

Exhibit A



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ASIAN AMERICANS
**ADVANCING
JUSTICE**

ASIAN LAW CAUCUS

VIA OVERNIGHT MAIL AND EMAIL

March 5, 2015

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, D.C. 20536-5009
Email: ICE-FOIA@dhs.gov

RE: Freedom of Information Act Request Regarding the Priority Enforcement Program

Dear ICE FOIA Unit:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of the National Day Laborer Organizing Network ("Requester"). We ask that you please direct this request to all appropriate offices and departments within the Agency that may supply the information sought through this request.

THE PURPOSE OF THE REQUEST

The purpose of this request is to obtain information for the public about the Department of Homeland Security's ("DHS") termination of Secure Communities ("S-Comm") and details of the new Priority Enforcement Program ("PEP"). On November 20, 2014, the Department of Homeland Security announced the end of the Secure Communities Program "as we know it"¹ and unveiled the Priority Enforcement Program. DHS acknowledged that S-Comm had "attracted a great deal of criticism" and "generalized hostility," and had embroiled the Government in litigation with many federal courts denying the authority of state and local agencies to detain individuals for immigration purposes.² According to the three-page memorandum, PEP will continue to check fingerprints taken during bookings that law enforcement agencies transfer to the Federal Bureau of Investigation ("FBI").³ Through the fingerprints transfer, U.S. DHS and Immigration and Customs Enforcement ("ICE") will seek custody of individuals convicted of "specifically enumerated" crimes or who pose a national security risk.⁴

¹ Jeh Charles Johnson, Secretary of Homeland Security, *Secure Communities* Memorandum [hereinafter "PEP Memo"], November 20, 2014, at 1.

² *Id.*

³ *Id.* at 2.

⁴ *Id.*

However, unlike under S-Comm, DHS and ICE will now primarily seek notification of an individual's date of release from detention, and will limit requests for detention to "special circumstances."⁵

No other information about PEP has been made publicly available, and no effective date has either been expressed or implied.⁶ Information providing details about what actions DHS and ICE will take to protect individuals from erroneous detention and removal, to identify and protect vulnerable groups, or to prevent racial profiling in local communities is important because it is unclear the extent to which individuals identified by the PEP process will experience due process violations and other abuses when they are swept through DHS and ICE's costly, dangerous, and inefficient detention and removal system. The language of the memorandum is vague at best and fails to provide substantive details and guidelines that govern the standards in determining, for example, what constitutes "special circumstances" that may subject individuals to a request for detention. Very little subsequent information has been provided to the public as to how, if at all, PEP will differ in practice from the deeply flawed S-Comm program, about which little public information was available for years until it was obtained in response to requests under the Freedom of Information Act.

Particularly, our request focuses on obtaining the Records needed to answer the following questions, among other information:

- a) Why and how was the decision made to terminate S-Comm?
- b) When was S-Comm, or when will it be, effectively terminated?
- c) When did, or will, PEP enter into effect?
- d) What standards, procedures and guidelines govern the shift from S-Comm to PEP?
- e) How, if at all, will standards, procedures and implementation of PEP differ from those of S-Comm?
- f) How, if at all, will fingerprint sharing between local law enforcement agencies, the FBI, and DHS differ under PEP compared with S-Comm?
- g) How will ICE determine when and whether to issue requests for notification, requests for detention, requests for transfer, and any other requests or orders under PEP to state, county, local and municipal governments and authorities?
- h) How will PEP impact the constitutional and legal rights of individuals?
- i) Will PEP respect or seek to undermine laws and policies in jurisdictions that have rejected cooperation with ICE detainer requests?
- j) What guidelines and other information have DHS and ICE and their officers provided the States, counties, and municipal and local governments and authorities regarding the implementation and execution of PEP?

⁵ *Id.*

⁶ See PEP Memo at 1 (stating that "[t]he Secure Communities Program, as we know it, will be discontinued"); Julia Preston, *Republicans Resist Obama's Move to Dismantle Apparatus of Deportation*, N.Y. Times, Jan. 15, 2015, http://www.nytimes.com/2015/01/16/us/secure-communities-immigration-program-battle.html?_r=0 ("The replacement program devised by [Jeh] Johnson, called Priority Enforcement Program, will start in the coming weeks").

- k) Will DHS' promise that PEP mechanism will only be utilized to target individuals who fall within certain designated enforcement priorities be realized or ignored in the implementation process of PEP?
- l) How will PEP impact immigrant communities, local and state criminal justice systems, and the states and localities where it is implemented?
- m) Will enforcement under PEP involve requests to state and local law enforcement agencies, jails and prisons, or other officers to coordinate procedures and timing of release of inmates or suspects with federal immigration officials to facilitate individuals' apprehension for purposes of possible deportation?
- n) Will PEP affect existing, or influence the creation of new, Inter-Governmental Service Agreements for state or local detention of persons for federal immigration enforcement purposes?
- o) How will PEP interface with other immigration enforcement programs, such as the Criminal Alien Program, the Fugitive Operations program, the 287(g) program, and the Criminal Alien Removal Initiative?

The information requested will enable the public to carefully monitor the impact of the program to guard against infringements on the rights of individuals and interference with community policing or public safety, and to determine whether it works according to DHS' expressed intent.

This information is crucial to the public because the PEP Memo gives very little information about how PEP differs from S-Comm, if at all. PEP's nebulous nature from its very announcement is uncomfortably similar to the inception of S-Comm, about which the public spent years seeking answers to basic, essential questions. There is no reason for the public to believe that PEP is an improvement on S-Comm based on what has been presented to date; communities and local government and enforcement bodies may still face all of the same abuses and obstructions they faced under S-Comm. These include: a blurred line between local and state law enforcement and immigration enforcement; racial profiling and the targeting of immigrants; undermining of community policing efforts and of community trust in law enforcement; and undermining of state and local TRUST Acts (legislation and policies, some of which go by other names, limiting local cooperation with federal immigration detention and notification requests) by allowing the continued sharing of information, including fingerprints, incarceration dates, and release dates of individuals with ICE, without protections to prevent abuse of this information to conduct harmful home and community raids. In addition, the public has received little assurance that ICE will not continue issuing immigration detainers and notification or transfer requests for persons who are or should be low removal priorities. S-Comm allowed excessive discretion to individual officers, and the program was implemented and enforced in an alarmingly uneven manner, often inconsistently with DHS' stated enforcement priorities. The public, after suffering such abuses under S-Comm, deserves full knowledge of how PEP, a supposedly improved replacement program, operates or will operate.

A. DEFINITIONS

- 1) **Designated Jurisdiction(s).** In this request, the term Designated Jurisdiction(s) refers to the following ICE Field Offices and all jurisdictions that they cover:
 - Phoenix, Arizona
 - Los Angeles, California
 - San Diego, California
 - San Francisco, California
 - Miami, Florida
 - Atlanta, Georgia
 - Chicago, Illinois
 - New Orleans, Louisiana
 - Boston, Massachusetts
 - New York, New York
 - Dallas, Texas
 - Houston, Texas
- 2) **Individual Records Jurisdiction(s).** In this request, the term Individual Records Jurisdiction(s) refers to the following ICE Field Offices and all jurisdictions that they cover:
 - Phoenix, Arizona
 - Los Angeles, California
 - San Francisco, California
 - Atlanta, Georgia
 - New Orleans, Louisiana
 - New York, New York
 - Dallas, Texas
- 3) **Priority Enforcement Query.** In this request, the term Priority Enforcement Query is defined as any mechanism by which a Law Enforcement Agency submits a fingerprint query to be checked against the National Crime Information Center or any other FBI or DHS databases, including, but not limited to, queries submitted to the FBI's Criminal Justice Information System Division ("CJIS").
- 4) **Request for Detention.** In this request, the term Request for Detention refers to the term and definition as used by Secretary of Homeland Security Johnson in the November 20, 2014, PEP Memo.
- 5) **ICE Field Offices.** In this request, the term ICE Field Offices refers to all ICE Field Offices, including, but not limited to, ICE Sub-Field Offices, and any other ICE office involved in immigration enforcement.
- 6) **Law Enforcement Agency ("LEA").** In this request, the term Law Enforcement Agency includes, but is not limited to, any state, city, town, county, or local police agency, department of corrections, sheriff's office, jail, prison, probation office, or other enforcement and public safety office or holding facility.
- 7) **Vulnerable Groups.** In this request, the term Vulnerable Groups includes, but is not limited to, such groups as minor children, elderly persons, pregnant or

breastfeeding women, individuals with chronic or acute medical or mental health conditions, victims of human trafficking or other crimes, individuals with T, U, or S visas or pending visa applications, individuals who express a fear of persecution if removed, and individuals with dependent minor children in the United States.

- 8) **Record(s).** In this request, the term “Record(s)” includes, but is not limited to, all Records or communications preserved in electronic or written form, such as correspondence, emails, text messages, cell phone records, telephone records, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind. The term “Record(s)” also include drafts of any Records.
- 9) **Enumerated Crimes.** In this request, the term “Enumerated Crimes” includes the categories of crimes referred to in the *Policy for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum* (hereinafter, “2014 Priorities Memo”) released by ICE on November 20, 2014 and in the preceding DHS/ICE enforcement priority memoranda in effect at relevant previous times.
- 10) **Public Safety Risks.** In this request, the term “Public Safety Risks” includes, but is not limited to, the enforcement priority category by this name as well as any individuals referred to as subject to this enforcement priority category in the 2014 Priorities Memo.

B. PROTOCOL GOVERNING THE PRODUCTION OF RECORDS

I. Production Formats of Electronic Records

It is requested that all responsive electronically stored information (“ESI”) be produced in its native format, meaning the format in which it is stored or used in the regular course of business, subject to the following additional conditions:

- A. **Emails.** Please produce emails in native format as well as in searchable Portable Document Format (“PDF”) format. Please produce the PDF copies of the emails with consecutively Bates numbered pages.
- B. **Parent-Child Relationships.** Parent-child relationships (the association between an attachment to an email or other record and its parent record) should be preserved.
- C. **Metadata.** Metadata should not be removed from ESI. For records that were originally created using common, off-the-shelf software (*e.g.*, Microsoft Word, Microsoft PowerPoint, Adobe PDF), please provide Records in a format that preserves all metadata, including at least the metadata fields set forth below. Any additional metadata corresponding to ESI should also be provided. Production of all files attached to each email produced is required, if such files were attached to that email in the ordinary course of business.

Metadata Fields

Custodian
Beginning Attachment Number
Ending Attachment Number
Record Type
Master Date
SentOn Date and Time
Received Date and Time
Create Date and Time
Last Modified Date and Time
Parent Folder
Author
To
From
CC
BCC
Subject/Title
Original Source
Native Path
File Extension
File Name
File Size
Full Text

II. Production Formats of Non-Electronic Records

Please produce any and all Records not constituting ESI, or Records not otherwise stored or used in electronic format, in searchable PDF format with pages affixed with consecutive Bates numbers. For any such documents for which production in that format is not practicable, please produce any non-ESI Records in the format in which they are stored or used in the regular course of business or in another reasonably usable format. Where production in the format in which they are stored or used in the regular course of business is not practicable, or where such records would involve production of voluminous papers, please produce such records in searchable PDF format unless production in another reasonably searchable and usable format more adequately preserves the ability to reasonably use, access and understand the records.

C. RECORDS REQUESTED

There has been little information made publicly available about the Priority Enforcement Program and its implementation process. Therefore, we seek any and all Records, received, maintained, or created by any government agency or subdivision, necessary to answer questions (a)-(n) set forth in the Purpose of Request section above, including, and not limited to, the following:

1) POLICIES, PROCEDURES OR OBJECTIVES

Any and all Records, received, maintained, or created by any government agency or subdivision, related to policies, procedures or objectives of the Priority Enforcement Program, including, but not limited to, Records created prior to November 20, 2014. Such Records include, and are not limited to:

- a. **Overview Documents:** policies, operating procedures, rules, internal or external policy guidance, training materials and legal opinions or memoranda or any other Records referencing PEP, or related to the process of developing PEP, or discussing the mandate, quotas or targets, goals, objectives, function responsibility, purpose, implementation, deployment strategy of PEP and any procedures for state or local jurisdictions to opt out of or into PEP. This includes opinions, training materials, memoranda or guidance or any other Records reflective of any agency position related to:
 - i. The decision to terminate S-Comm and to implement PEP;
 - ii. The purpose or goals of PEP;
 - iii. Availability of “opt-out” options to municipalities, localities and states and LEAs, including, but not limited to, preventing the sharing of fingerprints with DHS and preventing the receipt of ICE notification, transfer or detainer requests;
 - iv. PEP and deportation and enforcement priority categories;
 - v. PEP and review processes, quotas or targets;
 - vi. PEP and database accuracy or quality control issues;
 - vii. PEP and issuance of detainers, requests for notification, detention or transfer, or similar federal requests, including, but not limited to, any process, standards, guidelines and opinions relating to how ICE and DHS will evaluate probable cause for purposes of determining whether or when to issue a request under PEP;
 - viii. The impact, strategy, or design of PEP in relation to immigration enforcement activities in jurisdictions that have policies or laws limiting cooperation with federal immigration detainers;
 - ix. The process by which ICE or DHS determines which offense level to assign in individual cases and any offense level re-determination;
 - x. The process by which ICE or DHS determines which priority level to assign in individual cases;
 - xi. Any process by which the agency identifies individuals otherwise designated as Priority 1, 2, or 3 who should not be removed;

- xii. The agency's position on whether requests for notification, detention, or transfer, or similar federal requests under PEP are mandatory or voluntary;
 - xiii. Any process, standards, guidelines and opinions relating to how PEP will treat individuals who are not designated as enforcement priorities under the 2014 Priorities Memo⁷ or who DHS has stated will not be subject to PEP under the 2014 Priorities Memo⁸ or the PEP Memo;
 - xiv. Any process, standards, guidelines and opinions relating to how ICE Field Office Directors determine that an individual not otherwise under Priority 1, 2, or 3 should be removed because it would serve an "important federal interest" within the meaning of the 2014 Priorities Memo, and any other process, standards, guidelines and opinions by which ICE determines what constitutes an "important federal interest" for purposes of PEP and the 2014 Priorities Memo;
 - xv. Any process, standards, guidelines and opinions relating to how or whether dismissed, expunged, restricted, sealed or juvenile criminal records, including records of convictions for which a pardon was issued, may be utilized to assign a priority category to an individual or to determine that an individual, not otherwise under Priority 1, 2, or 3, should be removed to serve an "important federal interest" within the meaning of the 2014 Priorities Memo and the PEP Memo;
 - xvi. Any training materials for ICE Field Office Directors, or for DHS, ICE or FBI agents or officers of any other rank, regarding the implementation of PEP and the 2014 Priorities Memo;
 - xvii. Any and all forms and software developed for use under PEP;
 - xviii. Any process, standards, guidelines and opinions relating to the continued practice under PEP of sharing information and biometrics submitted by LEAs between the FBI and DHS;
 - xix. Any process, standards, guidelines and opinions relating to how PEP will be implemented in municipalities, localities and states that opted out of S-Comm or otherwise restricted or limited their responses to federal immigration detainer or notification requests.
- b. **State and Local Agreements:** agreements, both formal and informal, including Memoranda of Agreements or Understandings, and drafts of any agreements between ICE and any partner, local Law Enforcement Agency, State agency or any state or local agency related to the Priority Enforcement Program.

⁷ See 2014 Priorities Memo, available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

⁸ See *id.* at 2-3.

- c. **Notification Request Procedures:** any and all Records containing guidance, procedures, standards, and legal opinions or memoranda governing the issuance of requests for notification.
- d. **“Special Circumstances” Detention Request Procedures:** any and all Records containing guidance, procedures, standards, and legal opinions or memoranda governing the determination of “special circumstances” meriting Requests for Detention, and the issuance of detainers.
- e. **Transfer Request Procedures:** any and all records containing guidance, procedures, standards, and legal opinions or memoranda governing the issuance of requests for, or any other practice of seeking, transfer of custody of an individual from a Law Enforcement Agency to ICE or any other sub-agency within DHS.
- f. **Priority Enforcement Inquiry & Response Procedures:** any and all Records related to policies and procedures governing the initiation of the Priority Enforcement Program Queries in all state and local jurisdictions, and policies and procedures governing U.S. Department of Justice’s (“DOJ”), DHS’s or ICE’s responses to Priority Enforcement Queries, including but not limited to:
 - i. Any Record containing guidance or procedures governing when LEAs may generate a Priority Enforcement Query, including any Records providing for mandatory Priority Enforcement Queries or discretionary Priority Enforcement Queries;
 - ii. Any Record related to any past, current, or future practice of automatic generation of a Priority Enforcement Query (including “automated IAQ processing”) when “unknown” or “other than the United States” or a specific country other than the United States is entered as an individual’s place of birth;
 - iii. Any Records that contain lists or otherwise identify any databases checked as a result of a Priority Enforcement Query, including, but not limited to, all national, state and local databases;
 - iv. Any Records containing notices, forms or computer screen shots generated in response to a Priority Enforcement Query.
- g. **State or Local Training or Explanatory Materials:** any and all Records containing training, briefing, guidance, procedures, rules, or other informational materials related to the Priority Enforcement Program developed for Law Enforcement Agencies, or other state or local entities.
- h. **Relationship Between Priority Enforcement and Other ICE Enforcement Programs:** any and all Records indicating the interface or relationship between the Priority Enforcement Program and other DHS, ICE or FBI programs, including, but not limited to, Secure Communities, CAP, Next

Generation Identification (“NGI”), the Criminal Alien Removal Initiative (“CARI”), 287(g) arrangements, and other ICE Agreements of Cooperation in Communities to Enhance Safety and Security (“ICE ACCESS”).

i. **Racial Profiling Policy:**

- i. Any and all Records related to ICE monitoring or plans to monitor all state and local jurisdictions for racial or ethnic profiling or other due process violations;
- ii. Any and all Records related to Law Enforcement Agencies’ racial profiling or anti-racial profiling policies or procedures from all state and local jurisdictions;
- iii. Any and all Records related to anti-racial profiling policies or procedures governing DHS, ICE or FBI agents’ implementation of PEP and the 2014 Priorities Memo;
- iv. Any and all Records evaluating, reviewing, compiling or otherwise discussing compliance with racial profiling or anti-racial profiling policies and procedures, including, but not limited to, sections of the Priority Enforcement Standard Operating Procedures.

- j. **Vulnerable Groups:** Any and all Records containing policies, standards, guidance or procedures concerning the treatment of Vulnerable Groups affected by Priority Enforcement, including, but not limited to, the issuance of requests for detention, requests for notification, requests for transfer, or parole or other exercise of prosecutorial discretion.

2) DATA AND STATISTICAL INFORMATION

Any and all Records containing data or statistical information gathered, prepared or maintained by ICE or any subdivision thereof related or pertaining to S-Comm or PEP, including information from individual files necessary to compile such data or statistical information, beginning the full fiscal year before the release of the PEP Memo to the present. Please produce all data and statistical information requested in this section (a) nationally, (b) disaggregated by ICE Field Office, and, (c) for Designated Jurisdictions, disaggregated by LEA. Please treat this section as an ongoing request and produce responsive Records every three months for the next two years. Records include, but are not limited to:

- a. **Demographic information:** any and all information, or statistical data collected, maintained or compiled on race, ethnicity, sex, age, nationality, membership in a Vulnerable Group, or place of birth of:

i. Subjects of Detainers or Requests for Detention:

1. **Pre-PEP:** Individuals subject to detainers dating back through the last full fiscal year prior to the release of the PEP Memo, or

- any sub-period thereof, in each state and local jurisdiction and cumulatively;
2. **Post-PEP Memo:** Individuals subject to detainers or requests for notification, transfer or detention between the release of the PEP Memo and the implementation of PEP;
 3. **Post-PEP:** Individuals subject to detainers or requests for notification, transfer or detention after being subject to a Priority Enforcement Query since the implementation of PEP, in each PEP jurisdiction and cumulatively;
- ii. Subjects for which Notification is requested;
1. **Pre-PEP:** Individuals subject to notification requests dating back through the last full fiscal year prior to the release of the PEP Memo, or any sub-period thereof, in each state and local jurisdiction and cumulatively;
 2. **Post-PEP Memo:** Individuals subject to requests for notification between the release of the PEP Memo and the implementation of PEP;
 3. **Post-PEP:** Individuals subject to requests for notification after being subject to a Priority Enforcement Query since the implementation of PEP, in each PEP jurisdiction and cumulatively;
- iii. Subjects for which any transfer to ICE or DHS custody is requested of or required of a Law Enforcement Agency;
- iv. Subjects transferred by a Law Enforcement Agency to ICE or DHS custody by any other practice, including individuals arrested by DHS or ICE immediately upon their release by an LEA as the result of a notification from the LEA;
- v. Subjects targeted in any way based on suspected status as Priority levels 1, 2 or 3 under DHS's 2014 Priorities Memo;
- vi. Subjects targeted based on any Enumerated Crimes;
- vii. Subjects targeted based on a suspected national security risk;
- viii. The number of individuals apprehended by DHS or ICE pursuant to a detainer, request for notification, detention or transfer, or similar federal request, who were served with a Notice to Appear ("NTA"), disaggregated by the type of request;
- ix. The number of individuals apprehended by DHS/ICE pursuant to a detainer, request for notification, detention or transfer, or similar

federal request, who were never served with an NTA, disaggregated by the type of request;

- x. The number of individuals apprehended by DHS or ICE pursuant to a detainer, request for notification, detention or transfer, or similar federal request, who were subjected to an administrative or expedited removal order, disaggregated by the type of request;
 - xi. The number of individuals apprehended by DHS or ICE pursuant to a detainer, request for notification, detention or transfer, or similar federal request, who were subjected to reinstatement of removal, disaggregated by the type of request;
 - xii. The number of individuals who had their detainer, request for notification, detention or transfer, or similar federal request lifted within 48 hours of the request and why;
 - xiii. The number of individuals who had their detainer, request for notification, detention or transfer, or similar federal request lifted after the request was made but before the person was otherwise to be released and why; and
 - xiv. The number of individuals who were subject to a detainer, request for notification, detention or transfer, or similar federal request, who were not apprehended by DHS/ICE because of a favorable exercise of discretion, a determination that there was no basis to arrest the individual, the individual's transfer to another facility, or another reason;
 - xv. The number of individuals who had their detainer, request for notification, detention or transfer, or similar federal request that were not honored by LEAs, disaggregated by the type of request.
- b. **Offense Level Determinations:** any and all Records related to data or statistical information regarding individuals targeted by DHS through the Priority Enforcement Program, including, but not limited to:
- i. The number of individuals categorized in each Priority level and category,⁹ as outlined in DHS's 2014 Priorities Memo, including the breakdown of age, race, gender, nationality, membership in a Vulnerable Group, and place of birth for each Priority level and category;
 - ii. For Records predating the implementation of DHS's 2014 Priorities Memo, the number of individuals categorized in each priority level and category as outlined in the priorities memoranda previously in

⁹ Please treat each subsection of Priority levels 1, 2, and 3 as separate categories for purposes of this request. For example, please provide this data divided among Priority 1(a), 1(b), 1(c), 1(d), and 1(e) as distinct from solely aggregate data for Priority 1.