

November 17, 2011

The Honorable Patrick J. Leahy  
Chairman  
Judiciary Committee  
United States Senate  
224 DSOB  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Judiciary Committee  
United States Senate  
224 DSOB  
Washington, DC 20510

The Honorable Joseph I. Lieberman  
Chairman  
Homeland Security Committee  
United States Senate  
340 DSOB  
Washington, DC 20510

The Honorable Susan Collins  
Ranking Member  
Homeland Security Committee  
United States Senate  
340 DSOB  
Washington, DC 20510

The Honorable Lamar Smith  
Chairman  
Judiciary Committee  
U.S. House of Representatives  
2138 RHOB  
Washington, DC 20515

The Honorable John Conyers, Jr.  
Ranking Member  
Judiciary Committee  
U.S. House of Representatives  
2138 RHOB  
Washington, DC 20515

The Honorable Peter T. King  
Chairman  
Homeland Security Committee  
U.S. House of Representatives  
H2-176 FHOB  
Washington, DC 20515

The Honorable Blake Farenthold  
Ranking Member  
Homeland Security Committee  
U.S. House of Representatives  
H2-176 FHOB  
Washington, DC 20515

Dear Mr. Chairman and Ranking Member:

The concept of prosecutorial discretion in immigration enforcement, as in all law enforcement, is nothing new, but recent efforts to improve its use within the Department of Homeland Security have met with unwarranted criticism. As the members of the Task Force on Secure Communities, a bipartisan advisory committee of the Homeland Security Advisory Committee (HSAC), we unanimously express our support for these recent DHS initiatives. We strongly reject arguments that the use of prosecutorial discretion somehow undermines immigration laws enacted by Congress. Instead, we believe that the appropriate use of discretion can strengthen law enforcement, maximize the efficient use of finite resources, and allow DHS to concentrate on removing serious criminals and others who are and should be priorities for removal.

The Task Force, which was created by Secretary Janet Napolitano in June 2011 to review and recommend improvements to the Secure Communities program, represented a range of opinions and professions, including many law enforcement officials. Our report (available online at [www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf](http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf)), submitted to HSAC on September 22, 2011, contained a critique of Secure Communities and several suggestions meant to assure that the program would operate in a way that achieves its stated goals and is consistent with community policing and with the best practices of state and local law enforcement agencies.

One of our most critical recommendations for improving Secure Communities involved the necessity of exercising prosecutorial discretion. We urged the Department to continue its efforts to use prosecutorial discretion as an important law enforcement tool. In fact, we included specific suggestions meant to help ensure consistent and systematic exercise of prosecutorial discretion by ICE personnel in all its enforcement programs, including Secure Communities. We note that these recommendations were also endorsed by members of HSAC, who stated that the use of prosecutorial discretion is “the heart” of the matter when seeking to improve and reform Secure Communities.

Finally, we note that there is nothing unusual in our recommendation or in DHS’s current efforts to improve its use of prosecutorial discretion. Such discretion is a normal and essential part of the everyday activities of law enforcement agencies and prosecutors’ offices at the local, state, and federal levels across the nation. Exercising prosecutorial discretion, case by case, in a systematic and professional way, does not amount to administrative amnesty. Instead it helps to make sure that resources are focused in ways that best promote the overall enforcement mission.

Prosecutorial discretion is a critical tool enabling DHS to implement the law in a manner that will achieve the comprehensive objectives Congress has set in our immigration laws. As such, we urge members of Congress to reject limitations on the agency’s ability to prioritize through the exercise of discretion. Instead, we urge you to support DHS’s current efforts to instill within its law enforcement personnel the discretionary principles necessary to maintain a working and effective immigration enforcement system.

Sincerely,

**Chuck Wexler** (Chair)

Executive Director, Police Executive Research Forum

**Bo Cooper**

Partner, Berry Appleman & Leiden, L.L.P.

**Adrian Garcia**

Sheriff, Harris County, Texas

**Douglas Gillespie**

Sheriff, Las Vegas Metropolitan Police Department

**Robert Graves**

Executive Director, The Chicago Bar Foundation

**Benjamin Johnson**

Executive Director, American Immigration Council

**Andrew Lauland**

Homeland Security Advisor to Gov. Martin O'Malley of Maryland

**Laura Lichter**

Partner, Lichter & Associates, P.C.

**David A. Martin**

Professor of Law, University of Virginia

**Charles Ramsey**

Commissioner of Police, Philadelphia

**Lupe Valdez**

Sheriff, Dallas County, Texas

**Roberto Villaseñor**

Chief of Police, Tucson, Arizona

**Wendy Wayne**

Director, Immigration Impact Unit, Committee for Public  
Counsel Services

**Sister Rosemary Welsh**

Executive Director, Casa de Misericordia and  
Director, Mercy Ministries Outreach

Cc: The Hon. Harry Reid, Majority Leader, United States Senate  
The Hon. Mitch McConnell, Minority Leader, United States Senate  
The Hon. John Boehner, Speaker of the House  
The Hon. Nancy Pelosi, Democratic Leader