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**Congress of the United States**  
**House of Representatives**

Washington, DC 20515

**ZOE LOFGREN**

16TH DISTRICT, CALIFORNIA

635 NORTH FIRST STREET  
SUITE B  
SAN JOSE, CA 95112  
(408) 271-8700

1401 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3072

[WWW.HOUSE.GOV/LOFGREN](http://WWW.HOUSE.GOV/LOFGREN)

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April 28, 2011

Charles K. Edwards  
Acting Inspector General  
U.S. Department of Homeland Security  
245 Murray Drive, SW, Bldg. 410  
Washington, DC 20528

Timothy Moynihan  
Assistant Director  
Office of Professional Responsibility  
Immigration and Customs Enforcement  
P.O. Box 144755  
Pennsylvania Ave. NW  
Washington, DC 20044

Dear Inspector General Edwards and Assistant Director Moynihan:

In recent months, it appears that Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) personnel and contract staff may have made false and misleading statements to local governments, the public, and Members of Congress in connection with the deployment of the Secure Communities program. In response to a Freedom of Information Act request, ICE and the Federal Bureau of Investigations (FBI) have released many thousands of pages of documents, including internal e-mails and memoranda. Having conducted with my legal staff an initial review of the documents that have been made public, I believe that some of these false and misleading statements may have been made intentionally, while others were made recklessly, knowing that the statements were ambiguous and likely to create confusion. I now write to request that your offices conduct thorough investigations into any misconduct, including possible violations of criminal law, revealed by the documents. As the identities of many persons were redacted from publicly available documents and some documents were withheld entirely or have yet to be made public, it is important that you review the conduct of all relevant persons in order to determine who bears responsibility for any misconduct that you find.

The statements in question deal primarily with the issue of whether Secure Communities is a mandatory program that all states and localities must participate in or whether localities may be permitted to “opt out” of the program out of a concern that participation will present a barrier to community policing efforts and will make it more difficult to implement a law enforcement strategy that meets public safety needs. Under the Secure Communities program, fingerprints collected by local law enforcement

agencies upon booking that are routinely submitted to State Identification Bureaus (SIBs) in order to be checked by the FBI Criminal Justice Information Services Division (CJIS) Integrated Automated Fingerprint Identification System (IAFIS) are now checked against immigration databases and provided to ICE for purposes of immigration enforcement. Some localities have asked that fingerprints submitted to their SIBs be checked against criminal, but not immigration, databases, and Members of Congress and their offices have sent letters, asked questions for the record, and held briefings on that topic.

According to a recent statement by a DHS official, "Secure Communities is not voluntary and never has been." (Lee Romney, *Congresswoman Calls for Investigation of Enforcement Program That Screens for Illegal Immigrants in Jails*, LOS ANGELES TIMES, April 22, 2011). Unfortunately, this statement cannot be reconciled with many of the public and private statements made by DHS and ICE personnel over the past two years. For instance, more than two years ago, ICE responded to a written question for the record posed by then-Chairman David Price that "ICE does not require any entity to participate in the information sharing technology at the state or local level."<sup>1</sup> Similarly, in an August 26, 2009, e-mail exchange specifically on the topic of whether Secure Communities is mandatory or voluntary, one ICE official wrote that Secure Communities "will remain voluntary at both the State and Local level. . . . Until such time as localities begin to push back on participation, we will continue with this current line of thinking."<sup>2</sup> A memorandum prepared in 2009 for ICE Director John Morton on the topic of voluntariness acknowledges that "[t]o date, Secure Communities has stated in various arenas, including Congress, that state and local participation in IDENT/IAFIS Interoperability is voluntary."<sup>3</sup>

In order to clarify significant confusion about the program, I wrote to DHS Secretary Janet Napolitano on July 27, 2010, specifically asking "how local law enforcement agencies may opt out of Secure Communities by having the fingerprints they collect and submit to the SIBs checked against criminal, but not immigration, databases." In her response, Secretary Napolitano described what steps must be taken by a locality "that does not wish to participate in the Secure Communities deployment plan" and explained that "[i]f a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens." This response clearly indicated to me that localities were permitted to opt out of the program in the manner described in my original letter. And according to one recently released e-mail by an FBI/CJIS employee, my conclusion should have come as a surprise to no one; commenting on an earlier, but nearly identical, draft of the Secretary's response to my letter, the FBI employee wrote: "reading the response alone would lead one to believe that a site can elect to never participate should they wish (at least it reads that way on my small [Blackberry] screen)."<sup>4</sup>

One issue at the heart of any deceptive statements by DHS or ICE personnel appears to be ICE's decision to adopt a counterintuitive and misleading definition of the term "opt out" to refer only to the ability of localities to avoid receiving the results of immigration checks conducted on fingerprints submitted to the SIBs, but not the use of

fingerprints to check immigration databases. According to one e-mail exchange, this decision was approved by unnamed ICE front office personnel orally, rather than in writing, in order to give officials “plausible deniability.”<sup>5</sup>

It is unacceptable for government officials to essentially lie to local governments, Members of Congress, and the public. Unfortunately, my review of the e-mails that have been made public suggests that some government personnel have been less than completely honest about this program over the last two years. It is critically important that you thoroughly investigate this matter and that any misconduct result in real consequences. I am available if you have any questions or would like to discuss this matter in greater detail. Thank you for your prompt attention to this matter.

Sincerely,



Zoe Lofgren  
Ranking Member

Subcommittee on Immigration Policy and Enforcement

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<sup>1</sup> ICE FOIA 10-2674.001832.

<sup>2</sup> ICE FOIA 10-2674.001831.

<sup>3</sup> ICE FOIA 10-2674.0007299.

<sup>4</sup> FBI-SC-1719.

<sup>5</sup> ICE FOIA 10-2674.0007174.