

Immigrant Key Omission In Memo To Destroy CIA Terror Tapes

Groups Criticize Initiative

BY IVAN MORENO
Associated Press Writer

DENVER — The federal government is rapidly expanding a program to identify illegal immigrants using fingerprints from arrests, drawing opposition from local authorities and advocates who argue the initiative amounts to an excessive dragnet.

The program has gotten less attention than Arizona's new immigration law, but it may end up having a bigger impact because of its potential to round up and deport so many immigrants nationwide.

The San Francisco sheriff wanted nothing to do with the program, and the City Council in Washington, D.C., blocked use of the fingerprint plan in the nation's capital. Colorado is the latest to debate the program, called Secure Communities, and immigrant groups have begun to speak up, telling the governor in a letter last week that the initiative will make crime victims reluctant to cooperate with police "due to fear of being drawn into the immigration regime."

Under the program, the fingerprints of everyone who is booked into jail for any crime are run against FBI criminal history records and Department of Homeland Security immigration records to determine who is in the country illegally and whether they've been arrested previously. Most jurisdictions are not included in the program, but Immigration and Customs Enforcement has been expanding the initiative.

Since 2007, 467 jurisdictions in 26 states have joined. ICE has said it plans to have it in every jail in the country by 2013. Secure Communities is currently being phased into the places where the government sees as having the greatest need for it based on population estimates of illegal immigrants and crime statistics.

Since everyone arrested would be screened, the program could easily deport more people than Arizona's new law, said Sunita Patel, an attorney who filed a lawsuit in New York against the federal government on behalf of a group worried about the program. Patel said that because illegal immigrants could be referred to ICE at the point of arrest, even before a conviction, the program can create an incentive for profiling and create a pipeline to deport more people.

"It has the potential to revolutionize immigration enforcement," said Patel.

Patel filed the lawsuit on behalf of the National Day Laborer Organizing Network, which is concerned the program could soon come to New York. The lawsuit seeks, among other things, statistical information about who has been deported as a result of the program and what they were arrested for.

Supporters of the program argue it is helping identify dangerous criminals that would otherwise go undetected. Since Oct. 27, 2008 through the end of May, almost 2.6 million people have been screened with Secure Communities. Of those, almost 35,000 were identified as illegal immigrants previously arrested or convicted for the most serious crimes, including murder and rape, ICE said Thursday. More than 205,000 who were identified as illegal immigrants had arrest records for less serious crimes.

In Ohio, Butler County Sheriff Rick Jones praised the program, which was implemented in his jurisdiction earlier this month.

BY MATT APUZZO AND ADAM GOLDMAN
Associated Press Writers

WASHINGTON — When the CIA sent word in 2005 to destroy scores of videos showing waterboarding and other harsh interrogation tactics, there was an unusual omission in the carefully worded memo: the names of two agency lawyers.

Once a CIA lawyer has weighed in on even a routine matter, officers rarely give an order without copying the lawyer in on the decision. It's standard procedure, a way for managers to cover themselves if a decision goes bad.

But when the CIA's top clandestine officer, Jose Rodriguez, sent a cable to the agency's secret prison in Thailand and told his station chief to destroy videotapes showing two terrorists being waterboarded, he left the lawyers off the memo.

The destruction of the tapes wiped away the most graphic evidence of the CIA's now-shuttered network of overseas prisons, where suspected terrorists were interrogated for information using some of the most aggressive tactics in U.S. history.

Critics of that George W. Bush-era program point to the tapes' destruction and say his administration was trying to cover its tracks.

The reality is not so simple. Interviews with current and former U.S. officials and others close to the investigation show that Rodriguez's order was at odds with years of directives from CIA lawyers and the White House. Rodriguez knew there would be political fallout for the decision, according to documents and interviews, so he sought a legal opinion in a way to gain needed legal cover to get the tapes destroyed — but not so much that anyone would stop him.

Leaving the lawyers he had consulted off his cabled order to destroy the tapes was so unusual that a top CIA official noted it in an internal e-mail just days later. The omission is now an important part of the Justice Department's 2 1/2-year investigation into whether destroying the tapes was a crime.

As that investigation appears to be nearing a conclusion, prosecutors have focused on a little-used section of the 2002 Sarbanes-Oxley law intended to prevent future Enron accounting scandals. The law makes it a crime to destroy documents, even if no court has said they must be kept and no investigators are looking for them.

Rodriguez, who wasn't disciplined for what some former officials told prosecutors amounted to insubordination, is frequently back at CIA headquarters as a contractor.

The Associated Press has compiled the most complete published account to date of how the tapes were destroyed, a narrative that among other things underlines the challenges prosecutors face in bringing charges.

Most of the people interviewed spoke on condition of anonymity because of the continuing investigation. Some of the officials directly involved declined comment or were unavailable.

Videotaping interrogations is unusual at the CIA, but the capture and questioning of senior al-Qaida operative Abu Zubaydah and accused USS Cole bombing plotter Rahim al-Nashiri in 2002 were unusual cases. They presented a chance to unravel al-Qaida from within, and the Bush administration authorized increasingly severe tactics to try to ensure that the agency learned as much as possible of what they knew.

CIA officers at the secret prison began videotaping to show that Zubaydah arrived in Thailand with wounds from a firefight and to prove that interrogators followed broad new rules Washington had laid out.

Almost as soon as taping began, top officials at the agency's headquarters in Langley, Va., began discussing whether to destroy the tapes.

Many dozens of CIA officers and contractors cycled in and out of Thailand to help with the questioning. If those videos ever surfaced, officials feared, nearly all those people could be identified.

In November 2002, CIA lawyer John L. McPherson was assigned to watch the

videos and compare them with summaries being sent to headquarters. If the reports — called cables — accurately described the videos, it would help support an argument that the tapes were unnecessary and could be destroyed.

The 92 tapes they compiled were poorly organized. Several had been taped over so the video quality was poor. According to documents released in a federal lawsuit, others contained gaps. When one tape ran out, interrogators didn't immediately insert a new one. Many tapes contained brief interrogation sessions followed by hours of static. Also, the tapes weren't time-stamped.

Nonetheless, McPherson, a former Naval officer, concluded in a January 2003 memo that the tactics described in the cables matched what he saw on the video. With that assurance, the CIA planned to destroy the tapes when the inspector general completed a review of the interrogation program.

But lawmakers who were briefed on the tapes pushed back. In February 2003 came a warning from Rep. Jane Harman, D-Calif., that destroying the videos would "reflect badly on the agency." The CIA's deputy director, James Pavitt, decided not to destroy them, agency documents show.

The White House didn't learn about the tapes for a year, and even then, it was somewhat by chance.

CIA general counsel Scott Muller sat down for a regular meeting with White House lawyers in May 2004. Near the end of the meeting, the conversation turned to the growing scandal over photos of abuse at the military's Abu Ghraib prison in Iraq.

The question from National Security Council lawyer John Bellinger was almost offhand: The CIA isn't sitting on anything explosive like the Abu Ghraib pictures, right? Something that, if leaked, would create a firestorm?

Right?
Wrong.
David Addington, a former CIA lawyer who was Vice President Dick Cheney's legal

counsel, was stunned when he heard about the videos, officials said. Why had the agency made the tapes in the first place, he asked? But he told Muller not to destroy them, and Bellinger and White House counsel Alberto Gonzales agreed, according to CIA documents and interviews with former officials familiar with the meeting.

That was the standing order for more than a year. When Muller left the agency that July, John Rizzo became acting CIA general counsel. In early 2005, Rizzo received a similar order from the new White House counsel, Harriet Miers. The CIA was not to destroy the tapes without checking with the White House first.

All the while, courts and lawmakers looking into detainee treatment were unknowingly coming close to the tapes, but the CIA always was a technically away from having to reveal their existence.

—In early May 2003, U.S. District Judge Leonie M. Brinkema told the CIA to reveal whether there were interrogation videos of any witnesses relevant to the case of Zacarias Moussaoui, who was charged as a Sept. 11 conspirator. But that order didn't cover Zubaydah, who Brinkema ruled was immaterial to the Moussaoui case, so the CIA didn't tell the court about his interrogation tapes.

—A judge in Washington told the agency to safeguard all evidence related to mistreatment of detainees at Guantanamo Bay. But Zubaydah and al-Nashiri were held overseas at the time, so the agency regarded the order as not applicable to the tapes of their interrogations.

—A judge in New York told the CIA to search its investigative files for records such as the tapes as part of a Freedom of Information Act suit. But the CIA considered the tapes part of its operational files and therefore exempt from FOIA disclosure and did not reveal their existence to the court.

—The Sept. 11 commission asked for broad ranges of documents, but never issued a formal subpoena that would have required the agency to turn over the tapes.

DOGS

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obtained illegally.

Bern ruled Quinn had used evidence from an illegal April 2009 search of Christensen's property to obtain the search-and-seizure warrant.

Quinn appealed the ruling, but not only did Bern rule against Quinn and Second Chance, she also said the rescue center couldn't keep the dogs any longer.

Since the ruling, Christensen has been selling the remaining dogs, some were sold and others died, for \$106 per dog, which is about \$250 less than what he normally sold the dogs for.

Then on July 2, the 173-count indictment against Christensen was dropped because the illegally obtained evidence from the raid was thrown.

However, Quinn still considers the case a victory for Second Chance.

"We are glad that the dogs didn't go back to him, and we are glad that he isn't going to breed anymore," Quinn said. "He was made the victim, and the dogs were forgotten."

Christensen became the loser even though he won the case and had all charges dropped

against him. His business is now in shambles because of the illegal raid.

"They took everything; what does that tell a person? It's a victory to do something illegal if you can put someone out of business? It gives a dog catcher authority to do whatever they want to," Christensen said. "Rosey (Quinn) just let the power get to her. It was rampant."

For the past 20 years, Christensen was known for selling high-quality hunting dogs all over the country.

"I still get calls every day if we are still selling dogs," Christensen said. "We have sold puppies to federal judges and sheriffs all across the nation."

Christensen said he got into dog breeding for one reason. "I love dogs," he said. "All of our dogs had names, and all of our studs were DNA tested."

Christensen had a website for his business, which had the picture of the father and mother of each puppy, and the due dates of the puppy.

Three days after the puppy was born, Christensen would take a picture of it and post it. He did the same thing after three and five weeks.

Even though Christensen's business was going strong for 20 years, he said Quinn didn't start sniffing around on his property

until a few months before the raid.

"I caught her or someone from Second Chance on my property half a dozen times without a warrant," Christensen said. "You can't just come on a man's property and look through it without permission."

Quinn said she monitored the dogs over the course of a few months, and she talked to Christensen on one occasion.

Quinn was then issued a warrant for Aug. 27, which stated she could check the well being of all animals on David Christensen's property, Dan's son.

After she was done checking on the animals, Turner County Deputy Sheriff Jay Ostrem wrote "the dogs appear to be OK."

Christensen tried to find out why Quinn even got a warrant to search his son's property.

"I called her up that night to find out what was going on, and she said she would talk to me about it the next day."

Christensen said. "On August 28, she never called or showed up."

Quinn said she had received five complaints about Christensen's property, but she

could only use two of the complaints.

During her search on August 27, Quinn said she saw dogs who were sick with Parvo and intestinal parasites and the conditions they were living in were "deplorable."

Six days later, Quinn and her Second Chance team came back to seize the dogs.

"Deputy (Jay) Ostrem stopped me at my driveway and told me they had a search and seizure warrant to take all of my animals," Christensen said. "I saw people running around wearing badges and I thought it looked like a SWAT team. Rosey told the deputy I had no business being there and he threatened to arrest me."

A few months later, the raid was ruled illegal, which still baffles Quinn.

"I was shocked because I would never do anything illegal to rescue an animal because they would have to go back to the home," Quinn said. "The whole case was deemed bizarre."

Quinn seized all 173 dogs on Christensen's property. Since the illegal raid, Christensen said there are 230 dogs that have been unaccounted for, and 296

dogs were born in Second Chance's custody.

Quinn said with all the puppies that were born, it was too complicated to keep track of how many dogs there were.

Christensen did take five puppies home after the ruling, but he was advised not to take the rest of them home because he said the dogs conditions deteriorated under Second Chance's watch.

"I don't know how many died in their care, but I didn't know what euthenized was until my dogs were taken," he said.

Quinn said all the dogs' conditions didn't get worse.

"They flourished here after all the medical things we did for them," she said.

Since the case was thrown out, Second Chance has filed to sue Christensen for \$415,000, which would cover the cost of the dogs care when they were in the facilities' possession.

"That's like stealing someone's car and then suing them for gas and insurance," Christensen said of the lawsuit.

Christensen and his lawyer Brian Radke are still looking into what legal action they will take.

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