<p>Basis for “reason to believe” the subject was removable, and therefore subject to a request for detention, was not disclosed on the detainer form.</p>	<p>Detainer form requires that the basis for “probable cause” that an individual is removable be indicated:</p> <ul style="list-style-type: none"> <li>· final order of removal;</li> <li>· pendency of removal proceedings;</li> <li>· biometric match reflecting no lawful status or otherwise removable; or</li> <li>· statements by the subject to an immigration officer and/or other reliable evidence.</li> </ul>
<p>Some ICE detainers were issued with respect to foreign-born individuals who did not have records or a biometric match in ICE databases without any other additional information.</p>	<p>ICE no longer issues detainers in cases of foreign-born individuals who do not have records or a biometric match in ICE databases, without any other additional information. Detainers must include an indication of probable cause and that the individual is an enforcement priority under PEP.</p>

*The Ask:* DHS has reached out to you concerning the new Priority Enforcement Program (PEP) and to outline the reforms we have made to immigration detainers. This is important to the Administration. We urge you to take a close look. Ultimately, DHS is willing to discuss with each jurisdiction how your jurisdiction may be able to cooperate with immigration detainers issued under PEP. We are willing to discuss this and don't need a once size fits all approach.

*Further Points:*

In November 2014, the President announced a series of executive actions to begin to fix our immigration system.

As part of the Executive Action, DHS will end the Secure Communities program and replace it with the Priority Enforcement Program (PEP) that will closely and clearly reflect DHS's new top enforcement priorities.

The new Priority Enforcement Program or "PEP" is as part of our broader efforts to make the nation's immigration system more efficient through executive action by focusing resources on national security, border security and public safety.

We are ending the controversial Secure Communities program as we know it, and making a fresh start with PEP. We know that Secure Communities attracted widespread criticism in its implementation and has been embroiled in litigation.

We believe that PEP will help strengthen relationships and rebuild trust with state and local governments, as well as with law enforcement agencies which no longer honor ICE immigration detainers.

PEP will improve how we seek to transfer individuals from state and local custody to DHS custody.

This program will be implemented in a way that will better complement and support community policing and public safety.

We endeavor to work collaboratively with state and local jurisdictions and law enforcement agencies to take custody of certain convicted criminals whom we have the authority to remove from the country, before they are released into the community.

PEP will, for the most part, limit the circumstances under which DHS will seek an individual in the custody of state and local law enforcement—specifically, only when an individual has been convicted of certain crimes enumerated in of our new enforcement priorities.

As we establish the new Priority Enforcement Program – we know we need the cooperation of state and local governments, elected officials and law enforcement. We want to start that dialogue with you.

# Implementing Department of Homeland Security Immigration Enforcement Priorities

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## I. Introduction

This Instruction implements the Department of Homeland Security (DHS) policies for the apprehension, detention, and removal of aliens in the United States. This Instruction is Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). This Instruction informs enforcement and removal activity and detention decisions.

In general, enforcement and removal policies continue to prioritize threats to national security, public safety, and border security. DHS personnel are directed to prioritize the use of enforcement personnel, detention space, and removal assets accordingly. DHS exercises prosecutorial discretion in the enforcement of the law and, in the exercise of that discretion, ensures that use of its limited resources is devoted to the pursuit of its priorities.

This Instruction implements two of Secretary Johnson's November 20, 2014 memoranda (listed in Section III, References) that directly impact the activities of immigration officers engaged in civil immigration enforcement by:

- A. Setting forth Department-wide civil immigration enforcement priorities focused on national security, border security, and public safety including guidelines for the exercise of prosecutorial discretion at all stages of the enforcement process;
- B. Discontinuing the Secure Communities Program and implementing the Priority Enforcement Program (PEP).

## II. Purpose and Scope

This Instruction provides guidance to Components charged with the administration and enforcement of immigration laws, while ensuring adherence to the roles and methodologies of each Component. The following procedures apply only to civil

immigration enforcement activities and are inapplicable to criminal investigations and civil enforcement action taken pursuant to or in furtherance of a criminal investigation.

Nothing in this Instruction should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as DHS immigration enforcement priorities in Secretary Johnson's November 20, 2014 memorandum entitled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. However, resources should be dedicated, to the greatest degree possible, to the removal of aliens described in the priorities set forth, commensurate with the level of prioritization identified. Immigration officers and attorneys may pursue removal of an alien not identified as a priority provided, in the judgment of a designated DHS Component Field Responsible Official, removing such an alien would serve an important federal interest.

This is a law enforcement-sensitive document. This document contains information that would disclose techniques, procedures or guidelines for investigations or prosecutions and is exempt from release under the Freedom of Information Act.

### III. References

- A. Policy Directive 044-02, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, Signed by Secretary Janet Napolitano on June 15, 2012.
- B. Policy Directive 044-03, *Secure Communities*, signed by Secretary Jeh Charles Johnson on November 20, 2014
- C. Policy Directive 044-04, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, signed by Secretary Jeh Charles Johnson on November 20, 2014
- D. USCIS Memorandum, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, issued on November 7, 2011.

### IV. Definitions

The following definitions apply for purposes of this Instruction only:

- A. **Alien:** Any person who is not a citizen or national of the United States.

- B. Biographic identifiers:** Credible personal information obtained from a subject or a reliable third party (e.g., name, address, Social Security number, driver's license number, or permanent resident card) that can be used to identify an individual.
- C. Biometric identifiers:** An objective measurement of an anatomical, physiological, or behavioral characteristic of an individual that, when associated with an identity in a system of records, can be used to verify an individual's identity (e.g., fingerprints).
- D. DHS Component Field Responsible Official (FRO):** CBP U.S. Border Patrol (USBP) Sector Chief Patrol Agents and Office of Field Operations (OFO) Directors of Field Operations, ICE Enforcement and Removal Operations (ERO) Field Office Directors, Homeland Security Investigations (HSI) Special Agents in Charge, and the Chief Counsel of the Office of the Principal Legal Advisor (OPLA), and USCIS District Directors, USCIS Service Center Directors, and USCIS Asylum Office Directors.
- E. Enforcement action:** An activity taken by DHS to address criminal or administrative violations.
- F. Immigration Officers:** Any individual designated by the Secretary of Homeland Security, individually or by regulation, to perform the functions of an immigration officer, as described in 8 C.F.R. § 287.
- G. Interview:** A meeting or conversation, telephonic or otherwise, in which an individual is questioned by an immigration officer about his/her citizenship, nationality, and inadmissibility or deportability from the United States.
- H. Vetting:** The process of verifying the identity or other information about an individual through biographic and/or biometric identifiers.

## **V. Responsibilities**

- A. DHS Component Field Responsible Officials (FROs)** are responsible for approving the exercise of prosecutorial discretion, when appropriate, commensurate with an alien's priority level, and for ensuring that their subordinates comply with the procedures provided in this Instruction.
- B. ICE Enforcement and Removal Operations (ERO) Field Office Directors** have additional responsibilities under section VII (D) of this Instruction.
- C. United States Border Patrol (USBP) Agents** have responsibilities under sections VI and VII (A) of this Instruction.

D. **United States Customs and Border Protection Officers** have responsibilities under sections VI and VII (B) of this Instruction.

E. **ICE Homeland Security Investigation (HSI) Special Agents** have responsibilities under sections VI and VII (C) of this Instruction.

F. **ICE ERO Deportation Officers, Immigration Enforcement Agents and 287(g) Designated Immigration Officers** have their respective responsibilities under sections VI and VII (D) of this Instruction.

G. **United States Citizenship and Immigration Services Officers** have responsibilities under sections VI and VII (F) of this Instruction.

## VI. Procedures

The following procedures are to be applied universally by employees of the Components charged with the administration and enforcement of immigration laws during the course of enforcement actions.

A. **Identification.** Determine if an individual is an alien against whom DHS may take a civil enforcement action. Immigration officers determine alienage and legal authority to enter or remain in the United States. The identification process may include, but is not limited to, interviews and vetting.

B. **Investigation and Assessment.** Assess whether the alien's apprehension, detention, and/or removal meets one of the DHS civil immigration enforcement priorities. This assessment is based on the totality of information known to the immigration officer at the time. As additional facts present themselves throughout the course of the processing, detention, and removal process, it may become necessary to re-determine whether the alien continues to constitute an enforcement priority.

C. **Consultation.** In cases where there is any question whether the alien is a DHS enforcement priority, the immigration officer should consult with the appropriate DHS Component FRO and/or that official's designee.

D. **Consideration of Evidence.** At the discretion of each Component, the following evidence may be taken into consideration to assess the totality of the circumstances when determining whether the alien is an enforcement priority:

1. the alien's statements;
2. background and record checks;

3. documentation and information the immigration officer believes is relevant, including federal, state, and local forms of identification and records; or

4. if the alien cannot reasonably provide valid government-issued evidence of identity, the immigration officer may consider affidavits, sworn to or affirmed by individuals (other than the alien) who have direct personal knowledge of the events and circumstances at issue, and who provide copies of valid, government-issued photo identification documents and fully establish their own identities and addresses.

**E. Prosecutorial Discretion.** DHS exercises prosecutorial discretion in the enforcement of the law and, in the exercise of that discretion, ensures that use of its limited resources is devoted to the pursuit of those priorities. Prosecutorial discretion applies to the decision to issue, serve, file, or cancel a Notice to Appear, as well as a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action, parole, or a stay of removal instead of pursuing removal in a case. While DHS may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. DHS personnel are expected to exercise discretion and pursue these priorities at all stages of the enforcement process—from the earliest investigative stage to enforcing final orders of removal—subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position. The exercise of prosecutorial discretion is conducted on a case-by-case basis and no one factor is necessarily determinative. Decisions should be based on the totality of the circumstances.

1. In making such determinations, when information is available, DHS personnel should consider factors, such as: extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in, civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative. These factors are not intended to be dispositive nor is this list exhaustive.

2. As defined in Appendix A, Priority 1 aliens must be prioritized for removal unless, in the judgment of a designated DHS Component FRO

there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Priority 2 aliens should be removed unless, in the judgment of a designated DHS Component FRO, there are factors indicating the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. For CBP, authority to favorably exercise prosecutorial discretion in the case of a Priority 1 or 2 alien may be delegated from a USBP Sector Chief Patrol Agent to a designee ranking no lower than Patrol Agent in Charge, or from an OFO Director of Field Operations to a designee ranking no lower than Port Director. Upon determining, based upon the above considerations, that prosecutorial discretion may be appropriate in the case of a Priority 1 or Priority 2 alien, immigration officers are to communicate this information through their chain of command as soon as practicable. The authority for exercising prosecutorial discretion in these cases rests with the FRO, except as noted above.

3. An immigration officer, in accordance with the Component's policies and procedures, may exercise prosecutorial discretion in the case of Priority 3 aliens if, in the judgment of the immigration officer, the individual is not a threat to the integrity of the immigration system, or there are factors suggesting that the individual should not be an enforcement priority.

4. If an officer believes the removal of an alien who is not otherwise identified as a priority would serve an important federal interest, the officer should communicate this information through his or her chain of command for further evaluation and appropriate action. Only an FRO may determine that the removal of such an alien would serve an important federal interest.

5. For purposes of determining whether an individual falls within Priority 3, during the transition period between the prior and new enforcement priorities, the following categories of individuals are evaluated on a case-by-case basis to determine whether their removal would serve an important federal interest:

a. Individuals who were removed and illegally reentered the country before January 1, 2014 but whose prior removal orders were reinstated after January 1, 2014;

b. Individuals ordered removed by an immigration judge before January 1, 2014, but whose timely appeals were denied on or after that date; and

c. Individuals who were granted voluntary departure by an immigration judge or the Board of Immigration Appeals before January 1, 2014, and whose voluntary departure period expired on or after that date without them having departed (thereby converting their voluntary departure into a removal order).

5. The normal expenditure of federal resources to prosecute and otherwise adjudicate an individual's immigration case, alone, will not determine whether removal of that individual serves an important federal interest. Instead, the immigration officer should consider, on a case-by-case basis, the conduct of the individual and its impact on the integrity of the immigration system in the exercise of discretion.

**F. Considerations in Applying Immigration Priorities.** In applying the immigration priorities, the following considerations apply:

1. **National Security Threats.** In evaluating the range of aliens who pose a danger to national security, immigration officers should refer to the statutory language found in sections 212(a)(3) and 237(a)(4) of the *Immigration and Nationality Act (INA)*, generally captioned under "Security and Related Grounds." These sections encompass: (1) aliens who have engaged in espionage, sabotage, the illegal export of goods, technology, or sensitive information, and (2) aliens who have engaged in terrorist activities, including material support of terrorist organizations, solicitation of goods, funds or membership for terrorist acts or terrorist groups and the commission of terrorist activities as defined under the INA, and human rights violators as described in Section 2 below.

2. **Human Rights Violations and Relationship to National Security Threats.** The "otherwise poses a danger to national security" language in Priority 1(a) also includes those who have participated in serious violations of human rights. This is consistent with the longstanding approach of the U.S. government that equates human rights violations with national security threats. DHS should be guided by the statutory language found in INA sections 208(b)(2)(A)(i), 212(a)(2)(G), 212(a)(3)(E), and 212(a)(3)(G). These individuals would include aliens described as having engaged in, committed, ordered, incited, assisted, or otherwise participated in severe violations of religious freedom, Nazi persecution, genocide, torture, extrajudicial killings, or use or recruitment of child soldiers, and aliens described as having ordered, incited, assisted, or

otherwise participated in persecution.

3. **Juvenile Delinquency.** An adjudication of juvenile delinquency is not treated as a conviction and will not, on its own, serve to render an alien an enforcement priority. However, if a juvenile is tried and convicted as an adult, such conviction is treated as a conviction for purposes of priorities determinations.

4. **Expunged Convictions.** Expunged convictions are assessed on a case-by-case basis to determine whether, under the particular circumstances, including consideration of public safety, the expunged conviction should make an alien a priority for removal. In considering whether an expunged conviction should be considered, immigration officers should consult with their counsel regarding any questions.

5. **Domestic Violence.** Perpetrators of domestic violence, depending on state law, are prosecuted either under generally applicable criminal statutes prohibiting assault and battery or under statutes specifically addressing domestic violence. Many states do not have specific domestic violence laws, but INA section 237(a)(2)(E)(i) applies if there was a domestic relationship between the perpetrator and victim. The memorandum's definition of domestic violence applies to convictions that are crimes of violence (as defined in section 16 of title 18) for acts of domestic violence regardless of how the state law categorizes them. Likewise, INA section 237(a)(2)(E)(i) applies to crimes of violence (as defined in section 16 of title 18) against spouses or domestic partners, both current and former, regardless of how the state law categorizes the offense.

In evaluating whether an offense constitutes a significant misdemeanor involving domestic violence, careful consideration should be given to whether the alien was also the victim of domestic violence and whether there was a connection between the conviction and the alien's own victimization. In such cases, this fact should be a mitigating factor.

6. **Driving Under the Influence (DUI).** When determining whether a conviction for DUI is a significant misdemeanor, the elements of the applicable state law are considered. A conviction (requiring proof beyond a reasonable doubt) for DUI is a significant misdemeanor if the state statute of conviction: (1) constitutes a misdemeanor as defined by federal law (the minimum penalty includes imprisonment for more than 5 days but not more than 1 year); (2) requires the operation of a motor vehicle; and (3) requires, as an element of the offense, either a finding of impairment or a blood alcohol content of .08 or higher.

a. While individuals convicted of significant misdemeanors generally fall within Priority 2 of Secretary Johnson's November 20, 2014 enforcement priorities, the Secretary's guidance makes clear that, on a case-by-case basis, a designated DHS Component FRO (or appropriate designee, in the case of CBP) can determine that such an individual is not an enforcement priority when there are factors indicating that he or she is not a threat to national security, border security, or public safety. As with all criminal convictions, these factors could include the length of time since conviction, age at the time the offense was committed, sentence and/or fine imposed, whether the conviction has been expunged, and evidence of rehabilitation.

b. In the specific context of DUI offenses, such factors, if known to the officer, may also include the level of intoxication; whether the individual was operating a commercial vehicle; any additional convictions for alcohol or drug-related DUI offenses; circumstances surrounding the arrest, including presence of children in the vehicle, or harm to persons or property; mitigating factors for the offense at issue, such as the conviction being for a lesser-included DUI offense under state law, and other relevant factors demonstrating that the person is or is not a threat to public safety.

7. **Significant Abuse of the Visa System.** Aliens who, in the judgment of a designated DHS Component FRO, significantly abuse the visa or visa waiver programs may be deemed to meet Priority 2(d) for removal. An FRO should consider the totality of the circumstance in making this decision. An FRO may find significant abuse of the visa or visa waiver programs where the alien has committed intentional violations of the immigration laws that distinguish the alien as a priority because of the noteworthy or substantial nature of the violations or their frequency. By itself, overstay of a visa or the period of admission under the visa waiver program does not constitute significant abuse. The length of time an individual has overstayed his or her period of admission as a nonimmigrant should not generally be a factor in the determination. Prior or subsequent immigration violations or an adverse credibility finding are not determinative but are relevant factors to be considered. The commission of fraud when seeking an immigration benefit, at the time of entry, or during the visa application process is a significant matter that should be considered under the totality of the circumstances.

8. **Identity Theft Convictions.** With respect to identity theft-related convictions where immigration status is not an explicit element of the

offense but may be related to the offense or arrest, DHS may presumptively regard such cases as falling within Priority 1(d), Priority 2(a), or Priority 2(b), as applicable. But an immigration officer should be sensitive to the overall circumstances of the arrest and conviction in such cases, and should discuss such cases with his or her FRO. Circumstances that may be relevant in such cases include whether DHS was the agency that presented the case for prosecution, whether there is a victim in the case, the nature of any loss or harm experienced by the victim as a result of the crime, the sentence imposed as a result of the conviction (including whether the conviction was subsequently reclassified as a misdemeanor), whether there is any indication that the conviction has been collaterally challenged based on allegations of civil rights violations, and the nature and extent of the individual's criminal history.

G. If an alien who is not an enforcement priority indicates that the issuance of a charging document would make him or her eligible for a perceived benefit and requests issuance of the charging document, the ICE or CBP officer may explain to the alien that he or she does not meet one of the Department's priorities, and that no further action is to be taken at that time. This guidance does not limit USCIS's ability to issue an NTA consistent with its policy referenced in Section III C.

## **VII. Component Procedures**

The following requirements and procedures guide the individual Component workforces on the implementation of the Department's guidance.

### **United States Customs and Border Protection**

#### **A. United States Border Patrol**

In accordance with the memoranda listed in section III(A) and III(D) of this Instruction:

1. Upon encountering individual(s), USBP Agents are to determine alienage and legal status to enter/remain/reside in the United States.
2. For aliens subject to removal proceedings, USBP Agents are to:
  - a. Field process the subject with basic identifying/ biographical information (e.g. name, DOB, nationality) per sector guidelines;
  - b. Transport to the nearest USBP facility with processing and biometric enrollment capabilities and enroll aliens' biographic and

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biometric information into the e3 Processing system and the IDENT/ Next Generation Identification/Automated Biometric Identification System fingerprint system; and

c. Complete appropriate record checks, including wants and warrants, immigration history, and criminal records checks.

3. For aliens who have been identified as a priority for removal or return, (and a determination has been made that prosecutorial discretion is not warranted), under current authorized processes, procedures and guidelines, USBP Agents are to:

a. Process alien under required document process (expedited removal, warrant of arrest/notice to appear, etc.); and

b. Document the case in the e3 Processing system.

4. For individuals who demonstrate that they meet the guidelines for consideration of DACA under section III (D) of this Instruction, USBP Agents are to:

a. Complete an A-file on the alien with a Full Voluntary Return path;

b. Take sworn statement from the alien in order for them to outline their claim;

c. Obtain first- and second-line supervisory approval and concurrence from the sector-designated approving Agent (contact the Office of Chief Counsel (OCC) if legal questions arise);

d. Document the case appropriately in the e3 Processing system; and

e. Provide the USCIS Hotline number to the alien upon release (800-375-5283).

5. For aliens who do not fall within one of the Enforcement Priorities, or for aliens determined to warrant an exercise of prosecutorial discretion (and who do not demonstrate that they meet the guidelines for consideration of DACA under section III (D) of this Instruction), USBP Agents are to:

- a. Complete an A-file on the subject with a Full Voluntary Return path;
  - b. Obtain first- and second-line supervisory approval and concurrence from the Sector designated approving Agent (contact OCC if legal questions arise); and
  - c. Document the case appropriately in the e3 Processing system.
6. For aliens who do not fall within one of the listed Enforcement Priorities, but a determination has been made that placing the individual in removal proceedings would be in the federal government's interest, USBP Agents are to:
- a. Obtain first- and second-line supervisory approval and concurrence from the FRO (contact OCC if legal questions arise);
  - b. Process those individuals under current authorized processes, procedures, and guidelines, including properly documenting the determination via the e3 Processing system; and
  - c. Coordinate with local ICE/ERO for detention space, if necessary.
7. For an alien in the custody of a different law enforcement agency, who is an immigration enforcement Priority 1(a), (c), (d), or (e), or Priority 2(a) or (b), USBP Agents may issue:
- a. Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) in cases involving jurisdictions that do not accept immigration detainers or where USBP does not yet have probable cause that the alien is removable;
  - b. Form I-247D (Immigration Detainer- Request for Voluntary Action) in cases involving cooperative jurisdictions and where there is probable cause that the subject is a removable alien. Contact OCC if legal questions arise. Probable cause sufficient to support the issuance of an immigration detainer may be established with:
    - i. A final order of removal against the subject;
    - ii. The pendency of ongoing removal proceedings against the subject;

- iii. Biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; or
  - iv. Statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.
8. USBP Agents may also issue a Form I-247D (Immigration Detainer – Request for Voluntary Action) or Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) when a subject is transferred to the custody of another federal, state or local law enforcement agency for a proceeding or investigation and DHS intends to resume custody of the subject to complete its processing when the proceeding or investigation is concluded.
9. In cases in which an USBP Agent intends to seek the transfer of a priority alien outside of Priority 1(a), (c), (d), or (e); Priority 2(a) or (b), from a cooperative state or local LEA, the USBP Agent must comply with CBP policies and procedures applicable to such transfers, including the form or forms developed for use in such cases.

### **B. Office of Field Operations**

In accordance with the memoranda listed in section III(A) and III(B) of this Instruction:

1. Upon encountering individual(s), CBP Officers are to determine alienage and eligibility to enter, remain, or reside in the United States.
2. Arriving Aliens – Arriving aliens at a port of entry who are found inadmissible fall within Priority 1 and are processed and documented appropriately in SIGMA in accordance with existing policies and procedures.
3. Non-Arriving Aliens - When CBP Officers encounter a non-arriving alien, they are to determine whether the alien falls under an Enforcement Priority under section VI or the Prosecutorial Discretion Procedures under

section VII(E) of this Instruction, and, for aliens who may be subject to an enforcement action, perform the following actions:

- a. If not encountered at a port of entry, transport the alien to the nearest CBP facility with processing and biometric enrollment capabilities and enroll the alien's biographic and biometric information into SIGMA and the IAFIS fingerprint system;
  - b. Complete appropriate record checks, including wants and warrants and criminal and immigration history checks; and
  - c. Process appropriately in SIGMA in accordance with existing policies and procedures.
4. For individuals who demonstrate that they meet the guidelines for consideration for DACA under section III (D) of this Instruction, (and who are not otherwise an Enforcement Priority), CBP Officers are to document such claim in SIGMA and, with the concurrence of first- and second-line supervisory approval, release the individual.

## **U.S. Immigration and Customs Enforcement**

### **C. Homeland Security Investigations**

In accordance with the memoranda listed in section III(A) and III(B) of this Instruction:

1. HSI Special Agents (SAs) are to carry out their primary mission of investigating transnational organized crimes including drug smuggling, money laundering, counter proliferation and illegal export of controlled sensitive technology, trade fraud, human smuggling and trafficking, and cybercrimes. In the course of such criminal investigations, SAs may encounter individuals who are aliens. In the furtherance of their investigations, SAs are to determine if such individuals are criminally culpable and face potential arrest and criminal charges.
2. If the aliens do not face criminal charges related to the investigation, SAs are to assess whether such aliens fall under Enforcement Priority 1, 2, or 3. After full administrative processing, SAs are to prioritize the transfer of aliens in these categories to ERO custody for removal. SAs are to exercise prosecutorial discretion as early in the investigation as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. SAs are to document the exercise of prosecutorial

discretion during encounters with both priority and non-priority aliens.

3. SAs are to determine whether aliens encountered during an investigation may meet the guidelines for consideration of DACA under section III (D) of this Instruction. SAs are to refer such aliens to USCIS for case-by-case determinations.

For specific requirements related to the proper documentation in the Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement (EAGLE) of priority enforcement and prosecutorial discretion decisions made by SAs, please refer to sections VII(D) (5)-(8) of this Instruction below.

#### **D. Enforcement and Removal Operations**

In adherence to the memoranda listed in section III(A) and III(B) of this Instruction:

1. ICE Officers may seek the transfer of any priority alien when the state or locality agrees to cooperate with such transfer. However, under PEP, ICE Officers may seek the transfer of an alien in the custody of state or local law enforcement only when ICE has determined that the alien is an immigration enforcement Priority 1(a), (c), (d), or (e), or Priority 2(a) or (b). PEP does not apply to aliens detained in federal facilities.

2. ICE Officers are to use the following forms to request notification of release and/or request temporary detention from local and state facilities:

a. **Form I-247N Request for Voluntary Notification of Release of Suspected Priority Alien.** A Form I-247N may be issued in any case that falls within Priority 1(a), (c), (d), or (e); Priority 2 (a) or (b), as defined in Appendix A of this document. A Form I-247N may be particularly helpful in the following circumstances:

- i. DHS does not yet have probable cause that an individual is a removable alien;
- ii. Law enforcement agencies (LEAs) are unwilling or unable to accept detainees, or otherwise refuse to cooperate with DHS enforcement efforts, even in cases where probable cause does exist (e.g., not permitting DHS officers entry into jails to conduct interviews);

- iii. An alien is an immigration enforcement Priority 1(a), (c), (d), or (e), or Priority 2(a) or (b), but enough information is not known and an investigation into the alien's immigration status and criminal history is ongoing; and/or
  - iv. Other circumstances that ICE deems appropriate. Form I-247N does not request or authorize an LEA to detain the suspected alien beyond the time the alien is currently scheduled for release by the LEA, but instead requests advance notice of release.
- b. After a Form I-247N is issued and probable cause is established, a Form I-247D may also be issued for the alien.
- c. **Form I-247D - Immigration Detainer - Request for Voluntary Action.** The Form I-247D may only be issued against individuals detained in local or state custody when the officer has established:
- 1) That the subject falls within Priority 1(a), (c), (d), or (e); Priority 2(a) or (b); and
  - 2) **Probable cause** that the subject is a removable alien. Probable cause sufficient to support the issuance of an immigration detainer may be established with:
    - i. A final order of removal;
    - ii. The pendency of ongoing removal proceedings (e.g., filing of an NTA with the Immigration Court);
    - iii. Biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
    - iv. Statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate that the subject either lacks lawful immigration status or notwithstanding such status is removable under U.S. immigration law.

d. Form I-247D requests that the LEA maintain custody of the alien for a period not to exceed 48 hours beyond the time when the alien would otherwise have been released from the LEA's custody to allow ICE to assume custody. The LEA is not obligated by law to maintain custody of the subject for ICE, and this request only takes effect if the alien is served a copy of the form.

e. In cases in which an ICE Officer intends to seek the transfer of a priority alien outside of Priority 1(a), (c), (d), or (e); Priority 2(a) or (b), from a cooperative state or local LEA, the ICE Officer must comply with ICE policies and procedures applicable to such transfers, including the form or forms developed for use in such cases.

### 3. Detention

a. As a general rule, DHS detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law.

b. ERO Field Office Directors should not expend detention resources, absent extraordinary circumstances or the requirements of mandatory detention, on aliens who are:

- i. known to have a serious physical or mental illness;
- ii. disabled;
- iii. elderly;
- iv. pregnant;
- v. nursing mothers and primary caretakers of children, when such aliens are being placed in an adult-only facility;
- vi. primary caretakers of an infirm person; or
- vii. persons whose detention is otherwise not in the public interest.

If an alien falls within the above categories and is subject to mandatory detention, FODS are encouraged to contact their local Office of Chief Counsel for guidance.

4. ICE Officers and Agents are to document all encounters regardless of the outcome. Alerts have been added to the following Enforcement Integrated Database (EID) modules:
  - a. EID Arrest GUI for Law Enforcement (EAGLE);
  - b. Enforcement Alien Removal Module (EARM); and
  - c. Enforcement Alien Detention Module (EADM).
5. For priority alien encounters, including those relating to aliens whose removal would serve an important federal interest, ICE Officers and Agents are to add the appropriate alert to the Bio tab in EAGLE.
6. For encounters that resulted in the exercise of prosecutorial discretion, ICE Officers and Agents are to:
  - a. Create an encounter in EAGLE with the processing disposition (PD) - prosecutorial discretion in the Bio tab in EAGLE; and
  - b. Complete Form G-166c in EAGLE stating November 2014 Executive Actions.
7. If Form I-247N or Form I-247D has been lodged in connection with an encounter that results in the favorable exercise of prosecutorial discretion, ICE Officers and Agents are to issue a new form to the LEA with the appropriate box marked to notify the law enforcement agency that it should disregard the original request. The date that the previous request was issued should be included, if known. The lifting of the request is documented in EARM with the lift code value P – prosecutorial discretion.
8. For pre-final order aliens who are detained in ICE custody, ICE Officers and Agents are to complete a custody redetermination Form I-286 in Risk Classification Assessment or EADM.
9. For final order cases, ICE Officers and Agents are to select the final order action/decision in EARM and select “Yes” for “Are there reasons that prevent removal of the alien at this time?” Select

prosecutorial discretion in the "Reason Preventing Removal" drop-down list and write November 2014 Executive Actions release in the comments section.

10. When booking an alien out of ICE custody due to the exercise of prosecutorial discretion, ICE Officers and Agents are to select DACA or PD (prosecutorial discretion) from the "Release Reason" drop-down list in the Bookout Details section of Detention Book Out, as appropriate.

11. For every alien that receives an exercise of prosecutorial discretion from ICE, ICE Officers and Agents are to add an Alert Code PD - prosecutorial discretion to the Bio tab in EAGLE or the Supporting Info tab in EARM/EADM, as appropriate. A comment is optional.

## **E. Monitoring of State and Local Law Enforcement Transfers**

In accordance with the memoranda listed in section III(B) and pursuant to Appendix B of this Instruction, ICE, in conjunction with DHS's Office for Civil Rights and Civil Liberties (CRCL), has a role in ensuring that transfers from state and local law enforcement agency (LEA) custody to ICE for purposes of civil immigration enforcement are not based upon improper police practices by those LEAs.

1. **Notification.** When ICE officers or agents receive an allegation of, or themselves identify, improper LEA conduct, such as profiling on the basis of race, ethnicity, or limited English proficiency, that led to an individual's arrest and subsequent transfer to ICE custody for civil immigration enforcement, they are to refer the allegation to the CRCL Compliance Branch. The Detention Reporting and Information Line (DRIL) is to also refer any such allegations it receives to CRCL.

2. **Statistical Output and Modeling Development.** ICE and CRCL will develop a quarterly statistical package to enable CRCL statistical modeling. The package involves customized output of data and fields regularly maintained by ICE. Based on Fiscal Year quarters, six months from the issuance of this Instruction, ICE will provide this data on a quarterly basis. The contents of the data package are subject to periodic reexamination. The data may contain personally identifiable information (PII), as appropriate to the needs of the project. ICE will provide CRCL with technical assistance in understanding the data delivered and, where appropriate, advice on appropriate modeling and inferences.

3. **Outreach to LEAs.** ICE will assist CRCL in identifying and approaching appropriate points of contact with LEAs about whom CRCL

has concerns. While neither Component has compulsory investigative authority over LEA civil rights compliance, each will undertake reasonable and responsive best efforts to obtain information voluntarily to facilitate CRCL's inquiries.

4. Quarterly Reports, Meetings, and Remedial Steps. ICE will meet quarterly with CRCL to discuss CRCL's quarterly report regarding custody transfers, the status of any ongoing adaptive or remedial actions, and the need for any new adaptive or remedial actions.

5. Public messaging. ICE will collaborate with CRCL on messaging regarding the monitoring program and in determining the contents of any data released to the public related to CRCL statistical monitoring.

6. System improvements. ICE will develop a system, as a component element of the DHS immigration data integration project, for tracking all transfers of arrestees from LEA custody to ICE civil custody, including those who are transferred outside of PEP, through an enhancement to the appropriate system of record. This system will enable more direct monitoring of jail transfers arising outside of PEP. ICE will consult with CRCL during the development of this system to ensure that it provides CRCL with necessary and useful data to monitor such transfers, including identification of the arresting LEA, the LEA holding custody, the timing and circumstances of the transfer, the nature of the information communicated from the LEA to ICE outside of PEP, and other relevant data.

## **F. U.S. Citizenship and Immigration Services**

In accordance with the memoranda listed in section III(A) and III(B) of this Instruction, and because the memorandum listed in section III(A) is not intended to modify USCIS Notice to Appear policies, which remain in force and effect, USCIS will:

1. Issue NTAs required by statute or regulation, including:
  - a. Termination of Conditional Permanent Resident Status and Denials of Form I-751 (8 Code of Federal Regulations (CFR) 216.3, 216.4, 216.5);
  - b. Termination of Conditional Permanent Resident Status and Denials of Form I-829 (8 CFR 216.6);
  - c. Termination of refugee status by the DD (8 CFR 207.9);

d. Denials of NACARA 202 (8 CFR 245.13(m)) and HRIFA adjustments (8 CFR 245.15(r)(2)(i)); and

e. Asylum (8 CFR 208.14(c)(1), 8 CFR 208.24(e)), NACARA 203 (8 CFR 240.70(d)), and Credible Fear cases (8 CFR 208.30(f))

2. Continue to issue other NTAs in accordance with its policies to the extent they are not inconsistent with the November 20, 2014 Enforcement Priorities.

## VIII. Questions

Questions or concerns regarding this Instruction should be directed to the respective DHS component chain of command.

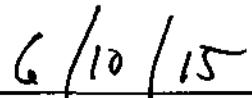
## IX. Rights and Procedures

This is an internal procedures statement of DHS. It is not intended to and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees, or any other person.



Russell C. Deyo

Under Secretary for Management



Date

## **APPENDIX A Enforcement Priorities**

As set forth in Secretary of Homeland Security Johnson's November 20, 2014 memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, the DHS immigration enforcement priorities are as follows:

### **Civil Immigration Enforcement Priorities**

The following shall constitute the Department's civil immigration enforcement priorities:

#### **Priority 1 (threats to national security, border security, and public safety)**

Aliens described under Priority 1 represent the highest priority to which enforcement resources should be directed.

- (a) Aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- (b) Aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;
- (c) Aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;
- (d) Aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and
- (e) Aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the *Immigration and Nationality Act (INA)* at the time of the conviction.

The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

#### **Priority 2 (misdemeanants and new immigration violators)**

Aliens described in this priority, who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. Resources should be dedicated accordingly to the removal of the following:

- (a) Aliens convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element was the alien's immigration status, provided the offenses arise out of three separate incidents;
- (b) Aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above is one for which the individual was sentenced to time in custody of 90 days or more (the sentence involves time to be served in custody, and does not include a suspended sentence);
- (c) 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; and
- (d) 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.

These aliens should be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or USCIS Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.

**Priority 3 (other immigration violators):**

Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly toward removal of the following:

- (a) Those who have been issued a final order of removal on or after January 1, 2014.

Priority 3 aliens should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the

alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

## **APPENDIX B**

### **Monitoring and Addressing Civil Rights Complaints and Concerns Arising from Transfers from State or Local Law Enforcement Custody**

#### **I. Purpose**

On November 20, 2014, Secretary of Homeland Security Johnson issued a memorandum entitled *Secure Communities*, in which he acknowledged the important law enforcement goal of more effectively identifying and facilitating the removal of criminal aliens in the custody of state and local law enforcement agencies. In order to address criticisms of the program, the Secretary directed ICE to discontinue the Secure Communities program and to put in its place the Priority Enforcement Program (PEP).

PEP relies on fingerprint-based biometric data, submitted during bookings by state and local law enforcement agencies (LEAs) to the Federal Bureau of Investigation, to identify priority aliens in LEA custody for potential enforcement action. PEP and the DHS enforcement priorities serve to significantly limit the potential for abuse. LEAs may cooperate in the transfer of priority aliens outside the PEP framework as well.

Recognizing the need to support community policing and maintain community trust, Secretary Johnson further directed that DHS, pursuant to a plan developed by the Office for Civil Rights and Civil Liberties (CRCL), monitor these activities, including through the collection and analysis of data, to detect inappropriate use to support or engage in biased policing, and to establish effective remedial measures to stop any such misuses.

CRCL has authority to investigate whether federal immigration enforcement activities, including those initiated based upon criminal arrests by state and local LEAs, may serve as a conduit for improper policing activities by those LEAs. CRCL investigates, identifies, and reports on areas of concern; to develop relevant facts; and where necessary to establish effective remedial measures, with respect to aliens who are transferred to ICE custody following an arrest by an LEA.

This instruction supersedes the June 14, 2011 memorandum from then-CRCL Officer Margo Schlanger and then-ICE Executive Associate Director Gary Mead, entitled *Secure Communities Complaints Involving State or Local Law Enforcement Agencies*.

#### **II. Identification and Monitoring**

Civil rights concerns regarding the use of transfers to ICE by state or local LEAs to support or engage in biased policing may come to the attention of ICE or CRCL through several channels, including:

- *Notification of individual complaints:* Allegations alleging improper LEA conduct that led to an individual's arrest and subsequent transfer to ICE custody, such as profiling on the basis of race, ethnicity, or limited English proficiency;
- *Community and public concerns:* External stakeholders, including nongovernmental organizations, advocates, or media representatives, may provide reliable information indicating improper LEA practices; and
- *Statistical monitoring:* CRCL's analysis of information routinely collected by ICE may identify patterns or trends consistent with improper police practices, warranting additional review.

Allegations by the public of this nature should be directed to CRCL's Compliance Branch. Where ICE receives an allegation of improper LEA conduct, or identifies information suggesting improper police practices, ICE refers such information to CRCL.

Not less than quarterly, CRCL monitors these transfers through statistical modeling. The information includes biometric submission and match data through PEP as well as ICE data on prioritization of aliens encountered and enforcement actions taken.

### **III. Assessing Civil Rights Concerns**

CRCL assesses civil rights concerns at the state, county, and individual law enforcement agency levels as appropriate.

Although this Department is neither charged with nor possesses broad legal authority to investigate the activities of state and local LEAs, CRCL will to use all available and lawful means to identify when concerns arise from allegations of biased policing, misuse of federal information systems, or any other allegation of improper LEA practices that may impact federal immigration enforcement. CRCL may review DHS records and data; interview DHS personnel and complainants; and request information from LEAs. As needed, additional DHS Components provide support in aid of these efforts.

### **IV. Remedial Measures**

On a quarterly basis, CRCL provides ICE and the Deputy Secretary of Homeland Security with a report of jurisdictions of concern (if any), and the basis for the concern. ICE and CRCL meets quarterly to discuss this report, the status of any ongoing assessments, adaptive or remedial actions previously implemented, and the need for any new adaptive or remedial action.

Where CRCL has received information that alleges biased policing, and CRCL has identified significant concerns with that jurisdiction's implementation, CRCL notifies ICE and Deputy Secretary of Homeland Security in order to develop an appropriate Departmental response. ICE acts on this information as appropriate. Early reporting on significant concerns is expected, particularly when they are the result of public allegations or reports of misconduct. CRCL provides as much transparency as reasonably feasible, consistent with law and policy, and develops appropriate outreach and public engagement plans.

If CRCL assesses or develops a good-faith basis to conclude that an LEA participating in transfers to ICE may be in violation of federal civil rights law, including but not limited to 42 U.S.C. § 14141, it notifies the U.S. Department of Justice, Civil Rights Division. CRCL may also communicate similar concerns to state attorneys general or other entities with appropriate jurisdiction.

## PEP Implementation Update & Engagement Update Meeting

### June 12 “Soft Roll Out”

- On June 12, ICE & CBP conducted a “soft roll” out of PEP. This meant that ICE and CBP made respective workforce and union notifications and began training their workforces on the new request for notification form (I-247N) and the new detainer form (I-247D).
- On June 12, while the new forms had been finalized, ICE still needed to complete a number of technology and database updates so that their computer systems could utilize the new notification form and the new detainer form.
- On June 12, IGA & SLLE began to distribute the “sample” notification form and the “sample” detainer form to various jurisdictions, along with the newly developed “PEP brochure”.
- The “soft roll out” also meant that the ICE Field Office Directors (FODs) were empowered and directed to start meeting with local law enforcement agencies within their respective areas of responsibility.

### Current Status

- ICE worked throughout the rest of June to complete the technological updates necessary to utilize the new notification and detainer forms.
- By the beginning of this week– Monday, July 6 – ICE had completed its computer work meaning the forms were now operational.
- This means that the ICE ERO field personnel could start utilizing and issuing the new notification and detainer forms.
- ICE should be able to speak to the number of notification and detainer forms that it has issued to local law enforcement agencies since Monday, July 6, though the universe/size is likely to be small.

### Engagement History in Brief

- You will recall that in March 2015, IGA and SLLE finalized a 15-state engagement plan that laid out a targeted approach for providing information on PEP to specific state and local stakeholders.
- Several offices and components from DHS are engaged in executing outreach plans to get non-cooperative state and local jurisdictions on board. We are also working with already cooperative jurisdictions to maintain and improve our existing relationships.
- That engagement plan indicated that DHS would utilize senior leadership, where appropriate, for these engagement efforts, to include the Secretary, Deputy Secretary, the ICE Director, A/S McNamara, A/S Fong, the CBP Commissioner, as well as ICE ERO leadership.
- IGA & SLLE have acted jointly to schedule and staff engagements for the Secretary and Deputy Secretary, as well as carry on their own independent outreach efforts.
- **Attached is an inventory of all of the DHS HQ conducted outreach on PEP.** This includes outreach by the Secretary, Deputy Secretary, A/S McNamara and A/S Fong.
- Since March, we have conducted outreach to jurisdictions in 29 states from DHS HQ (S1, S2, IGA & SLLE).
- More specifically, following is a breaking of our specific outreach efforts.
  - **Secretary Johnson** has engaged with a number of high-profile and strategic elected officials, including:

- Meetings with California Governor Brown, New York City Mayor de Blasio, Philadelphia Mayor Nutter and telephone conversations with Connecticut Governor Malloy and Cook County President Preckwinkle as well as 7 county sheriffs from the San Francisco Bay Area.
  - Secretary Johnson has also spoken with the U.S. Conference of Mayors and the National Sheriffs Association, the Major County Sheriffs Association, and the Major Cities Chiefs Association on PEP.
  - An op-ed penned by the Secretary has appeared in the **FILL IN THE BLANK**
- **Deputy Secretary Mayorkas** has also been personally engaged and meeting with a number of high-profile and strategic elected officials, including:
  - Meetings with a variety of officials in Los Angeles city and county, including Mayor Garcetti, LAPD Chief Beck, Los Angeles County Sheriff McDonnell, and all members of the Los Angeles County Board of Supervisors.
  - Meetings with San Francisco Mayor Lee and San Francisco Sheriff Mirkarimi.
  - Meetings and phone conversations with a number of state Attorneys General or their staff, including the Oregon, Colorado, and Georgia attorneys general.
  - Deputy Secretary Mayorkas has also spoken a number of times with the Law Enforcement Immigration Task Force and the National Sheriffs Association.
- We have taken advantage of **CBP Commissioner Kerlikowske's** Seattle background and he has met with King County, Washington Executive Constantine.
- **ICE ERO Engagement:** The engagement plan anticipated that once PEP was operational that the ICE ERO FODs would work closely with their law enforcement enforcement partners to educate them on the mission on the program and develop local operational processes. This was in recognition that ICE ERO engagement would be a complement to the engagement and outreach conducted by DHS HQ.
  - As mentioned earlier, the soft-roll out in mid-June allowed the ICE ERO FODs to begin engaging and reaching out to local law enforcement agencies.
  - From June 12 to date, ICE FODs have 1,248 jurisdictions out of approximately 3,100 counties.

#### Upcoming Engagements

- On Friday, Secretary Johnson will have a number of planned conference calls to continue his engagement efforts. We are planning 4 separate calls:
  - A call to select governors. – Invited were California Governor Brown, Connecticut Governor Malloy, Maryland Governor Hogan, and Rhode Island Governor Raimondo. As of 9:10 a.m. Thursday morning, no governors have confirmed.
  - A call to select mayors. Invited were NYC Mayor de Blasio, Boston Mayor Walsh, Philadelphia Mayor Nutter, and Los Angeles Mayor Garcetti. As of 9:10 a.m. Thursday morning, only Mayor Nutter has confirmed. We are working to schedule other mayors or find an alternative time.
  - A call to select sheriffs .
  - A call to select county officials.
- Secretary Johnson will travel to Chicago on July 16 to meet with Cook County Board President Toni Preckwinkle.

## State and Local Law Enforcement Engagement on Executive Actions

### Past Engagements:

- **S2 Notification Phone Calls.** On November 20, S2 made notification calls to Chief Charlie Beck (Los Angeles, CA), Sheriff Richard Stanek (Hennepin County, MN), Chief Art Acevedo (Austin, TX), and leaders of Major Cities Chiefs Association, Major County Sheriffs' Association, National Sheriffs' Association, International Association of Chiefs of Police, and the Fraternal Order of Police.
- **S2 Conference Call with Law Enforcement Immigration Task Force (LEITF).** On Monday, December 1, 2014, S2 hosted a conference call with members of the LEITF to discuss Immigration Executive Action and implementation. The LEITF was created in Fall 2014, with the official launch event scheduled for January 27, 2015. This Task Force consists of 33 law enforcement leaders from across the country that supports commonsense immigration reform.
- **Letter from Law Enforcement Officials to Senators Leahy and Grassley in Support of Executive Action.** On December 9, Chief Richard Biehl (Dayton, OH), Chief Chris Burbank (Salt Lake City, UT), Sheriff Paul Fitzgerald (Story County, IA), Sheriff William McCarty (Polk, County, IA), Chief Ron Teachman (South Bend, IN), and Chief Michael Tupper (Marshalltown, IA) signed a letter to Senator Patrick Leahy (Chair of the Committee on the Judiciary) and Senator Charles Grassley (Ranking Member) in support of the President's executive action on immigration.
- **Meeting with State and Local Law Enforcement Associations on Implementation of the Priority Enforcement Program (PEP).** On Thursday, December 11, OSLE hosted a meeting with major law enforcement organizations on the role they could play with implementation of the executive actions. Topics discussed included the revision to DHS's enforcement priorities and the new PEP program. DHS participants included: Heather Fong, Esther Olavarria, Alan Metzler, David Shahoulian, Megan Mack, Phil McNamara, Tim Robbins and other DHS & ICE officials. Law Enforcement organizations present were **Major Cities Chiefs Association**, the **International Association of Chiefs of Police**, the **National Sheriffs' Association** and the **Fraternal Order of Police**. The **Major County Sheriffs' Association** could not attend the meeting in person, but sent a letter to Assistant Secretary Heather Fong providing the association's input on DHS' enforcement priorities and the development of PEP.
- **Los Angeles County Board of Supervisors Countywide Criminal Justice Coordination Committee.** On Wednesday, December 17, IGA Assistant Secretary Phil McNamara and Tim Robbins spoke at the Los Angeles County Board of Supervisors Countywide Criminal Justice Coordination Committee. Topics of discussion, included revision to DHS' enforcement priorities and the implementation of PEP. County Supervisor Michael Antonovich is the chair of the committee.
- **Texas Border Sheriff's Coalition Annual Winter Meeting.** On January 14-15, ICE's Office of State Local Tribal Coordination participated in the **Texas Border Sheriff's Coalition Annual Winter Meeting** in Eagle Pass, TX.

- **National Sheriffs' Association 2015 Winter Conference.** On Thursday, January 22, S1 delivered keynote remarks at the first plenary session of the **NSA's 2015 Winter Conference** in Washington, DC. NSA is one of the largest associations of law enforcement professionals in the United States. The association has more than 20,000 members and represents the 3,080 sheriffs within the country.
  - On January 22, ICE ERO Deputy Executive Associate Director Tim Robbins, CBP Chief Woody Lee, CBP Chief Chris Clem, and Assistant Secretary for State and Local Law Enforcement Heather Fong addressed the NSA's **Immigration and Border Security Committee Meeting**. Implementation of the President's Executive Actions on Immigration, including PEP, was the primary focus of the discussion.
  - On January 22, ICE ERO addressed the NSA's **Jail, Detention, and Corrections Committee Meeting**. Implementation of PEP was part of the discussion.
  
- **Major Cities Chiefs Association (MCCA)/Major County Sheriffs' Association (MCSA) Joint Winter Meeting.** On January 26, S1 addressed the joint session of the **MCCA / MCSA Joint Winter Meeting**. During his remarks, S1 provided a broad overview of the PEP and the need to partner with state and local law enforcement on the implementation of this program. MCCA is a professional membership association of chiefs and sheriffs representing the 66 largest law enforcement agencies in the United States, nine largest in Canada, and one in the United Kingdom. Those agencies serve 82.5 million people (69.5 million U.S.) with workforces consisting of 190,402 (161,664 U.S.) officers and non-sworn personnel. MCSA is a professional law enforcement association of elected sheriffs representing counties or parishes with populations of 500,000 or more.
  
- **Major Cities Chiefs Association (MCCA).** On January 26, S2 met with the membership of the MCCA to discuss the President's Executive Action on Immigration, the PEP, and the importance of partnership with state and local law enforcement. With respect to the PEP, various chiefs noted that in addition to their cooperation, participation at the local level will depend on state and municipal laws and policies.
  
- **Major County Sheriffs' Association (MCSA).** On January 26, S2 met with the membership of the (MCSA) to discuss the President's Executive Action on Immigration, PEP, and the importance of partnership with state and local law enforcement. During the meeting, S2 and MCSA members discussed the transition to requests for notification, and in special circumstances, the use of detainers with a demonstration of probable cause. Sheriffs asked that requests for detention, when possible, be supported with the underlying documentation, such as a copy of an order of final removal.
  
- **Law Enforcement Immigration Task Force.** On January 27, S2, Assistant Secretary Fong, and other DHS officials met with members of the White House Law Enforcement Immigration Task Force to discuss the President's Executive Actions on Immigration and the transition from Secure Communities to the PEP. The discussion focused on requests for notification, probable cause associated with requests for detention, and the importance of transparency and information sharing. Additionally, the attendees asked for greater ICE ERO involvement in community meetings and for specific data identifying associated criminal violations for whom requests for notification or detention have been issued. The Law Enforcement Immigration Task Force is composed of 30 chiefs and sheriffs from across the country.

- Los Angeles, CA.** On January 30-February 2, Deputy Secretary Mayorkas met separately with both Los Angeles Police Chief Charlie Beck and Los Angeles Sheriff Jim McDonnell to discuss the Priority Enforcement Program. Separately, S2 also met with LAPD Assistant Chief (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) Immigration Chief (b)(6),(b)(7)(C) and a small group of immigration advocates for an informal dialogue on PEP.
- San Francisco, CA.** On February 2, S2 and Assistant Secretary Fong met with San Francisco Mayor Ed Lee, Chief Greg Suhr, and other local officials on the implementation of PEP in San Francisco.
- Fresno County (CA).** On February 6, Assistant Secretary Heather Fong, Julie Rodriguez, and OSLE staff met with Fresno County Sheriff Margaret Mims to discuss the parameters of the new Priority Enforcement Program and to seek her input on the PEP protocols in development.
- San Francisco, CA.** On February 12, Deputy Secretary Mayorkas met with San Francisco Sheriff Ross Mirkarimi to discuss the transition to the Priority Enforcement Program. This meeting was a direct follow-up to a February 10 phone call between the two officials on the same topic.
- OSLE Stakeholders.** On Tuesday, February 24, Assistant Secretary Heather Fong hosted a conference call for stakeholders to discuss the implementation of the President's Executive Actions on Immigration and the Law Enforcement Equipment Acquisition Working Group. The call included representatives from five law enforcement associations (Major County Sheriffs' Association, National Sheriffs' Association, International Association of Chiefs of Police, California State Sheriffs' Association, and Police Executive Research Forum) and 28 law enforcement agencies. During the call, ICE Enforcement Removal Operations Deputy Executive Associate Director Tim Robbins discussed the transition from Secure Communities to the Priority Enforcement Program. Deputy Executive Associate Director Robbins also answered questions about notification requests, the 287(g) program, and new enforcement priorities.
- Hennepin County (MN).** On February 26, Deputy Secretary Mayorkas and Assistant Secretary Heather Fong met with Hennepin County Minnesota Sheriff Rich Stanek to discuss the immigration executive actions, including the Department's new enforcement priorities and the importance of state and local law enforcement participation in the new Priority Enforcement Program.
- National Sheriffs' Association.** On March 12, Deputy Secretary Mayorkas and Assistant Secretary Heather Fong met with National Sheriffs' Association Executive Director Jonathan Thompson to discuss various homeland security issues. During the meeting, participants discussed the importance of local law enforcement participation in the Priority Enforcement Program and the common interest all should have in removing dangerous criminal aliens from our communities.
- Harris County (TX).** On March 12, Assistant Secretary Heather Fong held a conference call with Harris County Sheriff Adrian Garcia to discuss the new immigration executive actions, particularly the concerns and issues raised by the Law Enforcement Immigration Task Force in their letter to Secretary Johnson. This conversation followed a February 2015 meeting between ICE ERO Deputy Associate Executive Director Tim Robbins and Sheriff Garcia in Texas.

- **Western States Sheriffs' Association (WSSA).** On March 26, Assistant Secretary Heather Fong and ICE Enforcement Removal Operations Executive Associate Director Tom Homan will participated in the business meeting of the WSSA. Created in 1993, the WSSA represents 15 states in the western United States, including California, Colorado, Oregon, and Washington. During the business meeting, Executive Associate Director Homan discussed the transition from Secure Communities to the Priority Enforcement Program, and the importance to public safety of state and local law enforcement's participation in the program. He took questions on information sharing, detention beds, ICE pick-ups, and the release of criminal aliens.
- **Las Vegas Metropolitan Police Department.** On March 25, Assistant Secretary Heather Fong and OSLE staff met with Las Vegas Metropolitan Police Department Sheriff Joseph Lombardo. During the meeting the participants discussed immigration enforcement. Assistant Secretary Fong and OSLE staff had the opportunity to tour a detention facility and view the operations first hand.
- **Law Enforcement Immigration Task Force.** On March 30, Deputy Secretary Alejandro Mayorkas, Assistant Secretary Heather Fong, and other DHS and ICE officials hosted a conference call with members of the Law Enforcement Immigration Task Force to discuss the importance of state and local participation in the Priority Enforcement Program. The Law Enforcement Immigration Task Force consists of 33 sheriffs, chiefs of police, and law enforcement officials who support broad immigration reform and are committed to promoting safe communities and respect for the rule of law. During the call, Deputy Secretary Mayorkas provided the Task Force with an update on the progress of implementing the Priority Enforcement Program since he last met with them on January 27, 2015 and respond to the questions and recommendations that they made in their February 27, 2015 and March 20, 2015 letters.
- **Los Angeles County (CA).** On April 2, Deputy Secretary Alejandro Mayorkas and Assistant Secretary Heather Fong held a conference call with Los Angeles County Sheriff Jim McDonnell to discuss the possibility of LA County Sheriff's Department accepting ICE's request for notification.
- **South Florida.** On April 15-16, Assistant Secretary Heather Fong, ICE Assistant Director Matt Albence, and Miami Field Office Director Marc Moore met individually with Miami-Dade Police Director J.D. Patterson, Broward County (FL) Sheriff Scott Israel, and Palm Beach County (FL) Sheriff Ric Bradshaw. All three South Florida counties previously stopped honoring ICE's request for detention, but agreed to find ways to work with ICE on requests for notification. In Miami-Dade, Director Patterson agreed to set up a follow-up meeting between ICE and Director Marydell Guevara, who runs the corrections facilities in Miami-Dade.
- **San Francisco Bay Area (California) Law Enforcement.** On April 20, Secretary Jeh Johnson and Assistant Secretary Heather Fong participated in a Law Enforcement Roundtable hosted by Secretary Johnson in Oakland, CA. Participants included sheriffs from Alameda, San Francisco, Amador, Contra Costa, San Mateo, Santa Clara, Stanislaus counties, as well as chiefs or their representatives from the cities of San Francisco, Antioch, Fremont, Santa Clara, and Hayward. During the meeting, Secretary Johnson discussed the Priority Enforcement Program and the

importance of state and local law enforcement participation in the program, specifically with respect to requests for notification.

- **Boston, MA.** On April 27, Secretary Johnson met with Boston Police Commissioner William Evans in Washington, DC. During their meeting they discussed participation in the Priority Enforcement Program.
- **Southwest Border Sheriffs' Coalition (SWBSC)/Texas Border Sheriff's Coalition (TXBSC).** On April 30, Assistant Secretary Heather Fong and ICE Assistant Director Phil Miller participated in the joint meeting of the SWBSC and TXBSC. The SWBSC is comprised of 31 counties represented from the southern tip of Texas, New Mexico, Arizona and California. The TXBSC was organized on May 4, 2005, and is represented by the chief law enforcement officer of each respective county. Membership is limited to counties within 25 miles of the Texas/Mexico border and now has 20 counties on their membership rolls. During the joint meeting, Assistant Secretary Fong and Assistant Director Miller discussed the transition from Secure Communities to the Priority Enforcement Program, and the importance to public safety of state and local law enforcement's participation in the program.
- **Story County (IA).** On Thursday, May 7, Assistant Secretary Heather Fong and ICE Assistant Director Matt Albence discussed the Priority Enforcement Program with Story County (IA) Sheriff Paul Fitzgerald via conference call. During the call, participants discussed probable cause in the context of requests for detention and the ability for ICE to provide criminal warrants with the detainer forms.
- **Salt Lake City (UT).** On Thursday, May 7, Assistant Secretary Heather Fong and ICE Assistant Director Matt Albence discussed the Priority Enforcement Program with Salt Lake City (UT) Police Chief Chris Burbank via conference call. During the call, participants discussed the importance of information sharing between ICE and state and local law enforcement, specifically when state and local receive inquiries from the public.
- **Madison (WI).** On Friday, May 8, Assistant Secretary Heather Fong and ICE Assistant Director Matt Albence discussed the Priority Enforcement Program with Madison (WI) Assistant Chief Randy Gaber via conference call. During the call...
- **Law Enforcement Immigration Task Force.** On Tuesday, May 12, Deputy Secretary Alejandro Mayorkas, Assistant Secretary Heather Fong, ICE Director Sarah Saldana, CBP Commissioner Gil Kerlikowske, and ICE Enforcement and Removal Operations Executive Associate Director Tom Homan will meet with members of the Law Enforcement Immigration Task Force to discuss progress on implementing the Priority Enforcement Program. The Task Force, comprising 33 chiefs and sheriffs from across the country, has regularly informed the Administration about how immigration reform efforts have affected state and local law enforcement.
- **Washington Association of Sheriffs and Police Chiefs.** On Wednesday, May 20, Assistant Secretary Heather Fong and ICE Assistant Director Phil Miller will participate on a panel discussion about immigration at the Washington Association of Sheriffs and Police Chiefs' annual conference in Spokane, WA. Almost all of the sheriffs in the State of Washington have previously stopped honoring ICE requests for detention due to concerns of liability. During the

panel discussion, DHS officials will outline the public safety benefit of state and local law enforcement participation in the Priority Enforcement Program.

**Engagements on the Horizon:**

- **Oregon State Sheriffs' Association.** On June 15, Assistant Secretary Heather Fong and an ICE representative will outline the public safety benefit of state and local law enforcement participation in the Priority Enforcement Program during the quarterly meeting of the Oregon State Sheriffs' Association.



# Homeland Security

November 20, 2014

MEMORANDUM FOR: Thomas S. Winkowski  
Acting Director  
U.S. Immigration and Customs Enforcement

Megan Mack  
Officer  
Office of Civil Rights and Civil Liberties

Philip A. McNamara  
Assistant Secretary for Intergovernmental Affairs

FROM: Jeh Charles Johnson  
Secretary

A handwritten signature in dark ink, appearing to read "Jeh Charles Johnson", written over the printed name.

SUBJECT: **Secure Communities**

The Secure Communities program, as we know it, will be discontinued.

The goal of Secure Communities was to more effectively identify and facilitate the removal of criminal aliens in the custody of state and local law enforcement agencies. But the reality is the program has attracted a great deal of criticism, is widely misunderstood, and is embroiled in litigation; its very name has become a symbol for general hostility toward the enforcement of our immigration laws. Governors, mayors, and state and local law enforcement officials around the country have increasingly refused to cooperate with the program, and many have issued executive orders or signed laws prohibiting such cooperation. A number of federal courts have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainers issued under the current Secure Communities program.

The overarching goal of Secure Communities remains in my view a valid and important law enforcement objective, but a fresh start and a new program are necessary. As recommended by the Homeland Security Advisory Council Task Force, Secure Communities “must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement.”

Accordingly, I am directing U.S. Immigration and Customs Enforcement (ICE) to discontinue Secure Communities. ICE should put in its place a program that will continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies to the Federal Bureau of Investigation for criminal background checks. However, ICE should only seek the transfer of an alien in the custody of state or local law enforcement through the new program when the alien has been convicted of an offense listed in Priority 1 (a), (c), (d), and (e) and Priority 2 (a) and (b) of the November 20, 2014 [Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum](#), or when, in the judgment of an ICE Field Office Director, the alien otherwise poses a danger to national security. In other words, unless the alien poses a demonstrable risk to national security, enforcement actions through the new program will only be taken against aliens who are convicted of specifically enumerated crimes.

Further, to address the increasing number of federal court decisions that hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment,<sup>1</sup> I am directing ICE to replace requests for detention (*i.e.*, requests that an agency hold an individual beyond the point at which they would otherwise be released) with requests for notification (*i.e.*, requests that state or local law enforcement notify ICE of a pending release during the time that person is otherwise in custody under state or local authority).

If in special circumstances ICE seeks to issue a request for detention (rather than a request for notification), it must specify that the person is subject to a final order of removal or there is other sufficient probable cause to find that the person is a removable alien, thereby addressing the Fourth Amendment concerns raised in recent federal court decisions.

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<sup>1</sup> See, e.g., *Miranda-Olivares*, 2014 WL 1414305, at \*11 (D. Ore. Apr. 11, 2014) (holding that county violated the Fourth Amendment by relying on an ICE detainer that did not provide probable cause regarding removability); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D.R.I. 2014) (concluding that detention pursuant to an immigration detainer “for purposes of mere investigation is not permitted”). See also *Moreno v. Napolitano*, Case No. 11 C 5452, 2014 WL 4814776 (N.D. Ill. Sept. 29, 2014) (denying judgment on the pleadings to the government on plaintiffs’ claim that ICE’s detainer procedures violate probable cause requirements); *Gonzalez v. ICE*, Case No. 2:13-cv-0441-BRO-FFM, at 12-13 (C.D. Cal. July 28, 2014) (granting the government’s motion to dismiss, but allowing plaintiffs to file an amended complaint and noting that plaintiffs “have sufficiently pleaded that Defendants exceeded their authorized power” by issuing “immigration detainers without probable cause resulting in unlawful detention”); *Villars v. Kubiatoski*, --- F. Supp. 2d ---, 2014 WL 1795631, at \* 10 (N.D. Ill. May 5, 2014) (rejecting dismissal of Fourth Amendment claims concerning an ICE detainer issued “without probable cause that Villars committed a violation of immigration laws”); *Galarza v. Szalczyk*, Civ. Action No. 10-cv-06815, 2012 WL 1080020, at \*14 (E.D. Penn. March 30, 2012) (denying qualified immunity to immigration officials for unlawful detention on an immigration detainer issued without probable cause), rev’d and remanded on other grounds, 745 F.3d 634 (reversing district court’s finding of no municipal liability); *Uroza v. Salt Lake City*, No. 2:11CV713DAK, 2013 WL 653968, at \*6-7 (D. Utah Feb. 21, 2013) (denying dismissal on qualified immunity grounds where plaintiff claimed to have been held on an immigration detainer issued without probable cause). Cf. *Makowski v. United States*, --- F. Supp. 2d ---, 2014 WL 1089119, at \*10 (N.D. Ill. 2014) (concluding that plaintiff stated a plausible false imprisonment claim against the United States where he was held on a detainer without probable cause).

This new program should be referred to as the “Priority Enforcement Program” or “PEP.”

Nothing in this memorandum shall prevent ICE from seeking the transfer of an alien from a state or local law enforcement agency when ICE has otherwise determined that the alien is a priority under the November 20, 2014 [Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum](#) and the state or locality agrees to cooperate with such transfer. DHS will monitor these activities at the state and local level, including through the collection and analysis of data, to detect inappropriate use to support or engage in biased policing, and will establish effective remedial measures to stop any such misuses.<sup>2</sup> I direct the Office of Civil Rights and Civil Liberties to develop and implement a plan to monitor state and local law enforcement agencies participating in such transfers.

Finally, acquainting state and local governments, and their law enforcement components, with this policy change will be crucial to its success. I therefore direct the Assistant Secretary for Intergovernmental Affairs to formulate a plan and coordinate an effort to engage state and local governments about this and related changes to our enforcement policies. I am willing to personally participate in these discussions.

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<sup>2</sup> See Homeland Security Advisory Council, *Task Force on Secure Communities Findings and Recommendations*, September 2011.

## Call to San Francisco (SF) Board of Supervisors President London Breed

### Overview & Purpose

- You are calling SF Board of Supervisors President London Breed ahead of the Government Audit and Oversight Committee's meeting today at 10:30 a.m. PT.
- You previously met President Breed at the meeting you had in City Hall on February 2, 2015 that Mayor Lee hosted on PEP.
- As part of its agenda for today's meeting, the Committee is considering two resolutions central to PEP and the City's communication with DHS/ICE.
- You will urge her to think of the resolutions as opposed to each other, explained in greater detail below. If necessary, you will urge to postpone a vote on both resolutions until the City and DHS/ICE have had more robust conversations about the flexibilities of PEP.
- A certain sense has emerged among some supervisors that the resolutions are not contradictory but rather both affirm the City's Sanctuary City policies.

### The "Farrell Resolution"

- This Resolution should be framed to President Breed as "this *will* allow the city/Sheriff to talk to DHS/ICE about truly serious, violent criminals."
- This resolution will allow for communication.
- In July 2015, Supervisor Mark Farrell proposed a "Resolution confirming the Board of Supervisors' support for the Sanctuary City and Due Process for All Ordinance; and urging the Sheriff to immediately rescind his department-wide gag order."
- This resolution echoes Mayor Lee's statement that the Sheriff rescind his policy of refusing to communicate with DHS/ICE.
- Sheriff Mirkarimi issued a March 2015 policy memo that effectively barred any communication with ICE, including "release dates or times."
- The San Francisco Chronicle has stated "The sheriff's policy went well beyond the plain letter of city law, and effectively blocked the department from meeting the feds' request to notify them before releasing Lopez-Sanchez."
- The "Farrell Resolution" quotes sections of the city's 1989 "Sanctuary City policy" that allows communication between the City and DHS/ICE on any individual who has been convicted of a felony under CA state law.

### The "Campos Resolution"

- Earlier this month, Supervisor David Campos proposed a "Resolution opposing the scapegoating of immigrants and urging the rejection of the deportation-focused Priority Enforcement Program."
- This resolution urges the Sheriff not to participate in PEP.
- This resolution should be framed to President Breed "as this *will not* allow the city/Sheriff to talk to DHS/ICE about serious, violent criminals."
- By rejecting PEP, this resolution shuts off communication between the City and DHS/ICE.
- In this manner, PEP should be viewed as flexible communications tool that enhances public safety by allowing the city to talk to DHS/ICE about undocumented immigrants who commit serious/violent crimes.

### Suggested Conversation Frame

- You wanted to reach out to her in advance of today's Committee meeting.

- You have been following the developments in the press about the resolutions under consideration by the Committee today.
- You have had an opportunity to briefly look at the texts of both resolutions and wanted to offer some unsolicited thoughts to her.
- You should start by saying that we all share the same goals for keeping our communities safe and that none of us want to see hardened criminals walking the streets freely to reoffend and commit more crimes if there is a criminal justice reason for them not to be in the community.
- Explain that you see Supervisor Farrell's resolution as a resolution that promotes the values of SF by upholding the city's Sanctuary City ordinance and allowing for law enforcement from the city to talk to law enforcement at the federal level. This does not imply we want local law enforcement to enforce immigration laws.
- That Supervisor Farrell's resolution will permit that conversation between law enforcement because it will urge the Sheriff to rescind his gag order.
- On the other hand, the resolution sponsored by Supervisor Campos that rejects PEP really rejects communication.
- Explain that PEP is a flexible tool that we are willing to discuss with the City what types of violent felons it wants to keep off its streets.
- Explain that there might be some confusion about PEP and the openness that DHS/ICE has to work with the city to craft PEP according to SF values.
- But rejecting PEP means the city doesn't want to communicate with DHS/ICE on keeping the worst of the worst off the streets.
- Suggest that before the Board of Supervisors takes a vote on PEP that we are willing to sit down with relevant supervisors and others to explain the facts of PEP, clarify the misinformation, and work to support the city in developing an implementation that is consistent with the values of the San Francisco community.

## California

### Contra Costa County, CA

- Decision appears to rest exclusively with Sheriff David Livingston
- Press reports say the County will cooperate with PEP on a limited basis
- A San Jose Mercury News article published 9/16/15 stated "Since then, four other counties in the region -- Alameda, Contra Costa, San Mateo and Marin -- have already agreed to cooperate with ICE. In Contra Costa County, the sheriff notifies ICE only about inmates who have committed serious or violent crimes."
- 5-member Board of Supervisors – Chair is John Gioia
- Sheriff changed policy on honoring ICE detainers in May 2014 following Oregon court case
- Contra Costa County deported more people than any other county in the SF Bay Area through Secure Communities
- Contra Costa County has become a Democratic stronghold
- Contra Costa County is split between four congressional districts: all Dems – Mike Thompson, Jerry McNenrey, Mark DeSaulnier, Eric Slawell
- Concord is the largest city in the county

### Kern County, CA

- Decision appears to rest exclusively with Sheriff Donny Youngblood
- 5-member Board of Supervisors – chair is David Couch
- Sheriff Youngblood is generally supportive of ICE efforts
- County seat is Bakersfield
- Very GOP county – last Dem presidential candidate to win there was LBJ in 1964
- County is split between 2 congressional districts – both GOP: David Valadao and Kevin McCarthy (House Majority Leader)
- Bakersfield is 9<sup>th</sup> largest city in CA

### Riverside County, CA

- Decision appears to rest exclusively with Sheriff Stanley Sniff
- 5-member Board of Supervisors – chair is Marion Ashley
- Generally a GOP county – though Obama did win in 2008 and 2012
- County is split among 4 congressional districts – 2 Dems: Mark Takano and Raul Ruiz and 2 GOP: Ken Calvert and Duncan Hunter
- Largest city and county seat is Riverside

### Sacramento County, CA

- Decision on cooperation appears to rest exclusively with Sheriff Scott Jones as it was the Sheriff's office that changed the policy on detainers in May 2014
- 5-member Board of Supervisors – Chair is Phil Serna (son of city's first Latino Mayor, Joe Serna)
- County Board has not passed any ordinances on detainers, etc

- John Whisenhunt is the County Counsel (appointed in 2012 by Board of Supervisors)
- Sheriff Jones has said “The ACLU is creating more national immigration policy than the federal government” in reference to the ACLU sending sheriffs letters about not honoring ICE detainees
- Sheriff Jones has also said that CA has become a de facto sanctuary state
- Sheriff Jones testified before House Judiciary Cmte in late July 2015 for the majority and said “The problem with the current immigration policy can fundamentally be simply stated as there is NO coherent, sustainable immigration policy.”
- During his testimony the Sheriff also said that PEP is failing
- Sheriff Jones spoke out against expanded DACA/DAPA
- One of the Sacramento County Sheriff’s Department deputy sheriffs was killed and the suspect is an undocumented immigrant who had previously been deported
- Congresswoman Doris Matsui represents Sacramento
- Kevin Johnson is the Mayor of the city

### **San Joaquin County, CA**

- Decisions appears to rest exclusively with Sheriff Steve Moore
- Sheriff changed policy on honoring ICE detainees in June 2014
- 5-member Board of Supervisors which has not passed any ordinances or other resolutions on this matter
- Historically is a Republican county, though Obama won it in 2008 and 2012
- County is Split between two congressional districts: Dem Jerry McNenrey and GOP Jeff Denham
- Largest city and county seat is Stockton – which filed bankruptcy in July 2012
- Anthony Silva is the Mayor of the City of Stockton and was elected in Nov. 2012

### **Santa Clara County, CA**

- Decision is with County Board of Supervisors
- S2 has engaged County Board President Dave Cortese
- IGA has engaged Supervisor Cindy Chavez
- In August, Cortese sent the matter to a Bail and Release Working Group, that group reported back to the Board earlier this week (9/15)
- Board is expected to take final vote on policy at October 20 meeting
- Under the policy proposed by President Dave Cortese, the county would notify ICE only when certain inmates who have been convicted of serious or violent crimes are about to be released.
- All 5-members of the County Board publicly supported the measure

### **New York City**

### **Philadelphia**

### **King County, WA**

- In December 2013, the King County Council (Seattle) voted to establish as policy that the county would only honor ICE detainers for certain categories
- CPB Commissioner Kerlikowski met with County Exec Dow Constantine, Chief of Staff Sung Yang and Director of Adult and Juvenile Detention William Haye in late May
- County Exec is responsible for detention services and it is not a branch under the Sheriff. All arrested subjects from the various jurisdictions are booked into and housed by King County.
- County Exec asked his Chief of Staff (Sung Yang) and the Director of the Department of Adult and Juvenile Detention (William Hayes) to take the lead for further follow up.
- Heather Fong and Tim Robbins met with William Hayes in early August – since then progress has stalled
- Constantine is a Dem who was elected in 2009 when Ron Sims was appointed Deputy Secretary of DOT
- County is split among 4 congressional districts – 3 Dems: Adam Smith, Jim McDermott, Suzan DelBene and 1 GOP: Dave Reichert

### Philadelphia Position on Detainers

- On April 16, 2014, Philadelphia Mayor Michael Nutter signed Executive Order No. 1-14, prohibiting Philadelphia law enforcement agencies from honoring ICE detainers “unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by judicial warrant.”
  - Since Philadelphia’s detainer ordinance went into effect on April 16, 2014, there have been 125 declined ICE detainers through February 23, 2015.
  - Because a judicial warrant is not required for an arrest under the immigration laws and Article III judges and magistrate judges do not have authority to issue warrants pursuant to the immigration laws, this requirement would effectively preclude cooperation with any immigration detainers.
  - Notably, the executive order also precludes the Police Department’s cooperation with requests for notification as it states “nor shall notice of his or her release be provided.”

### Philadelphia & PEP Engagement

- Secretary Johnson traveled to Philadelphia to meet with Mayor Nutter in person on April 15, 2015 to discuss the possibility of the City of Philadelphia participating in PEP.
- On July 7, 2015, DHS Assistant Secretary for State & Local Law Enforcement Heather Fong traveled to Philadelphia to meet with Police Commissioner Ramsey to discuss PEP.
- On July 10, 2015, Secretary Johnson spoke to Mayor Nutter on the phone to again discuss PEP. The Secretary asked if the Mayor could delete the prohibition on requests for notification from his executive order. During that call, Mayor Nutter said he would ask his staff to draft various options for his consideration for the city to participate in PEP.
- On July 29, 2015, DHS Assistant Secretary for Intergovernmental Affairs Phil McNamara and Senior Counselor to the Deputy Secretary Serena Hoy along with ICE officials conducted a conference call with Philadelphia Mayor for Public Safety and Chief of Staff Everett Gillison. Officials with the city’s law department also joined the call. City officials said they were drafting a “new” executive order and they would share it with DHS prior to becoming final.
- On July 31, 2015, CBP Commissioner Kerlikowske was in Philadelphia and had an opportunity to also discuss PEP with Mayor Nutter.

### November Election

- Mayor Nutter is term-limited and prevented from running for a third consecutive term. The election for mayor is November 3, 2015 and the new mayor will take office in January 2016.
- The major political party nominees for mayor have made various statements with respect to the City’s cooperation with ICE.
- GOP nominee Melissa Murray Bailey has stated “By declaring Philadelphia a sanctuary city and not detaining illegal immigrants who have been convicted of a violent crime, we are putting the citizens of Philadelphia at risk...By allowing illegal immigrants who commit violent crimes to stay in our city we are proclaiming, ‘Come to Philadelphia, because even if you are in the country illegally and committing crimes there is a place for you here.’ As part of a Bailey administration, Philadelphia will not be a sanctuary city. I will put the safety of

people first and support policies that provide a pathway for law abiding immigrants to obtain legal status.”

- Democratic nominee Jim Kenney stated through a campaign spokesperson, “Jim has stated that he will continue Philadelphia's non-cooperation policy with ICE. The current policy allows ICE officers with judicial warrants to arrest individuals with violent criminal histories, while also building trust between community members and police that allows undocumented Philadelphians to feel safe reporting crimes in their neighborhood and assisting police in their investigations. It is for that reason that over 20 cities and counties have also adopted this policy.”
- In response to various pieces of congressional legislation that would deny federal grant funding (either DOJ or DHS) to states and cities that don't cooperate with ICE, Kenney was quoted as saying “Money is important, but it's not worth violating the Constitution. You can't pay me to violate the Constitution... I wish that the U.S. Congress would be as animated and as energetic about gun violence and education as they are about holding immigrants without a warrant.”

## PEP Outreach

### Top Points:

- Have been making progress. ICE ERO FODs have met with over 2,000 jurisdictions. 167 out of 322 previously non-compliant jurisdictions are back on board per ICE ERO FOD reporting. And things continue to change daily:
  - After a MSNBC news story aired this past Monday (9/14/15), the Riverside County, CA Sheriff reached out to ICE to discuss how the County can institute PEP. Previously, Riverside told ICE they would not participate. Riverside is #14 on the Top 25 list. Meeting is set for next week.
  - Santa Clara County Board of Supervisors at its meeting on 9/15/15 unveiled a proposal to participate in PEP. The Board board is expected to formally approve the policy in October. Santa Clara is #1 on the Top 25 list for declined detainees. They can be considered the Cook County of the West Coast. Santa Clara joins 4 other Bay Area counties in participating in PEP.
- Among the top 25 jurisdictions – these 25 jurisdictions represent 83% of ALL declined since 2014. Efforts and focus should be on these. 8 of the 25 are participating. 8 are considering participation.
- S1 priorities – given as guidance & direction during the 9/14/15 0730 huddle are (1) NYC and (2) Philadelphia
  - NYC – We are very close. S1 has spoken to deBlasio at least twice in the past month. S1 had a very positive conversation with Mayor de Blasio last week about PEP (Tuesday, 9/8). The Mayor communicated that when they sign up for PEP, which the Mayor anticipates they will do, they are willing to do something public. The mayor also flagged the two biggest outstanding issues: first, the draft MOU, which they're aiming to get us by the end of this week; second, they want to be able to work out something with us on the foreign birth-no match issue, but before they're able to do that they need to know what sort of numbers we're talking about, which ICE ERO has been working on.
  - Philadelphia – Mayor and S1 have spoken. Mayor committed to getting it done. We've did some staff-level calls in August, but progress has stalled since then. Likely a result of the city's planning efforts for Pope's visit. The main person in Mayor's universe who is working this is Everett Gillison – Nutter's COS and also the Deputy Mayor for Public Safety. S1 going to Philly on Friday.

Where we could use WH Help:

**Ventura County, CA** – #4 on Top 25 list – Have told ICE they won't participate. Need help with either County Board of Supervisors OR County Sheriff

**Miami-Dade County, FL** – #7 on Top 25 list – Have told ICE they won't participate. Need help with the County Board of Commissioners they passed a county ordinance in 2013 about not cooperating with ICE. We should focus on Board Chairman Jean Monestime

**Cook County, IL** – #12 on Top 25 list – Very preliminary conversations have begun. We expect a long road ahead. S1 went to Cook County in July to meet with Board President Preckwinkle and Commissioner Chuy Garcia. They spoke again on the phone in August. Esther went in mid-August to speak to the Board's Latino Advisory Council meeting. Could use WH help in explaining this is a priority for POTUS/Administration.

**King County, WA** – #24 on Top 25 list – Listed as "Considering Participation." The decision maker is County Executive Dow Constantine. On May 27, CBP Commissioner Kerlikowski met with Constantine who oversees the King County Jail. A/S Fong also met with Constantine staff in early August. Progress has stalled. Could use a push with Constantine.

**Rhode Island** – while not a Top 25 jurisdiction, ICE can't get anyone out of RI jails. The state is so small there are no counties, so everything is run out of state prison. The ask is for Gov. Raimondo to reverse a Gov. Chafee executive order limiting cooperation with ICE. Cecilia Munoz previously spoke to Gov. Raimondo in July. The main constraint on the state's end is pending litigation that raises the risk of liability for cooperating with ICE. The state says they will be closely examining the details of the new program to see if there is an opening to reconsider Gov. Chafee's policy. However progress has stalled. Ask is for notifications, not detainers.

**San Francisco** – #15 on Top 25 list. Don't need help yet. Election for new County Sheriff in November. It's neck and neck between incumbent Sheriff Ross Mirkarimi and Vicki Hennessy. Mayor Lee has endorsed Vicki Hennessy. Cooperation with ICE could be used a wedge issue in sheriff's race. Want to keep a low profile until election results are known, then will reengage.