

September 11, 2011

BY FEDEX AND FAX

Department of Justice
Attn: Office of Inspector General
Cynthia A. Schnedar, Acting Inspector General
950 Pennsylvania Avenue, N.W., Suite 4706
Washington, DC 20530-0001
FAX: 202-514-4001

Re: Request for Investigation of FBI's Next Generation Identification Initiative and the Secure Communities Program

Dear Acting Inspector General Schnedar,

We, the undersigned organizations, write to call for an immediate investigation of the FBI's Next Generation Identification (NGI) initiative, including the "Secure Communities" program. NGI is an unprecedented, billion-dollar initiative to create the world's largest biometric database. To date, it has been developed with minimal oversight or public scrutiny. But, as demonstrated by the highly controversial Secure Communities program—itsself a part of NGI—the initiative raises serious privacy and civil rights concerns and is likely to have significant unanticipated consequences. A DOJ OIG investigation is urgently needed to provide clarity and transparency regarding NGI and its potential implications.

We send this letter on the tenth anniversary of the tragic September 11th attacks because NGI is a prime example of the massive surveillance structure and the erosion of civil liberties that have become part of the legacy of September 11th. We seek to honor the memory of those who suffered and lost their lives as a result of the September 11th attacks by defending our civil liberties, and preserving them for the next generation.

Although purportedly designed to target terrorists, our new surveillance structures have, too often, been used instead to gather mass quantities of information about ordinary citizens and immigrant communities, with a particular impact on South Asian, Arab and Muslim communities. Moreover, as a result of increased information sharing between agencies, information that was collected for one purpose can end up being used for entirely different purposes—often with unanticipated and undesired consequences.

Recent experience with the Secure Communities program exemplifies the risks of NGI and our new surveillance structure. Through Secure Communities, the FBI takes fingerprints that were sent by local law enforcement agencies to the FBI for criminal background checks and sends them to the Department of Homeland Security (DHS), which uses the prints for immigration enforcement efforts. The program has become the subject of intense controversy. The states of Illinois, New York, and Massachusetts,

along with numerous cities and counties across the country, have demanded to opt out due to concerns that the program undermines public safety, usurps state resources, and may encourage racial profiling and pre-textual arrests.¹ One of the program's most serious unintended consequence has been to jeopardize decades of community policing efforts by promoting distrust between police and immigrant communities.²

Documents obtained through Freedom of Information Act litigation by the National Day Laborer Organizing Network, the Center for Constitutional Rights, and the Cardozo Immigration Justice Clinic show that the FBI views Secure Communities as a key first step in the NGI initiative.³ The documents also show that the FBI may have played a role in misrepresenting key aspects of Secure Communities to state and local partners.⁴ The Department of Homeland Security Office of Inspector General is currently investigating Immigration and Customs Enforcement's (ICE) role in Secure Communities, including the extent to which ICE misrepresented the program to state and local partners.⁵ But the FBI's role in this controversy has yet to be investigated. **We ask that the Department of Justice OIG immediately begin an investigation into the FBI's role in Secure Communities.**

We also request that the OIG investigate the extent to which the problems associated with the Secure Communities program are common to other aspects of the NGI initiative. In particular, we request that OIG look into the following issues:

Miscommunication with state and local partners: The Department of Homeland Security OIG is currently reviewing alleged misrepresentations made by ICE to congress members and state and local officials about the Secure Communities program. As described above, documents obtained through FOIA litigation suggest that the FBI may have played a role in this misrepresentation. We request that DOJ OIG investigate whether the FBI has been clear and open in its communications with state and local officials about NGI overall. In particular, we request that the OIG identify the various situations in which, as a result of NGI, the FBI is using state-provided information to run searches or perform other functions that the states have neither requested nor authorized

¹ See Letter from Illinois Governor Pat Quinn to Secure Communities Acting Assistant Director Marc Rapp, May 4, 2011; Press Release, Governor Cuomo Suspends Participation in Federal Secure Communities Program, Albany, June 1, 2011; Letter from Mary Elizabeth Heffernan, Mass. Office of Public Safety and Security, to Secure Communities Acting Assistant Director Marc Rapp, June 3, 2011. For a list of local resolutions opposing Secure Communities, see <http://altopolimigra.com/s-comm-shadow-report/#resolution>.

² See Restoring Community: A National Community Advisory Report on ICE's Failed 'Secure Communities' Program, 4-10, available at <http://altopolimigra.com/s-comm-shadow-report/>.

³ See FBI-SC 2246-61 at 2256-58.

⁴ See FBI-SC-1312-1313 (showing that the FBI decided in June 2009—over one year before DHS publicly described Secure Communities as mandatory—to change Secure Communities from a voluntary to a mandatory program); FBI-SC-1313 (apparently adopting misleading definition of opt out later adopted by ICE officials, under which “the state can opt out of receiving the response” but must still share all its information with DHS).

⁵ See Lee Romney, *U.S. to investigate Secure Communities deportation program*, LOS ANGELES TIMES, May 18, 2011.

and investigate whether the FBI has communicated openly with the states about these situations.

Privacy: The creation of the world's largest biometrics database raises serious privacy concerns. NGI is certain to attract hackers and others bent on harnessing data for their own purposes. And with 900,000 users able to access the database, the potential for misuse of data is considerable.⁶ We request that OIG investigate and evaluate the security measures in place to protect NGI data.

Public Safety: Law enforcement officials across the country have raised concerns that Secure Communities interferes with public safety by distracting police from their primary crime-fighting mission.⁷ This indicates that there may be a risk that NGI, which expands upon Secure Communities, will present an even greater distraction. We request that OIG investigate the extent to which the overall NGI initiative serves as a distraction from, rather than an enhancement to, core law enforcement functions.

Accuracy: As multiple databases are made interoperable, it becomes inevitable that errors within one database may be replicated in others. Previous reports from your office have found that at least some of the databases involved in NGI are plagued with errors.⁸ DHS itself admits that its "databases cannot be relied upon to accurately determine immigration status because immigration status is dynamic" and database entries are often outdated.⁹ And the FBI has exempted many of its databases from the Privacy Act's accuracy requirements, largely because of the difficulty of maintaining accurate law enforcement data.¹⁰ While accuracy is no doubt difficult, it is nonetheless essential that a massive database that will be depended on by law enforcement officers throughout the country be reliable. Accordingly, an up-to-date assessment by this Office of the accuracy of databases involved in the NGI initiative is urgently needed.

Financial Burden: Much of the technology employed by NGI is untested. Upgrades needed to access NGI technologies have, in at least some cases, presented a significant financial burden for states and localities.¹¹ We ask that your office calculate the financial burden imposed by the new technologies used by NGI and assess whether the expense is justified by the anticipated benefit.

⁶ See Ellen Nakashima, *FBI Prepares Vast Database Of Biometrics*, WASHINGTON POST, Dec. 22, 2007.

⁷ See Restoring Community: A National Community Advisory Report on ICE's Failed 'Secure Communities' Program, 4-10, available at <http://altopolimigra.com/s-comm-shadow-report/>.

⁸ See, e.g., DOJ OIG, Follow-up Review of the Status of IDENT/IAFIS Integration, Report # 1-2005-001, at 41 (Dec. 2004).

⁹ *Id.*

¹⁰ See, e.g., 68 Fed. Reg. 14140 (exempting the National Crime Information Center from the Privacy Act's accuracy requirement). Such exemptions seriously damage the intent of the Privacy Act. Public oversight and accountability, as well as protections for those injured by misuse of personal information, are undermined when agencies self-exempt from key obligations under this law.

¹¹ See Nancy Lofholm, *Program to find criminal illegal immigrants hampered in Colo. by pricey equipment*, THE DENVER POST, July 6, 2011.

Oversight and accountability: As the Secure Communities controversy shows, it is essential that the FBI get input from affected parties about NGI as early as possible. Without that input, the consequences of NGI are not likely to be fully examined or understood until it is too late. We request that OIG investigate the adequacy of existing processes to provide oversight and accountability for NGI, including the extent to which state and local partners, advocacy organizations, and affected individuals are included in decision-making.

...

We hope that you will begin an investigation into these urgent issues as quickly as possible. The FOIA documents referenced in this letter are provided in an attached appendix.

Thank you for your time and consideration.

Sincerely,

Advocacy for Principled Action in Government
American Civil Liberties Union
Asian American Legal Defense and Education Fund
Asian Law Caucus
Bill of Rights Defense Committee
Black Alliance for Just Immigration
CAAAY Organizing Asian Communities
Cardozo Immigration Justice Clinic
Casa Esperanza
Causa Justa::Just Cause
Center for Constitutional Rights
Center for Media and Democracy
Center for Torture Accountability
Central Florida Jobs with Justice
Coalición de Derechos Humanos
Community United Against Violence
Congress of Day Laborers
Defending Dissent Foundation
Desis Rising Up & Moving
DreamActivist California
Electronic Frontier Foundation
Electronic Privacy Information Center
Georgia Latino Alliance for Human Rights
Grassroots Leadership
Hayward Day Labor Center
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defense Project
Immigrant Legal Resource Center

Justice for Families
Justice Strategies
La Raza Centro Legal
Latino Union of Chicago
Lawrence Action Network for Diversity
Migrant Inner-city and Rural Aid
Minnesota Immigrant Rights Action Committee
Montgomery County Civil Rights Coalition
Mujeres Unidas y Activas
Multiracial Activist
Muslim Legal Fund of America
National Asian Pacific American Women's Forum
National Day Laborer Organizing Network
National Guestworker Alliance
National Immigrant Youth Alliance
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Latina Institute for Reproductive Health
New Jersey Civil Rights Defense Committee
New Orleans Workers' Center for Racial Justice
No More Deaths
North Carolina Immigrant Rights Project
Northwest Immigrant Rights Project
One Michigan
P.A.S.O.- West Suburban Action Project
Pakistan American Public Affairs Committee
Pakistan Solidarity Network
Pax Christi USA
People United for Economic Justice Building Leadership Through Organizing
(PUEBLO)
Privacy Activism
Pueblo Sin Fronteras
Respect-Respeto
Rutherford Institute
San Gabriel Valley Dream Team
Sanctuary Coalition of NYC
South Asian Americans Leading Together
Tenants and Workers United
Unitarian Universalist Association
Voces de la Frontera
WeCount!
Workers Defense Project
Workplace Project