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Federal Anti-Immigrant Policy and its Correlation to Racial Profiling within Law Enforcement

Reporting Agency: Junta for Progressive Action

Junta for Progressive Action, Connecticut - Junta for Progressive Action is a community-based, non-profit organization with a mission to improve the economic, social and political conditions of the Latino and immigrant community of Connecticut, while building bridges with other communities. Our issue focus is based on a vision of a successful and thriving community, free from discrimination, injustice, and fear, working together with mutual respect to achieve full human rights and dignity for all people.

I. Issue Summary

Within the United States, an upsurge in anti-immigrant policies and legislation, both at the federal and state level, has unfairly targeted immigrant communities, taking a significant toll on the right of immigrants to live and work without fear of unjust racial profiling and detaining by law enforcement as a result. Even as the federal government pushes back against state level immigration policies that violate the human rights of immigrants, federal immigration policies, specifically the Secure Communities (S-Comm) program and the 287g program, have successfully violated the right of immigrants to work, drive, and raise families without the risk of being pulled over by law enforcement for “looking” like an undocumented immigrant.

Secure Communities program goal involves voiding the community of undocumented immigrants who pose a threat to public safety, particularly those who have committed violent crimes. Through a partnership with the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE) to share fingerprints of individuals arrested or booked and taken into custody. Under S-Comm, these fingerprints are also shared with the Department of Homeland Security (DHS) to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE takes enforcement action – prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors – as well as those who have repeatedly violated immigration laws (www.ice.gov). Although ICE states that it prioritizes those who pose a threat to public safety, its absolutism that state and local law enforcement participate in the program leaves an opportunity for local entities to either prioritize or denounce the program and refuse to honor the program. States and localities with anti-immigrant sentiment have benefited from using the program as a means to oppress immigrants in communities through racial profiling of those whom they suspect to be immigrants, undocumented and primarily Latino.

A report released by the Earl Warren Institute on Law and Social Policy¹ found that Latinos and men are disproportionately targeted by S-Comm. While 77% of the undocumented population is

Latino, 93% of those arrested through Secure Communities are also Latino. In addition, in line with a historic pattern of targeting men of color, 93% of all arrested through S-Comm are male, while only 57% of all the undocumented population is male. Within the state of Connecticut, our organization and several others have demanded that state government not honor the S-Comm policy. Although the state implemented non-compliance measures within its Department of Corrections, many local town governments are divided on how to address the policy. Some towns are vigilant in enforcing S-Comm through racial profiling measures, while other towns have adopted general orders to not honor the policy in order to prevent the negative aspects of the program. Because of this division, many states, including Connecticut have or will introduce statewide legislation to push back on S-Comm. Trust Act legislation advocacy in the states of California, Pennsylvania, Maryland, Connecticut and the District of Columbia aim to create comprehensive legislation that will refuse to honor detainers through S-Comm within all law enforcement entities. Despite local, statewide and national mobilization to end S-Comm, the U.S. Government continues to expand its implementation to more states.

Noted as one of ICE's top partnership initiativesⁱⁱ, 287g allows state and local law enforcement entities to enter into partnership with ICE. Law enforcement officials are trained by ICE agents to enforce federal immigration laws. Officers selected by the state or local agency receive four weeks of training on how to access immigration databases, complete immigration forms, and otherwise carry out the functions of federal immigration agents. An investigation by The Department of Justice (DOJ) found that when the Maricopa County Sheriff's Office in the state of Arizona entered in a 287g agreement, the office engaged in practice of racial profiling, among other constitutional violations. One of the major conclusions of the investigation found that Latino drivers were nine times more likely to be stopped by police than non-Latinos. Through federal immigration enforcement, the Sheriff's Office "poisoned the relationship between law enforcement and Latinos, hindering general law enforcement efforts within the Latino community." Although DHS terminated its 287g partnership with Maricopa County after the DOJ's investigation, as of October 2012, DHS had 287(g) agreements with 57 states and localities around the country.

II. **Concluding Observations**

The U N Human Rights Committee concluded in regards to article 2: The state party should continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials. The Committee wishes to receive more detailed information about the extent to which such practices still persist, as well as statistical data on complaints, prosecutions and sentences in such matters.

In response to article 9: The State party should review its practice with a view to ensuring that the Material Witness Statute and immigration laws are not used so as to detain persons suspected of terrorism or any other criminal offences with fewer guarantees than in criminal proceedings. The State party should also ensure that those improperly so detained receive appropriate reparation. (Article 9)

III. **U.S. Government Report**

Within its response to the U N Human Rights Committee in December 2011, the U.S. Government addresses law with regard to aliens within context of Article 2 of the ICCPR. It notes the Department of Homeland Security (DHS), Office of Civil Rights and Civil Liberties (CRCL) reaches out to immigrant communities as a primary means of addressing concerns of racial, ethnic and religious discrimination (paragraph 105). In particular it states that DHS leads efforts to develop relationships with communities whose civil rights may be affected by DHS activities. In paragraph 107, the U.S. Government states the Department of Justice (DOJ) "works closely with immigrant communities to address civil rights concerns, such as racial profiling by law enforcement."

IV. **Legal Framework**

Although the U.S. Government addressed the impact of racial profiling within its response, racial profiling as a direct result of federal immigration policies imposed upon states violates Article 2 (1) that individuals would not be distinguished by race, colour, sex, language, political or other opinion, national or social origin, property, birth or status. The government is in clear violation through the allowance of S-Comm and 287g to continue despite research data and other U.S. Government agencies that evidence its ties to racial profiling. In addition, under article 26, immigrants do not receive effective protection against discrimination, inherently based on race, colour, language, sex and national origin.

V. **Human Rights Committee General Comments**

In regards to Article 2:

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/c95ed1e8ef114cbec12563ed00467eb5?OpenDocument>

Position of Aliens under the Covenant:

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/bc561aa81bc5d86ec12563ed004aaa1b?OpenDocument>

VI. **Other UN Body Recommendations**

UN Human Rights Council: Report of the Working Group on the Universal Periodic Review – United States of America, January 2011.

<http://daccess-dds->

[un.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement](http://daccess-dds-un.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement)

VII. **Recommended Questions**

1. With the plethora of information and data that supports Secure Communities as a mechanism for racial profiling, when will the U.S. Government abandon the policy and reexamine its detention and deportation methods?
2. How does the U.S. government justify continuing and expanding the 287g program after its own Department of Justice provided evidence of its failure to fulfill its goals, and its prevalence to racial profiling?
3. What is the status of the End Racial Profiling Act (ERPA)? How has the U.S. government promoted its passage?

VIII. **Suggested Recommendations**

1. End the 287g program including all law enforcement and detention partnerships.
2. End Secure Communities and reexamine the government's approach to immigration and its deportation methods.
3. Pass the End Racial Profiling Act.

ⁱ http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

ⁱⁱ <http://www.ice.gov/287g/>