

November 30, 2011

The Honorable Elton Gallegly
Chair, Subcommittee on Immigration Policy and Enforcement
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515-0523

The Honorable Zoe Lofgren
Ranking Member, Subcommittee on Immigration Policy and Enforcement
U.S. House of Representatives
1401 Longworth House Office Building
Washington, DC 20515-0523

Dear Honorable Elton Gallegly and Honorable Zoe Lofgren:

As a coalition of organizations in New York State dedicated to working with survivors of domestic/intimate partner violence, family violence, human trafficking, sexual assault, other forms of gender-based, homophobic and transphobic violence, and discrimination against individuals living with HIV, we are extremely concerned about the effect that programs like Secure Communities (S-Comm) will have on the immigrant survivors we serve. The unprecedented entanglement of state and local criminal justice systems with federal deportation programs like S-Comm completely undermines community safety by making non-citizen survivors of violence and other crimes afraid of the very people entrusted to protect them. As home to one of the most diverse and vibrant immigrant communities in the country, New Yorkers still struggle every day with improving our community policing relationships and increasing access to justice and safety for all non-citizen survivors. S-Comm stands to erode the substantial progress that anti-violence advocates have made towards this end.

We are acutely aware of the devastating impact that S-Comm is having on immigrants throughout the country. We are disheartened when we hear that anti-immigrant legislation in states like Alabama, Georgia and Arizona has made immigrant survivors afraid of accessing even the most basic services. Because S-Comm clearly jeopardizes the possibility for meaningful progress in our communities' relationships with local law enforcement, we stand in solidarity with Governor Cuomo's courageous decision earlier this year to suspend New York State's participation in this fatally flawed program.

S-Comm works numerous injustices in the communities we serve and helps perpetuate rather than prevent violence. Sexual assault, domestic/intimate partner violence, human trafficking, homophobic and transphobic violence are already underreported crimes. S-Comm's adverse impact on reporting cannot be understated and underscores how this program pushes survivors deeper into the shadows and creates a culture of fear. In New York, as in many other states, dual

and mandatory arrests are quite common in cases where intimate partner violence exists. This is especially so for immigrant victims of violence who often live in linguistic, social and cultural isolation. Batterers often threaten immigrant survivors with arrest and deportation and are particularly adept at using the criminal justice system as a tool to reinforce their power and control. We also routinely hear reports of survivors who are not provided with interpretation when interfacing with law enforcement and who are improperly arrested as a result or are unable to report their victimization. S-Comm thereby adds teeth to a batterer's threat and places survivors at increased risk of further violence and deportation. Even if the criminal charges against survivors are eventually dismissed, S-Comm ensures that they face deportation, detention, and indefinite separation from their children, families, and communities.

This is highly problematic when batterers already routinely intimidate survivors by threatening to take their children away from them. Non-citizen survivors of violence with children face the very real threat of being separated from them especially when they are subjected to immigration detention. "Shattered Families," a recent report published by the Applied Research Center (ARC), highlights the numerous problems encountered by families when immigration enforcement and the child welfare system intersect.¹ Detained non-citizen parents whose batterers have initiated custody proceedings against them or whose children are in the custody of child protective services often face insurmountable barriers in family reunification as they neither have the ability to appear in court or comply with child protective service reunification plans. S-Comm will only exacerbate these concerns and even more children, citizens and non-citizens alike, will face forced separation from their parents.

We also still have substantial concerns regarding the disproportional negative impact S-Comm will have on non-citizen Lesbian, Gay, Bisexual, Transgender, Queer and HIV affected (LGBTQH) immigrants and survivors. According to a 2010 report published by the National Coalition of Anti-Violence Programs (NCAVP), there was a substantial increase in the severity of intimate partner violence in LGBTQH communities coupled with a marked decrease in the willingness of LGBTQH survivors to reach out to local law enforcement for assistance.² LGBTQH individuals still face enormous obstacles in obtaining competent assistance from local law enforcement and in seeking orders of protection now available to them through the 2008 New York Access to Family Court Bill.³ LGBTQH immigrants of color are at increased risk for negative encounters with local law enforcement in our state and elsewhere because of police profiling, selective enforcement, and discrimination. We have a long way to go in New York to improve access to justice and appropriate services for LGBTQH survivors and S-Comm impedes our ability to move forward with this important work.

In jurisdictions where S-Comm has already been implemented, all non-citizen survivors are faced with an increased risk of ending up with an U.S. Immigration and Customs Enforcement (ICE) detainer lodged against them and in deportation proceedings, sending the chilling message to survivors everywhere that reporting leads to deportation. S-Comm undermines survivors' safety by removing them from familial and community support networks that are so essential to

¹ Applied Research Center, *Shattered Families, The Perilous Intersection of Immigration Enforcement and the Child Welfare System, Executive Summary* (2011), available at <http://arc.org/shatteredfamilies>.

² National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence* (2010), available at <http://www.avp.org/documents/IPVReportfull-web.pdf>.

³ L.2008, c. 326, eff. Jul. 21, 2008; N.Y. Fam. Ct. § 812(1)(e).

their survival. We are concerned about the increasing prospect of funneling survivors into a broken detention system where they are vulnerable to harassment, sexual assault, lack of access to adequate medical care and other human rights violations which amplify the abuse they have already experienced. Many LGBTQH and other survivors of violence have fled to the United States due to gender-based and homophobic and transphobic violence in their home countries and the failure of their governments to meaningfully protect them.

Survivors of human trafficking are also at an increased risk for violence because of programs like S-Comm. New York State, especially New York City, is a destination for trafficked persons from all over the world who are forced into various labor sectors, such as restaurant, domestic and commercial sex work or prostitution. Trafficked persons are often unwilling and afraid to come forward. Because they are also unfamiliar with the U.S. legal system, they often do not self-identify as trafficking survivors and are even unaware that trafficking is a crime and a human rights violation. A trafficking survivor is more often than not arrested while a trafficker remains at large signaling the continued shortcomings of local law enforcement in meaningfully promoting efforts to identify and protect them. These arrests often trigger the mandatory detention of the trafficking survivor who then faces an uphill battle like other victims of violence in securing adequate legal representation and navigating through a deportation system that offers few options and remains fraught with due process violations.

We have serious concerns with the Administration and ICE's attempts at using prosecutorial discretion to triage victims who are in deportation proceedings. The reality is that immigrant crime survivors are highly unlikely to trust ICE, the agency charged with deporting them and their families. For this reason, ICE agents and staff are not appropriately positioned to make determinations about who is a victim and possibly qualifies for immigration relief. ICE's prosecutorial discretion memos in our experience have still not significantly shifted the agency's response here in New York, especially where survivors have convictions. We know that these are often the most victimized and marginalized survivors but that they are the least likely to benefit from the prosecutorial discretion memo. More importantly, non-citizen survivors' access to justice and safety in New York should not rest solely on ICE's prosecutorial discretion let alone in places where anti-immigrant and anti-LGBTQH bias is even more pervasive.

As anti-violence advocates, we understand the complex dynamics of unsafe relationships. To truly have secure communities, we need to ensure that immigrants including non-citizen survivors do not equate local law enforcement with deportation. Doing so helps us build rather than erode the trust that is so essential in encouraging survivors to come forward and end the cycle of abuse. Nothing short of a termination of S-Comm will protect the safety and integrity of our communities. The lives of the survivors we work with depend on it.

We thank the members of the House Judiciary Committee for its serious consideration of our communities' concerns.

Sincerely,

Barrier Free Living, Inc.

Breakthrough

Community Healthcare Network

Garden of Hope

Good Shepherd Services, Safe Homes Project

Empire Justice Center

Korean American Family Service Center

inMotion

Latino Commission on AIDS

LatinoJustice-PRLDEF, Latinas at Work Project (LAW)

The Legal Project

The Legal Aid Society

Long Island Immigrant Alliance

Long Island Teachers for Human Rights

Neighbors in Support of Immigrants

New York City Anti-Violence Project

Safe Horizon

Sakhi for South Asian Women

Sanctuary for Families

SEPA Mujer

Streetwise and Safe

Turning Point for Women and Families, New York

New York Anti-Trafficking Network

New York Asian Women's Center

Violence Intervention Program, Inc.

Voces Latinas