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July 7, 2015

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

We write regarding the Priority Enforcement Program (PEP), which requires immigration law officers and agents to ignore plain law and public safety, solely to the benefit of criminal aliens in the United States. This program, along with the so-called "enforcement priorities" outlined in your November 20, 2014, memorandum titled "Priorities for the Apprehension, Detention, and Removal of Undocumented Immigrants," are contrary to law and pose direct threats to public safety.

Your Department has refused to confront so-called "sanctuary" jurisdictions, endangering the public safety and leading to tragedies such as the recent killings of Kathryn Steinle in San Francisco, California, and Angelica Martinez in Laredo, Texas. These deaths are the result of such sanctuary jurisdictions' dangerous policies, and this Administration's refusal to do anything to stop them. Yet, rather than enhance the successful Secure Communities program, confront sanctuary jurisdictions, defend federal law enforcement's legitimate use of detainers, request additional resources, or ask Congress for a legislative solution, your Department has unilaterally designed a program that will endanger the American people.

As a preliminary matter, the "enforcement priorities" established in the aforementioned memorandum fail to include significant categories of criminal aliens defined by Congress in the Immigration and Nationality Act (INA), including, but not limited to:

- Aliens convicted of nearly all offenses that constitute crimes involving moral turpitude,[1] which includes not only crimes such as theft, but all offenses that are

[1] *See* INA §§ 212(a)(2)(A)(i), 237(a)(2)(A)(i)-(ii).

"inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or society in general"[2]; and,

- Aliens convicted of drug possession offenses,[3] including those who were initially charged with trafficking offenses but who were permitted to plead down to simple possession.

Your enforcement priorities also fail to include other criminal aliens, such as those who have been convicted of two or more misdemeanors that you deem not to be "significant." They similarly fail to include aliens convicted of *any* misdemeanor offense who do not serve 90 days or more in prison—regardless of whether they received a suspended sentence that exceeded 90 days. Rather than take the common sense approach of defining as "enforcement priorities" all classes of criminal and dangerous aliens as defined by Congress in the INA, and adding others as a matter of policy, your Department has elected to acquiesce willfully to the presence of criminal aliens in the United States and ordered law enforcement officers and agents to look the other way except in extremely limited circumstances.

As though the disparity between these "enforcement priorities" and existing law were not bad enough, your Department has designed PEP in a manner that creates disparities between PEP and the "enforcement priorities" listed in your November 20, 2014, memo. Significantly, this includes priorities 1(b) (recent border crossers); 2(c) (aliens who enter the United States unlawfully or reenter after a previous removal or return); 2(d) (aliens who significantly abuse the terms of their visas); and 3 (aliens who have a final order of removal on or after January 1, 2014).

It is also our understanding that, under PEP, your Department will *only* seek the transfer of an alien in the custody of state or local law enforcement if the criminal alien has a *conviction* for a limited number of criminal offenses, engaged intentionally in organized gang activities, or poses a danger to national security. However, even in many of these cases, DHS will simply request "notification" of the release date from state and local law enforcement, rather than issue a detainer. Additionally, the mere fact that an alien has been charged with or arrested for an offense is no longer acceptable, as your Department will only seek to assume custody of *any* criminal alien once that alien has an actual *conviction*.

In recent briefings to congressional staff, your Department has described PEP as though it is somehow necessary to reengage with sanctuary jurisdictions that failed to work with DHS under the Secure Communities program. At the same time, however, DHS representatives have confirmed at these briefings that PEP does not guarantee the cooperation of any sanctuary jurisdictions, and that such jurisdictions will have the

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[2] *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994).

[3] *See* INA §§ 212(a)(2)(A)(i)(II), 237(a)(2)(B).

ability to determine which parts of PEP they will comply with, if any. Thus, even here, the Administration has once again acquiesced to sanctuary jurisdictions.

Under PEP, countless criminal aliens who have managed to evade conviction will be released, endangering our communities. More crimes will be committed, and precious resources will be spent to re-apprehend these individuals, a process that significantly endangers the safety of your officers and agents. It would be much more effective and efficient to issue detainers and simply transfer these criminal aliens directly into your Department's custody. We note that as recently as 2012, then-Director of U.S. Immigration and Customs Enforcement, John Morton, offered to pay localities any additional expenses of holding inmates until they can be picked up,[4] yet your Department has apparently abandoned even this reasonable proposal.

Accordingly, please respond to the following questions by July 21, 2015:

1. How many aliens present in the United States today have ever been arrested for a criminal offense?
2. How many aliens present in the United States today have ever been convicted of a criminal offense?
3. How many aliens with final orders of removal remain in the United States today?
   a. Of those, please specify how many have ever been arrested for any criminal offense.
   b. Of those, please specify how many have ever been convicted of any criminal offense.
4. From fiscal year 2009 through the present, how many detainers has your Department issued? Of those, how many were honored?
5. Does DHS have any projections as to how PEP will affect the number of detainers it issues each year? If so, please provide them.
6. Does DHS have any projections as to how the new enforcement priorities will affect the number of removals it can effectuate each year? If so, please provide them.
7. Does DHS have any projections as to how PEP will affect the number of removals it can effectuate each year? If so, please provide them.
8. Does DHS have any projections as to how many criminal aliens with any record of a criminal arrest or conviction will be permitted to stay in the United States after full implementation of PEP? If so, please provide them.

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[4] Antonio Olivo, *Feds Seek Compromise on Cook County Immigration Ordinance*, CHICAGO TRIBUNE, Feb. 29, 2012, *available at* http://trib.in/1RiHGPC.

9. Does DHS have any projections as to how many sanctuary jurisdictions will comply with PEP? If so, please provide them.
10. DHS has publicly touted its engagement with Los Angeles County regarding PEP.[5] However, DHS has not actually secured any commitments from Los Angeles County as to how it will cooperate with PEP. Do you have any guarantees that Los Angeles County, or any other sanctuary jurisdiction, will fully comply with PEP?
11. How many jurisdictions that had previously refused to honor detainers or otherwise cooperate with federal immigration law enforcement have committed to comply with PEP in its entirety?
12. Under PEP, will DHS issue a request for a notification of release or a detainer for all aliens who are subject to mandatory custody under section 236(c) of the INA? If not, please explain why not.
13. In light of the tragic murders of Kathryn Steinle and Angelica Martinez last week, is it still the Administration's position that federal immigration detainers should not be mandatory?

Thank you for your attention to this matter,

Sincerely,

Jeff Sessions
Chairman, Subcommittee on
Immigration and the National Interest

David Vitter
Deputy Chairman, Subcommittee on
Immigration and the National Interest

Chuck Grassley
U.S. Senator

David Perdue
U.S. Senator

John Cornyn
U.S. Senator

Mike Lee
U.S. Senator

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[5] Jeh Charles Johnson, Secretary, U.S. Department of Homeland Security, Remarks at Rice University on "Immigration: Perception Versus Reality" (June 8, 2015), *available at* http://1.usa.gov/1RiHIag.

Ted Cruz
U.S. Senator

Thom Tillis
U.S. Senator

Orrin Hatch
U.S. Senator