



U.S. Immigration and Customs Enforcement

STATEMENT

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REGARDING A HEARING ON

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on Immigration”*

BEFORE THE

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SUBCOMMITTEE ON HEALTH CARE, BENEFITS & ADMINISTRATIVE RULES
AND
SUBCOMMITTEE ON NATIONAL SECURITY

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INTRODUCTION

Chairmen Jordan and DeSantis, Ranking Members Cartwright and Lynch, and distinguished members of the Subcommittees, thank you for the opportunity to appear before you today to discuss the policies and procedures related to our work at U.S. Immigration and Customs Enforcement (ICE), a Component agency of the Department of Homeland Security (DHS).

In the two months since I last appeared before the full Committee, I have continued to meet with the men and women of ICE to discuss the issues that are important to them while building and expanding our relationship with our interagency colleagues, international partners, industry, state and local law enforcement, and communities. In addition, I continue to take steps to enhance ICE's ability to achieve one of its primary goals – enforcing our Nation's immigration laws and keeping our country safe by ensuring we focus our resources on individuals who pose the greatest threat to our national security and public safety. Enforcing the laws within ICE's jurisdiction safely and humanely is my priority.

As you know, one of ICE's key federal partners is U.S. Citizenship and Immigration Services (USCIS) and I am delighted to share the panel with my colleague, USCIS Director Rodríguez. Although we are separate Components, we are a united DHS, and as such all have an interest in ensuring that there is coordination between our Components since our missions often intersect.

As some of you noted during my previous appearance before the Committee, this is not an easy job. The men and women of ICE, me included, have families and children of their own and cannot help but empathize with those entering the country in search of a better life. But we also know the critical homeland security and public safety roles we play in preventing terrorism,

removing individuals who are identified as enforcement priorities because they are a threat to national security and public safety, and combatting the illegal movement of people and goods through the smart, humane enforcement of more than 400 federal statutes.

Secretary Johnson has made it clear that our borders are not open to illegal migration, that individuals apprehended crossing the border illegally are an enforcement priority, and that ICE should allocate enforcement resources accordingly, consistent with our laws. As such, ICE is endeavoring to use appropriate prosecutorial discretion and is dedicating resources, to the greatest degree possible, toward the removal of individuals who are considered enforcement priorities, which includes recent border entrants, as well as individuals who have been convicted of felonies, those who have been convicted of significant or multiple misdemeanors, and those actively and intentionally engaged in gang activity. The employees of ICE—with offices in all 50 states as well as U.S. territories and 46 foreign countries—are dedicated to accomplishing this mission with integrity and professionalism, and I am very proud to lead this organization. Today, I am pleased to outline the role that the dedicated men and women of ICE play in the apprehension, detention, and removal of individuals unlawfully present in the United States, as well as highlight some of ICE's challenges, recent initiatives, and successes.

EXECUTIVE ACTION AND PROSECUTORIAL DISCRETION

On November 20, 2014, in accordance with the President's announcement, Secretary Johnson announced new immigration enforcement priorities and guidance on the exercise of prosecutorial discretion in a memorandum entitled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. All appropriate DHS Components, including ICE, apply these priorities when deciding which individuals to arrest, detain, and remove from the United

States. Based on my personal experience and many years as a federal prosecutor, culminating in service as a U.S. Attorney, I believe this guidance is smart and effective. The reality is that all law enforcement agencies (LEAs) – ICE included – have only enough resources to go after a fraction of the individuals whom they suspect of violating the law, so they have to make choices. Prosecutorial discretion is a long-established, widely-used practice in every area of law enforcement today. ICE will continue to do the best job we can within the bounds of existing law and policy to accomplish our mission and employ new initiatives to improve efficiency and reporting.

ENFORCEMENT AND REMOVAL OPERATIONS

Guided by DHS's enforcement priorities, the approximately 7,300 personnel of ICE Enforcement and Removal Operations (ERO) identify, and as appropriate, arrest, detain convicted criminals and other priority removable individuals, or supervise them through alternatives to detention; and remove from the United States those priority individuals determined to be illegally present or otherwise subject to removal. ERO enforces civil immigration laws in a manner designed to best promote national security, public safety, and border security. To protect public safety and national security, ICE prioritizes the removal of national security threats, recent border crossers, convicted criminals, and those who otherwise pose public safety threats to our communities.

Priority 1 comprises threats to national security, border security, and public safety, and significant abusers of the visa and visa waiver programs. Priority 2 includes those who have committed significant or multiple misdemeanors, as well as new immigration violators entering the U.S. after January 1, 2014. Priority 3 are those who have been issued a final order of

removal on or after January 1, 2014. The removal of these individuals from the United States is a national priority that is carried out by a team of just under 5,700 law enforcement officers operating in nearly every jurisdiction of the United States. ERO works with ICE's Office of the Principal Legal Advisor to facilitate the processing of individuals in removal proceedings through the immigration court system, which is administered by the Department of Justice's Executive Office for Immigration Review. ERO also coordinates the removal of individuals with final removal orders, including obtaining necessary travel documents from the country to which they are being returned.

Between Fiscal Year (FY) 2013 and FY 2014, ICE experienced a key demographic shift in the population it detained and removed. Most notably, removals to Mexico decreased from 66 percent to 56 percent of the total ICE removals, while removals to Central America increased by 15 percent, which is consistent with changes in apprehension demographics at the border. Removals of nationals from non-contiguous countries require more ICE resources and take significantly more time, and require added officer resources than removals of Mexican nationals, who generally can be quickly returned after apprehension. ICE must take custody of Central Americans and other individuals from non-contiguous countries, detain them in certain circumstances, obtain travel documents from the host country, and expend transportation and flight resources.

Since arriving at ICE in January of this year, I have met with government officials from Honduras, Guatemala and El Salvador. We each pledged to do our part to reduce the number of foreign nationals attempting to unlawfully circumvent our immigration laws.. I fully appreciate the challenges we face in furthering our diverse mission, and welcome the opportunity to take full advantage of the resources available to us, including the support of your subcommittees.

In recent years, ERO implemented the Guatemalan and Honduran pilot initiatives in the Rio Grande Valley (RGV) region to streamline repatriations to these countries and to decrease the average length of stay of individuals in ICE custody. To support the commencement of these initiatives, ERO expedited resources to each of the consulates, including video teleconferencing equipment; electronic Travel Document System (eTD) laptops and printers; technical support for the eTD system; and travel funding support. Individuals returned are processed in their country through a repatriation reception center, where they are provided numerous reintegration services by their respective governments and/or non-governmental organizations.

Removals and Returns

In FY 2014, ICE conducted 315,943 removals and returns, 213,719 of which were individuals apprehended while, or shortly after, illegally entering the United States and 102,224 of which were individuals apprehended in the interior of the United States. Eighty-five percent of individuals removed or returned from the interior had been convicted of a criminal offense, reflecting a significant increase in the removal of individuals with convictions as a percentage of overall removals, from 67 percent in FY 2011 and 38 percent in FY 2008. This is no accident. The increasing number of convicted criminals removed from our country is the result of change in ICE's strategic focus, which revised policies and newer initiatives, such as ERO's focus on probation and parole cases, help us achieve.

ICE's FY 2014 removal numbers illustrate the agency's continued commitment to focusing on identifying, arresting, and removing convicted criminals and other priority individuals in the interior of the United States who present the most significant public safety concerns and the removal of individuals apprehended while attempting to unlawfully enter the

United States. Ninety-eight percent of ICE's FY 2014 removals and returns fell into one or more of its civil immigration enforcement priorities applicable at the time.

Impact of Federal Court Rulings

ICE's removal operations are also influenced by federal court rulings, including the decision of the U.S. Court of Appeals for the Ninth Circuit in *Rodriguez v. Robbins*, which expanded the availability of bond hearings for individuals detained for six months or longer while removal proceedings are pending, including those subject to mandatory detention pursuant to sections 235(b) and 236(c) of the Immigration and Nationality Act. In many instances, individuals detained in the Ninth Circuit must be granted individual bond hearings within 180 days of the commencement of immigration detention, regardless of ICE's custody determination. If bond is granted by an immigration judge, and the individual posts bond, the individual's case is transferred from the detained docket to the non-detained docket, where the immigration court process generally takes significantly longer.

In addition, ICE relies on the cooperation of foreign governments to effectuate removal of their nationals, and certain countries continue to fail to issue required travel documents in a timely manner, impeding our ability to repatriate individuals. In these cases, due to the decision of the U.S. Supreme Court in *Zadvydas v. Davis*, ICE is required to release individuals with final orders of removal from custody when post-order custody reaches 180 days if there is no longer a significant likelihood of removal in the reasonably foreseeable future. While ICE continues to engage these countries regarding the timely repatriation of their nationals, we remain concerned by the operational, public safety, and national security impacts of the release of certain individuals due to the *Zadvydas* decision. Bolstering ICE's ability to obtain travel documents

from recalcitrant countries is an important priority, and I will continue to work closely with the Department of State to achieve better cooperation from countries in accepting the return of their nationals.

ICE INITIATIVES

Enhanced Oversight and Release Procedures

Earlier this year, I announced enhanced oversight and release procedures for ICE custody determinations involving detainees with criminal convictions on their records. These procedures enhance public safety and public confidence in ICE's enforcement and administration of immigration laws. ICE is committed to making certain that both mandatory and discretionary releases, including those required under *Zadvydas*, are executed in a way that promotes public safety and protects our communities. These procedures include: supervisory approval for discretionary releases of certain categories of convicted criminals; senior headquarters manager review of discretionary release decisions for individuals convicted of crimes of violence; ensuring that detention capacity is not a determinative factor in the release of an individual with a serious criminal conviction; and developing a capability to provide appropriate release information concerning individuals convicted of crimes to state law enforcement authorities in relevant jurisdictions. The Law Enforcement Notification System has been deployed to Virginia, Louisiana, and Texas, with full implementation expected later this year.

Enhanced Oversight for Family Residential Centers

Following last summer's unprecedented spike in illegal migration of unaccompanied minors and adults with children in the RGV, we responded with decisive action on a number of

fronts. One element of this comprehensive approach was opening additional facilities to house adults with children as they wait for a resolution to their immigration proceedings or removal to their home countries. While we routinely review and evaluate our facilities to ensure that we are providing the level of care required by our Family Residential Standards, we understand the unique and sensitive nature of detaining families and we are committed to maintaining the optimal level of care.

Last month, ICE announced a series of actions to enhance oversight, increase access and transparency, and ensure our Family Residential Centers (FRCs) continue to provide a safe, secure, and humane environment for families pending the outcome of their immigration proceedings. After undertaking a comprehensive assessment of our FRCs, ICE is creating a new Advisory Committee comprised of experts in key fields; designating a senior official who will work directly with me while also engaging with key stakeholders; starting a series of engagements over the next several months with stakeholders to listen and discuss ways to make additional improvements; and looking for additional ways to better ensure access to counsel and address language access issues for speakers of indigenous languages. Because of the sensitive and unique nature of detaining adults with children, ICE has also implemented a review process for any families detained beyond 90 days, and every 60 days thereafter, to assess whether detention or the designated bond amount continue to be appropriate while families await the conclusion of their immigration proceedings. Finally, on February 20, 2015, the U.S. District Court for the District of Columbia enjoined ICE from invoking general deterrence in custody determinations where an individual from Central America in a FRC is found to have a credible fear of removal. ICE has complied with that injunction, but has nonetheless moved for reconsideration of the court's ruling based upon its position that the court lacked jurisdiction

over the issue and that consideration of general deterrence was lawful at the time and would be lawful in the future if reinstated.

Priority Enforcement Program (PEP)

As part of another November 20, 2014 memorandum, *Secure Communities*, Secretary Johnson directed the creation of the Priority Enforcement Program (PEP) to replace Secure Communities. Since that time, the Department has consulted with LEAs across the country, as well as state and local governments and other key stakeholders, to ensure that PEP serves to protect our nation while enhancing trust between law enforcement and local communities. Our objective is to implement this new approach in a way that supports community policing and public safety, working with state and local law enforcement to take custody of dangerous individuals and convicted criminals—including felons, significant/repeat misdemeanants, and gang members—before they are released into the community. ICE is committed to working with those jurisdictions that partner with us, and our hope is that PEP will assist ICE in bringing back on board those communities that had concerns with Secure Communities.

PEP is a balanced, common-sense approach, placing the focus on convicted criminals and individuals who threaten public safety and provides a new framework for requesting the transfer of individuals from state and law enforcement custody. For PEP to be successful, however, we must maintain strong relationships with our state and local law enforcement partners and with local communities on the ground. That is why 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, including myself, regularly engage with senior law enforcement officials from

across the nation through the White House-sponsored Law Enforcement Immigration Task Force.

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 from our communities without damaging trust with local communities. PEP will continue to rely on biometric information sharing between the Federal Bureau of Investigation and DHS (IDENT/IAFIS Interoperability) to identify individuals arrested by state and local LEAs for criminal violations of local, state, and federal laws, and will generally be utilized only on a post-conviction basis. PEP will focus on individuals who fall into specific enforcement priority categories, as these individuals pose the greatest threat to our nation’s safety.

I anticipate the ICE and U.S. Customs and Border Protection workforce will be fully trained, the necessary management tools will be in place, the key LEA stakeholders and unions will have been engaged, and PEP will be fully operational in the next few weeks. The Department and ICE will continue our efforts to engage local communities and LEAs around the country before, during, and after the implementation of PEP. Recently, Los Angeles County agreed to continue cooperating with ICE and DHS in implementing PEP; we are in active discussions with many other jurisdictions that we anticipate will support PEP as well.

Personnel Reform for ICE Officers

I am very pleased to support job series realignment for ICE’s dedicated and hardworking ERO officers engaged in removal operations. Often, the work performed by ICE ERO law enforcement personnel is in response to critical, unforeseen circumstances involving the

identification, arrest, and removal of individuals, as well as ongoing law enforcement, detention, and removal activities. I believe these reforms will provide a more effective and efficient workforce as ICE continues to carry out its critical homeland security mission.

CONCLUSION

I believe that ICE will be successful in the deliberate implementation of our mission objectives. I commit to implement ICE's priorities in a smart and strategic manner to maximize 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, and I look forward to working with Congress on comprehensive immigration reform.

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 Subcommittees and their staffs to forge a strong and productive relationship going forward. I look forward to answering any questions.