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UNITED NATIONS HUMAN RIGHTS COMMITTEE
ONE-HUNDRED AND NINTH SESSION

OCTOBER 2013

GENEVA

**Federal Anti-Immigrant Policy and Its Correlation to
Racial Profiling within Law Enforcement in Context of the International Covenant on
Civil and Political Rights**

*In response to the
Response to the Fourth Periodic Report of the United States Replies to the United Nations Committee*

Endorsed by:
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About Junta

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. Introduction and Issue Summary

The following report is an update to a List of Issues submission in 2012.

Throughout the years, the United States government has targeted immigrant communities through the inception of federal policies that have significantly diminished their quality of life. The Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS)—such as Secure Communities (S-Comm), 287-G and the Criminal Alien Program have violated the right of immigrants to live freely without the fear of unjust incarceration and separation from their families; studies have shown that these programs disproportionately target Latinos and men.¹ While 77% of the undocumented population is Latino, 93% of those arrested through Secure Communities are also Latino. Additionally, while only 57% of the undocumented population is male, 93% of those arrested through Secure Communities are male. Even though the federal government claims that its own directives clarify that these programs are designed to only be used in the identification of individuals that pose a threat to public safety, this guidance does not seem to deter law enforcement from stopping, questioning and detaining Latinos under the suspicion that they are undocumented immigrants. Advocates have long argued that these programs blur the line between immigration enforcement agents and local police have significantly diminished public safety. The unintended consequence of a program that enlists police to carry out immigration enforcement is that immigrant communities are isolated from society and are afraid of an agency that is supposed to protect them.

Most recently, a study released by the University of Chicago confirms the veracity of this argument.² According to the report, Latino perception of law enforcement after the entanglement with immigration authorities has significantly increased the fear that Latinos have of police.³ Furthermore, Latinos also reported feeling isolated and withdrawn from their communities for fear of being separated from their families.⁴ This fear is not unfounded, a report released by the Earl Warrant Institute on Race, Ethnicity and Diversity found that immediately after the federal immigration program Criminal Alien Program went into effect in Irving, Texas, arrests of Hispanics over minor offenses—most of them minor traffic violations—rose radically.⁵ We also previously reported that the DOJ found that when the Maricopa County Sheriff's Office in the state of Arizona entered into a 287g agreement, the office engaged in the practice of racial profiling. This past May, a federal judge ruled that the Sheriff in charge of this office had violated the constitutional rights of Latinos by targeting them during raids and traffic stops.⁶ The federal judge ruled that the 800 deputies under his command were following policies and plans instituted

¹ http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

² http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf

³ More than 4 in 10 Latinos are less likely to report crimes and 45% said that they are less likely to volunteer information about crimes.

⁴ 37% of Latinos surveyed said that they are afraid to leave their homes and 42% reported that they feel more isolated from their communities.

⁵ http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf

⁶ http://www.nytimes.com/2013/05/25/us/federal-judge-finds-violations-of-rights-by-sheriff-joe-arpaiio.html?_r=0

by the sheriff to consider race in making law enforcement decisions.⁷ The deportation dragnet that has resulted from these programs is indiscriminate because a screening of the individual will take place whether or not the arrest was legitimate. For example, in a recent case, a New Haven, Connecticut man was out getting lunch on his break when he was racially profiled by the police.⁸ They were looking for a short brown man that had attempted to steal a bicycle earlier in the day and arrested him for the offense. He spent four months in jail before seeing a judge, who later dismissed charges for lack of evidence. His innocence did not matter to the judicial marshals who detained him while immigration authorities took over custody and sent him to jail. The impact of his detention was not only felt by him, but was also devastating to his family for whom he provides. His sister, who has been his fearless advocate, was emotionally distraught because she had to explain to his two nephews every day that she did not know when they would see him again. His case is not isolated and it has created a culture of immense fear within the community. Our immigrant population lives in constant fear that today might be the day that they never see their family again.

All of these findings have created a movement to stop these programs that have not only contributed to the exacerbation of racial profiling in our communities, but that have also created a culture of fear, mistrust, and isolation. We reported that within the state of Connecticut, our organization along with others demanded that the state government not honor immigration detainers. As a result of public pressure and a recognition of the negative impact of the program, the state government responded by issuing a policy within the state Department of Corrections limiting ICE requests. Nevertheless, this policy did not apply to all law enforcement and people were still being held by judicial marshals and local law enforcement. When part of Connecticut's law enforcement failed to implement similar policies, we introduced legislation to remedy this loophole and we called it the Connecticut Trust Act. The bill aimed to limit the negative impact of these programs in our state by setting a cohesive standard for all law enforcement that outlined the very few instances in which an individual could be held under an ICE detainer. Under the Trust Act, unless an individual committed a felony or had an order of deportation, he or she should not be held in custody. Law enforcement from various cities testified in favor of the bill arguing that the bridges that had been built between the police and the immigrant community had been torn down because of the fear that plagued the community. Witnesses and victims of crime were not calling the police because the fear of being detained and separated from their families indefinitely was worse than the violence they had endured.⁹ The Trust Act passed unanimously in one legislative session with bipartisan support, rejecting the excessively punitive and aggressive approach that the federal government has taken in what should be federal immigration policy that is just and humane.

Connecticut is not alone in recognizing that the programs violate human rights. The District of Columbia, Cook County, Illinois, Newark, New Jersey, New Orleans, LA and New York City have also enacted similar policies and legislation after documenting the unjust effects of the programs. The States of California and Massachusetts are also working to pass their versions of the Trust Act. Despite the pushback that the government is facing from state legislatures, advocates and law enforcement, the Department of Homeland Security continues the proliferation of ACCESS programs and their enforcement. Secure Communities has now been implemented in every jurisdiction of the United States and despite all findings DHS continues to enforce 287(G) agreements with 19 states and localities. Furthermore, while states continue to reject this approach to immigration policy, Congress is currently

⁷ There are many more examples of this behavior across the country. See The Leadership Conference on Civil and Human Rights, *Restoring a National Consensus: The Need to End Racial Profiling in America*, Pgs. 15-20, http://www.civilrights.org/publications/reports/racial-profiling2011/racial_profiling2011.pdf

⁸ http://www.newhavenindependent.org/index.php/archives/entry/despite_governors_efforts_ice_snares_immigrant/

⁹ "Call for help leads to possible deportation for Hyatsville mother" <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/01/AR2010110103073.html> ; "Domestic violence victims calls 911 and is nearly deported" http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=8128621;

debating immigration reform at the federal level. The House of Representatives introduced a series of bills that run completely counter to the will of the American people, which recognizes that we need to reform our punitive immigration system in a fair and humane way. Congress introduced the Safe Act which gives state and local government unchecked power to enforce immigration laws, including the detention of individuals, with no safe-guards against human rights violations and without federal oversight.¹⁰ The Act actually encourages what advocates have been fighting for years by creating monetary incentives for law enforcement agencies that utilize frequent enforcement. The Safe Act recently passed the House Judiciary Committee, further encouraging xenophobia, bigotry and widespread racial profiling in our country.

II. Relevant Question in List of Issues

Our issue is the non-discrimination and equal rights of men and women according to arts. 2, para.1; 3; and 26 of the ICCPR. Our issue is specifically addressed by question number 5 of the Human Rights Committee's list of issues in relation to the fourth periodic report of the United States of America. Specifically, the Human Rights Committee requested clarification regarding whether plans are foreseen to review all relevant immigration enforcement programs, including the Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security – Criminal Alien Program, the Secure Communities program, and 287(g) agreements, to determine whether they result in racial profiling.

III. U.S. Government Response

The U.S. government addressed the above under Issue number 5 within its response. It stated:

Within DHS, law enforcement agencies such as U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are subject to strict rules and to investigations, where warranted, regarding incidents of assaults, harassment, threats, or profiling involving employees. CBP and Border Patrol Agents receive regular training in this area. DHS has also created trainings designed primarily for use by front-line state and local law enforcement agency personnel that directly address the risk of biased policing and how law enforcement officers and agencies can avoid illegal targeting of individuals based on race or ethnicity,
http://www.ice.gov/secure_communities/crcl.htm.

Under Article 2 (1) of ICCPR, the U.S. government has an obligation to ensure that individuals are not distinguished by race, color, sex, language, political or other opinion, national or social origin, property, birth or status. Although the U.S. government has referenced trainings and information available to state and local law enforcement in relation to racial profiling and immigration enforcement policies, there is no identified plan of action for addressing the problematic culture of profiling based on race, language or national and social origin as it relates to Secure Communities, 287g or other enforcement policies.

Further, individuals detained under these problematic policies are without equal protection under the law. The violation of their human rights under enforcement policies are without consideration within individual immigration proceedings, violating Article 26 of ICCPR.

¹⁰ The Act would also expand the 287(g) program, prohibit states from passing legislation such as the Trust Act, authorizes the indefinite detention of people who have been ordered removed, and creates a much more racially-driven interior enforcement system.
<http://www.nilc.org/safeactsummary.html>

IV. Recommended Questions

1. Will the U.S. Government follow the sentiment of its people and state leaders and abolish racially-driven immigration policies?
2. Beyond recognizing the detailed flaws of current immigration detention policies, how does the government propose to limit local and state level law enforcement's entanglement with the immigration system and the inconsistent implementation of detention and deportation policies?
3. The separation of families under policies such as S-Comm and CAP undermine the value of the family unit and place children of undocumented parents within foster care systems. How does this benefit economic and social growth of the country?

V. Suggested Recommendations

1. Request that President Obama issue an executive order suspending all ACCESS programs that exhibit documented evidence of human rights violations.
2. Disallow federal immigration reform bill legislation that will eliminate the power of individual states to exercise restrictions on federal immigration policies identified as detrimental to the social and economic stability of their communities. This includes the proposed SAFE Act.
3. Pass the End Racial Profiling Act.
4. Establish guidelines and penalties for law enforcement entities, and state and local government that are evidenced to have engaged in profiling of immigrant populations for the sake of detainment.