

Microsoft Outlook

From: (b)(6),(b)(7)(C) (CTR) (b)(6),(b)(7)(C)
Sent: Friday, October 08, 2010 12:18 PM
To: (b)(6),(b)(7)(C)
Subject: FW: Notes from HJC

Attachments: HJCnotes.docx



HJCnotes.docx (17 KB)

From most recent mtg (b)(6),(b)(7)(C)/House Judiciary.

-----Original Message-----

From: Greenberg, Randi L
Sent: Thursday, October 07, 2010 5:24 PM
To: (b)(6),(b)(7)(C); (b)(6),(b)(7)(C); (b)(6),(b)(7)(C) (CTR)
Cc: (b)(6),(b)(7)(C) C)
Subject: Notes from HJC

For your information and records.

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(Apologies for any typos as I am sending this from my BlackBerry)

10/10 Meeting with House Judiciary Committee

ICE – Kate Mills - Office of Congressional Relations, Dave Venturella - SC, Marc Rapp – SC, Randi Greenberg – SC

House Judiciary Committee – Ur Jaddou, Traci Hong, Tom Jawetz

NOTES:

UJ – We've met and made inquiries over the past several months about SC and a jurisdiction's ability to opt-out. Out of the blue there is an article in the Washington Post today on this very topic and "it really upsets us". For "months we've been told there is a process" to opt-out, the S1 letter to Lofgren implies there is a process to opt (we'll talk to DHS Office of Legislative Affairs about this). "Is there really an opt-out process?" If you really know, tell us because we'll meet with David Price and the Chairwoman to authorize this program or change the way it works.

DV – ok, tell me how you think it works so I can ensure we're working from the same page

UJ – we think it's a county by county approach to sign up. We thought opt-out meant fingerprints would not be run against the ICE database automatically. Santa Clara has always worked with ICE but on their terms, forwarding those they wanted ICE to take action on, and not with automated checks.

DV – got it. That's where we need to be clearer. ICE is not asking for those fingerprints, they are not coming to ICE. They are being checked against IAFIS and then the DHS biometric database. Interoperability is between IAFIS and IDENT. The first intention of Interoperability is that DHS entities could access information in IAFIS and vice versa. Interoperability makes available to only LE entities, the information in those databases. What LE agencies can opt-out of is receiving the second message back – the immigration response that SC now provides access to

TJ – what is the point of the MOA?

DV- MOA was intended to outline the agency's priorities and the role of the SIB. It sets expectations on both sides and memorializes the roles and responsibilities of ICE and the SIB. The MOA describes the process and that we're not asking local jurisdictions to provide fingerprints to ICE. Rather states and locals LE operations don't change and ICE receives match information generated from FP submissions to IAFIS and run through Interoperability

TJ – I understand that 34 states have signed the MOAs. So in the other states, is Interoperability occurring? Does ICE have access to those prints?

DV – In some states without MOAs, interoperability is up and running. The deployment plan allows ICE to build capacity. ICE has taken a measured approach with outreach and the MOA to ensure we have the resources in place to overcome current limitations.

TH – "can I ask a basic question?" What is the difference between states that have SC and states that don't?

DV – the difference is the state has to turn on access to receive the immigration response back. A main part of SC is to facilitate information-sharing. Now we can share information automatically as opposed to manually.

UJ – Do the localities know what you just explained?

DV – I think so. Law Enforcement understands it, it gets confusing outside of LE w/politicals and elected officials.

UJ – Well, the county counsel is confused and I'm wondering if it needs to be written down explicitly.

DV – it is, and it's clear. It's those that don't understand or use the systems that get confused. ICE is automating the response and is now more responsive to those that are being identified. Within the LE community, they get it. Outside the LE Community, it's less clear. We need to do a better job outside of the LE community with the messaging.

UJ – I'm just really surprised. We're steeped in this and we're just getting understanding the issue.

DV – I think the Santa Clara letter clears up confusion. We'll continue to work to message better.

UJ – perhaps our anger is misplaced and it should be placed on interoperability. Maybe we need to re-shape our argument and our path forward?

TJ – it's not correct that 100% of LE agencies wants or agrees with this initiative. We all understand the majority will.

UJ – DOJ spoke about a "switch" that gets turned on.

TJ- Activation is that we will turn on or off a switch. When you read S1's response to Lofgren it certainly implies the promise of "we will turn off that switch".

UJ – that's what DOJ told us – it's technically possible to turn off the switch

TJ – if all SC is, is the response back, then we're confused

DV – adjusting the activation date is LE and jurisdictions requesting more time to validate ORI's to receive information back. San Francisco law enforcement is the only LE entity who is objecting. Santa Clara and Arlington Boards have objected, but not the LE agencies.

MJR – in those agencies that don't want it. We're eager to meet and discuss, but they won't accept the meetings.

UJ – NGI is Next Generation Identification. Can you tell us more about it?

DV – it's a suite of options for LE to pick and choose what information they receive.

UJ – it seems different from what they explained to us

DV – CJIS does control what switch is on or off. In the past FPs would get submitted for a criminal check only. Now, with interoperability, both db's are checked. That's part of turning it on or off.

UJ – so if we want counties to get out of information sharing at the federal level, we should place our energy on interoperability?

DV – that's what we'd like to meet with the communities about – to discuss what is being shared at what level (i.e. Federal information sharing between IDENT and IAFIS) and what parts can technically be turned off – i.e. receiving the immigration response back

TH – Fingerprints are sent to FBI CJIS and we're all in favor of continuing the criminal history check but not the immigration check. Technically, can that be done?

DV – I don't know. ICE wants this information as it enables us to do our jobs better.

TH – Likewise, local governments don't want this, and we're asking the Federal Government to respect local government's wishes.

DV – for SC it's not about asking for fingerprints from the locals – that information is already shared.

UJ – we'll need to clarify with DOJ about the technical possibility to turn off interoperability – DOJ and CJIS

UJ – forget about SC for a minute, can you talk about the SIB's role in this?

DV – the SIB's own the state's criminal history repository and FP system. They sign a user agreement with the FBI

MR – SIBs submit fingerprints to the FBI, documented through these user agreements.

TJ – we want to see what comes out of the conversations. It's as if we're talking past each other to believe that information is not being shared from the FBI to ICE.

UJ – the concern is still valid, the concern is misplaced. We should be angry about another program.

TH – was it us what wasn't clear? Or was it you?

MR – good questions. We answered the questions you asked. Perhaps without an understanding of what your understanding was.

TH – you stated that if someone called you, you'd be able to deactivate SC.

MR – I stated that I'd be happy to discuss the options of opting out of the piece ICE controls – receiving the second message. Additionally, I waited for a call all weekend after our last meeting. I received one call, called back and then never heard back again.

TH – were "we" not clear? I thought I was pretty clear that opt-out meant fingerprints would be checked against FBI CJIS and not ICE.

DV – it's not possible for local LE to opt-out of federal information-sharing.

TH – by far, this is the clearest we've understood it.

MR – part of the reason you met with DOJ was b/c the technical aspect of interoperability is theirs. The part we control is the immigration response that is made available through SC.

UJ – if you told us that, we wouldn't be here today. We need to think about what happens next. Perhaps write it down, and send it out. Engage with CJS appropriations and the crime folks to change interoperability and federal information sharing.

TJ – what's happening with DC?

DV – prints are still being shared with IAFIS but ORI's haven't been activated yet.

(something in my notes about mischaracterizing interoperability)

TJ – when you say the ORI hasn't been activated

DV – DC is unique b/c they are the SIB and the MPD. Together, we agreed not to automate the IAFIS to IDENT check

TJ – well, I was clarified for about 45 minutes, and now I'm completely confused again.

DV – we can access that information. ICE and CJIS have chosen not to automate that process in DC at this time.

TH – so activation can be based on a county by county basis

UJ – in California, most counties are activated but not all

DV – as I mentioned before, we took a risk-based approach to implementation in order to build our capacity

TJ – in Santa Clara, fingerprints are automatically submitted from IAFIS to IDENT

MR – automatically shared. Yes. For those not yet activated, ICE doesn't automatically get it.

TJ – interoperability is an operation that can be used, but not used by everyone. Federal government can say we want to work with law enforcement to respect their operations and policies.

DV – ICE, or any other LE agency can ask the FBI for that information.

UJ – we don't like it, and we want to change forcing law enforcement agencies to share prints.

MR – just out of curiosity, in your minds, who would it be up to? Sheriff and local LE? County officials? The mayor?

UJ – it would be up to whoever submits the initial fingerprint. In Santa Clara it would be the Sheriff whose operations are controlled by the County Board.

TH – it's an interesting federalism questions. It would be up to the elected leaders of the community to choose how they run the county. It completely depends on the city/county structure which may vary widely across or within states.

TJ – back to the issue at hand, we ask that ICE not access this information.

MR – “who” is asking.

TH – Congress writes the laws, and if we don't like it and get enough votes, it changes. We're asking for the same thing to happen at the local level. Local government gets enough votes to have the power to change operations at the local level.

TJ – left for meeting on interior enforcement with CBP

UJ – moving onto the data for a bit. DO you wonder why Maricopa County has some many more submissions than LA? Do you think they are arresting so many more people in the hopes that the immigration check may lead to deportation?

DV – no there is no incentive for LE enforcement to do anything other than enforce the laws, promote public safety and fight crime within their communities. Additionally, b/c ICE can only take action on known immigration offenders, we don't know about everyone b/c they aren't in our system.

TH – does law enforcement know that?

MR – they get it. They understand the limitations of the current system.

TH – it doesn't stop the scenario where check points are set up outside of church services on Sunday mornings to run prints for those not using a turn signal, broken tail lights, etc.

MR – LE officer's job is to prevent crime.

KM – also, don't forget about ICE's prioritized approach to immigration enforcement. The low level offender with no criminal past is not a priority for the agency.

UJ – non-criminal #'s are going up and maybe that's b/c you have enough resources and that's our fault – one we'll work to correct.

DV – explains data. Explained the types of “non-criminals” identified. If there is no encounter with ICE/DHS or LE, no “match” will result and therefore no resulting immigration enforcement action will take place. April to July data – explains how we receive updated conviction records in our system that results in adjusted status from non-criminal to criminal, as we're cautious to not label anyone a “criminal” alien until a recorded conviction is determined.

TH – can ICE/SC track to see when charges are dropped?

MR – ICE is focused on the conviction – either current or prior when reporting stats

TH – do you track this through SC? The underlying criminal charge to ensure local LE isn't using SC as a way to round up aliens and arrest them and then drop charges in hopes of deporting them?

DV – we're working with CRCL to determine anomalies and how we might be better able to track that type of scenario.

TH – great! If ICE isn't tracking, what will they look at?

DV – they will help us to determine if it's possible to track this, or what else we should look to collect to be able to track this in the future. CRCL has identified an expert in this area through Rutgers University, I believe, to bring on board and begin researching this.

UJ – that's great news and we look forward to hearing about the results of that when available. The automation of interoperability is a huge issue, one we will continue to look into.