



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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REGARDING A HEARING ON
CRIMINAL ALIEN REMOVALS

BEFORE THE

U.S. SENATE
COMMITTEE ON THE JUDICIARY

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INTRODUCTION

Chairman Grassley, Ranking Member Leahy, and distinguished members of the Committee, thank you for the opportunity to appear before you today to discuss our work at U.S. Immigration and Customs Enforcement (ICE), an agency within the U.S. Department of Homeland Security (DHS).

As Secretary Johnson has mentioned in previous congressional hearings, the Department is focused on the smart and effective enforcement of our immigration laws. Individuals who pose a threat to public safety or who are apprehended crossing the border illegally are enforcement priorities, and ICE is allocating enforcement resources accordingly, consistent with our laws. Day in and day out, ICE agents, officers, and attorneys focus their efforts and resources on the removal of individuals who have been convicted of felonies, those who have been convicted of significant or multiple misdemeanors, those actively and intentionally engaged in gang activity, and recent border entrants. Today, I am pleased to outline the role the dedicated men and women of ICE play in the arrest, detention, and removal of individuals meeting the Department's enforcement priorities, and to highlight some of ICE's recent initiatives and successes.

EXECUTIVE ACTION AND PROSECUTORIAL DISCRETION

Approximately one year ago, on November 20, 2014, Secretary Johnson issued several memoranda, including *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* and *Secure Communities*, outlining enforcement priorities and guidance on the exercise of prosecutorial discretion. These priorities continue to inform our decisions to arrest, detain, prosecute, and remove individuals from the United States. Prosecutorial discretion is a

long-established, widely-used practice in every area of law enforcement today. The ability to use good judgment on a case-by-case basis is one of our most important tools for ensuring that our laws are enforced fairly, humanely, and with the understanding that each decision will affect the lives of many individuals. ICE will continue to do the best job we can, within the bounds of existing law, to accomplish our mission, make strategic use of our resources, and improve efficiency and reporting.

ENFORCEMENT AND REMOVAL OPERATIONS

Guided by DHS's enforcement priorities, the approximately 6,000 law enforcement officers of ICE Enforcement and Removal Operations (ERO) identify removable aliens and make arrest, detention, prosecutorial, and removal determinations in a manner designed to best promote national security, public safety, and border security while remaining consistent with the following priorities:

Priority 1 includes those who pose a threat to national security, border security, or public safety. Priority 2 includes those who have been convicted of significant or multiple misdemeanors, those who have significantly abused the visa or visa waiver programs, and those apprehended who unlawfully entered the United States after January 1, 2014. Priority 3 focuses on those individuals who have been issued a final order of removal on or after January 1, 2014.

ERO works to identify individuals who may be subject to immigration enforcement, including working with federal, state, and local law enforcement organizations to identify, locate, arrest, and remove dangerous convicted criminal aliens that pose a threat to the community. ERO works closely with ICE's Office of the Principal Legal Advisor as it represents the government in removal proceedings in the immigration court system, administered by the U.S.

Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR). ERO also coordinates the removal of individuals with final removal orders, including obtaining necessary travel documents from the countries to which they are being returned.

Removals and Returns

Over the past few years, ICE has refined its priorities to focus on the most serious public safety and national security threats as well as recent border crossers. I believe this strategy makes our communities safer.

In previous testimony, Committee members have heard of the impact that limited or declined cooperation of local law enforcement agencies has had on removals and returns. As a result, ERO has had to expend more time and resources, including using more ERO officers, to locate and arrest individuals "at-large" who have been released back into our communities. However, with the deployment of the Priority Enforcement Program – or PEP – and the agency's proactive efforts over the past year to reach out to those communities and encourage them to work with ICE, we are making important gains in this area. PEP builds collaboration between Federal, State, and local law enforcement that allows for effective enforcement while enhancing community policing. ICE believes this collaborative approach, which prioritizes the worst offenders, is the most effective strategy for engaging local law enforcement.

The Priority Enforcement Program

As the committee is aware, over the past several years, ICE experienced a significant challenge when state and local jurisdictions increasingly restricted the ability of law enforcement agencies to continue to detain individuals for transfer to ICE. Secure Communities attracted a great deal of criticism within communities, was widely misunderstood, and became embroiled in

litigation. Many counties and cities across the country stopped holding individuals on immigration detainers to avoid potential liability for complying with such requests. These factors led to the replacement of Secure Communities by PEP.

Our objective with PEP is to implement an interior enforcement approach in a way that supports community policing by focusing on convicted criminals and individuals who threaten public safety, and by working with state and local law enforcement to take custody of dangerous individuals and convicted criminals—including felons, significant/repeat misdemeanants, and criminal gang participants—before they are released into the community. ICE is committed to working with all jurisdictions that are interested in partnering with us; PEP was tailored to bring back on board those state and local jurisdictions that had concerns with, or legal obstacles to assisting us in implementing Secure Communities.

PEP is designed to be flexible and is not a “one size fits all” solution, but rather an approach that allows us to tailor the program and develop processes to fit the needs of each jurisdiction, ensuring that law enforcement is able to remove convicted criminals without damaging trust with local communities. This trust is critical so communities remain vigilant in reporting crimes, thereby making everyone safer.¹ PEP continues to rely on interoperable biometric information sharing between the Federal Bureau of Investigation and DHS to identify individuals arrested by state and local law enforcement agencies who have been convicted of specifically enumerated crimes, who have intentionally participated in criminal gang activity, or who pose a demonstrable risk to national security. PEP focuses on individuals who fall into specific enforcement priority categories, generally related to convicted criminals, as these individuals pose the greatest threat to our nation’s safety.

¹ See Op Ed by Dayton, Ohio Chief of Police Richard S. Biehl, entitled “Communities are safer when law enforcement roles are clear.” The Hill, July 15, 2015.

To facilitate state and local cooperation, Secretary Johnson, Deputy Secretary Mayorkas, and I have all personally met with elected and law enforcement officials in some of our largest jurisdictions, including Los Angeles, New York City, Florida and Texas. Additionally, DHS and ICE officials regularly engage with senior law enforcement officials from across the nation through various associations and task forces. ICE and DHS will continue to engage local law enforcement agencies as we implement PEP.

We at ICE are highly focused on the arrest and removal of individuals who pose a threat to public safety and national security. The ICE workforce has been trained on PEP priorities, procedures, and new forms; the necessary management tools are in place; key stakeholders and unions have been engaged; and PEP is being implemented across the nation. Communities that cooperate with us on implementing PEP will help ensure dangerous convicted criminals, gang members, and national security threats are transferred into ERO custody for deportation and not inadvertently released into communities. That is why we are working diligently to bring jurisdictions that had concerns or legal obstacles with Secure Communities back on board and into PEP.

We will continue to work with those local jurisdictions that have cooperated with ICE in the past, but it is critically important that we bring back non-compliant jurisdictions as partners, so that we can work together to keep our communities safe. I think it is an encouraging sign that, for the top 25 previously non-cooperating jurisdictions, 13 are now participating in PEP, representing 52 percent of previously declined detainees. PEP will allow ICE to re-establish these crucial local partnerships.

I remain firmly committed to enforcing our immigration laws effectively and sensibly, in a way that makes national security, public safety, and border security our top priorities. An example of ICE's commitment is the Law Enforcement Notification System (LENS). LENS promotes transparency and maximizes public safety through electronic message transmission to state law enforcement partners, for appropriate distribution to local law enforcement agencies, regarding subjects being released from ICE custody into their jurisdictions who have been convicted of sex offenses or violent crimes. ICE is committed to making certain that both mandatory and discretionary releases, including those required under the U.S. Supreme Court decision in *Zadvydas v. Davis*, are executed in a way that promotes public safety and protects our communities.

At-Large Efforts

I would like to highlight ICE's continued actions in locating and arresting priority aliens in non-custodial settings. Each and every day, ERO officers assigned to operational teams seek and arrest criminal aliens and other enforcement priorities. Our officers continue to accomplish their mission with accuracy, consistency, and professionalism. One such operation, a six-day enforcement action targeting criminals aliens occurred just this past October and resulted in 235 arrests across four western states within our Salt Lake City Field Office's area of responsibility. Arrests included 111 in Utah, 89 in Nevada, 34 in Idaho, and 1 in Montana. All of the individuals targeted by ERO during the enforcement action had prior criminal convictions. Many had criminal histories that included convictions for serious or violent offenses, such as child sex crimes and assault. All targets met DHS's two top immigration enforcement priorities as established in Secretary Jeh Johnson's 2014 memorandum.

Personnel Reform

With the new Department-wide enforcement priorities and initiatives that place increased emphasis on convicted felons and national security threats, ICE ERO is increasingly focused on dangerous individuals. While furthering its focus on national security and public safety missions, ICE ERO's personnel structure had lagged behind other federal law enforcement agencies, and even other ICE components. In recognition of this lag, DHS sought and obtained approval from the Office of Personnel Management to implement a single career path for ICE ERO officers, with promotion potential up to the GS-12 level. The transition to the single career path for all ERO Officers began in the fourth quarter of FY 2015.

In addition to the single career path for ERO officers, ICE continues to explore a potential revision to its premium pay system. ICE continues to work with its bargaining unit to identify potential premium pay options that will increase flexibility for the agency and maximize ERO's ability to effectively and efficiently accomplish its mission.

CONCLUSION

I believe that ICE will be successful in the deliberate and strategic implementation of our mission objectives. I commit to implement ICE's priorities in a smart and strategic manner to safeguard our communities, maximize the agency's success, improve data collection and reporting, protect against fraud, and engage with state and local governments and local communities to enhance cooperation and build enduring partnerships. Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. You have my commitment to work with each Member of your Committee

and its staff to forge a strong and productive relationship going forward. I look forward to answering any questions.