



U.S. Immigration and Customs Enforcement

Statement

of

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“Sanctuary Jurisdictions: The Impact on Public Safety And Victims”

Before

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Committee on the Judiciary

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Introduction

Chairman Graham, Ranking Member Feinstein, and distinguished members of the Committee, thank you for the opportunity to appear before you today on behalf of U.S. Immigration and Customs Enforcement (ICE) to discuss sanctuary jurisdictions. Cooperation between ICE and state and local law enforcement agencies is critical to the agency's efforts to identify and arrest removable aliens and protect the Nation's security.

ICE Enforcement and Removal Operations (ERO) is committed to using its unique enforcement authorities to promote national security, uphold public safety, and preserve the integrity of our immigration system, and works closely with its federal, state and local law enforcement partners in pursuit of this mission. ICE has many strong partnerships nationwide; however, in recent years the agency has experienced an increase in the number of jurisdictions that refuse to work with our officers or even directly impede the agency's efforts. Unfortunately, when a local jurisdiction refuses to collaborate with ICE or obstructs the agency's lawful enforcement activities, it places at risk both public and officer safety, misuses limited resources, and forces ICE to arrest criminal aliens at-large in the communities, instead of the secure jail environment.

Policies and laws that prohibit and prevent local law enforcement agencies from collaborating with ICE, even to the extent of not sharing information about criminal aliens in local custody, have an immediate and direct impact on public safety and put the public at risk. It is important to remember that so-called "sanctuary" laws and policies have a direct human cost: people are being hurt and victimized by aliens who are illegally present and who have ended up in local custody after being arrested on criminal charges, but are released back into the community to commit additional crimes, instead of being turned over to ICE for removal. While

extensive studies of recidivism have produced varying rates depending on methodology,¹ it is clear that criminals – aliens or otherwise – frequently reoffend. As a result, ICE seeks to use its lawful authorities to remove those who are illegally present and who have been arrested for criminal activity in order to stop them from committing additional, entirely preventable, crimes. This was widely regarded as a common-sense approach to combatting crime and keeping people safe for a long time. However, increasingly those who insist ICE must focus its enforcement resources on criminal aliens - which it does - are also attempting to restrict the agency's access to these criminals by curtailing jail interviews, limiting data sharing, and ignoring detainees. Simply put, you cannot have it both ways.

ICE's Public Safety Mission

In accordance with Executive Order 13768 and former Secretary of Homeland Security John F. Kelly's February 20, 2017 implementation memorandum, *Enforcement of the Immigration Laws to Serve the National Interest*, ICE prioritizes its immigration enforcement resources to focus on removable aliens who (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of

¹ A large Bureau of Justice study of 401,288 state prisoners in 30 U.S. states who were released in 2005 showed that the vast majority were re-arrested subsequent to release; 44% were re-arrested at least once in the year following their release, and 83% were re-arrested during the 9-year follow-up period.
<https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

removal but have not complied with their legal obligation to depart the U.S.; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Although ICE has dedicated significant resources in support of U.S. Customs and Border Protection's efforts at the Southwest Border, the agency's interior enforcement efforts remain strongly focused on the identification, arrest, detention, and removal of aliens who are a threat to public safety. As a result, in Fiscal Year (FY) 2019, approximately 9 out of 10 of ICE ERO's administrative arrests in the interior included aliens with at least one criminal conviction or pending charge, an outstanding final order of removal, or who illegally reentered after previously being removed (a federal felony). As of September 21, 2019, of ICE ERO's 139,189 administrative arrests, 89,118 were convicted criminals, 30,633 had pending criminal charges, and just 19,438 were classified as other immigration violators.

ICE ERO Enforcement Efforts

ICE ERO collaborates with its federal, state, and local partners in a number of different ways. These partnerships include the Immigration and Nationality Act (INA) Section 287(g) Jail Enforcement Model (JEM) Program,² a valuable force multiplier for ICE at the state and local level which enhances community safety by allowing ICE to partner with state and local law enforcement agencies to identify and remove criminal aliens and immigration law violators before they are released, as well as the Warrant Service Officer Program (WSO),³ which

² Section 287(g) of the Immigration and Nationality Act (INA) authorizes ICE to delegate the limited authority to state and local law enforcement officers to enforce federal immigration law under a signed memorandum of agreement (MOA).

³ Like the JEM, the WSO also delegates authority pursuant to an MOA between ICE and a local law enforcement agency. However, although the WSO also derives its authority from INA section 287(g), the WSO program is different from the traditional 287(g) JEM program. Unlike 287(g) JEM officers, the WSO officers will not interview individuals regarding alienage and removability, nor will they process aliens who are in the United States in violation of immigration law.

provides an opportunity for jurisdictions that wish to cooperate with ICE but are precluded from honoring ICE detainers by state or local law.

ICE also works to identify and process incarcerated criminal aliens nationwide before they are released, increasing the safety of all involved and conserving limited resources. ERO's efforts within jails around the country are a key part of its public safety effort, and its Criminal Alien Program (CAP) provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens that have circumvented identification. ICE applies an organized, methodical approach to identifying aliens who are removable from the United States while they are housed in jail and prison facilities. By lodging detainers against those individuals, ICE makes every effort to ensure that the removable aliens are turned over to ICE custody at the conclusion of their criminal detention rather than being released into the community where they may abscond or reoffend.

Currently, nearly 70 percent of all ICE arrests are attributed to CAP, and the percentage was even higher prior to the inception of sanctuary laws and policies. In the past fiscal year alone, ICE has experienced a 16 percent decline in CAP arrests compared to FY 2018. Unfortunately, sanctuary laws and policies in place in several jurisdictions force ICE to expend significant resources and utilize less efficient methods to locate and arrest criminal aliens and other immigration violators at large in the community. When ICE is unable to assume custody of criminal aliens directly from state and local jails, ICE must arrest these aliens in the community; most likely at their homes, places of employment, or courthouses. These sanctuary laws and policies make apprehensions more dangerous for our officers and more disruptive to our communities. They also provide criminal aliens with the opportunity to commit further

offenses. ICE focuses its limited enforcement resources on public safety threats, in accordance with U.S. immigration law, and its officers are authorized to arrest other aliens who are illegally present in the United States encountered during the course of at-large enforcement actions. While ICE officers may exercise prosecutorial discretion as appropriate on a case-by-case basis, they cannot ignore our country's immigration laws when they encounter individuals illegally present in the United States, which happens with increasing frequency as ICE is forced by sanctuary policies to conduct increased at-large operations.

ICE ERO's Fugitive Operations Division National Fugitive Operations Program consists of 129 Fugitive Operations Teams (FOTs) and 10 Mobile Criminal Alien Teams (MCATs) nationwide and focuses its efforts on the apprehension of targets who pose a serious threat to national security and community safety. Included in these targets are members of transnational street gangs, sex offenders who have committed crimes against children, and aliens with convictions for violent crimes, as well as those who have violated immigration laws, such as illegal re-entrants. ERO's FOTs and MCATs help mitigate the risk to public safety posed by criminal aliens by conducting enforcement activities designed to investigate, locate, and arrest criminal aliens at-large and allow the agency to adjust its resources to counter emerging threats. However, these resources are currently stretched thin, especially in jurisdictions that refuse to honor ICE detainers and release criminal aliens back into the community.

Within the last few weeks, ICE conducted its ninth national crosscheck operation – a targeted, intelligence-based operation targeting criminal aliens at-large, which has evolved since the prior administration. What is different today is the specific need to increasingly target large numbers of individuals who have been released into the communities in jurisdictions with sanctuary policies in place. Among the nearly 1,300 aliens taken into custody, many had

extremely serious criminal histories: three had convictions for manslaughter or murder, and 100 had convictions for sexual assault or related crimes, with nearly half of the victims being children. Additionally, 70 had convictions for crimes involving drugs, and 320 had convictions for driving under the influence of drugs or alcohol. Almost 200 of the aliens arrested during the most recent operation could have been taken into custody at local jails if the detainer had been honored. While this operation was a success in terms of removing dangerous offenders from U.S. communities, it highlights the public safety risk posed by criminal aliens, including those who are arrested and then released by local authorities.

The Detainer Process

Every day, ICE places detainers on individuals who the agency has probable cause to believe are removable from the United States and who are currently in federal, state, and local law enforcement's custody after being arrested for a criminal offense. The issuance of detainers is a longstanding aspect of ICE's public safety mission and its commitment to working with state and local partners to help keep communities across the country safe. In FY 2019, ICE lodged more than 160,000 detainers nationwide.

When an individual is booked into custody by a law enforcement agency, his or her biometric data is automatically routed through federal databases to the Federal Bureau of Investigation (FBI), which shares this information with ICE. ICE uses this information to develop probable cause that the subject is a removable alien to support the issuance of an immigration detainer to the federal, state, or local law enforcement agency that has custody of the alien. The detainer provides notice of ICE's intent to assume custody when ICE has probable cause to believe the individual in custody is a removable alien. A detainer requests that the law

enforcement agency notify ICE as early as practicable – at least within 48 hours, if possible – before the subject of the detainer is released from criminal custody and that the state or local law enforcement agency maintain custody of the alien for a period not to exceed 48 hours beyond the time he or she would otherwise have been released from criminal custody. These requests are intended to allow a reasonable amount of time for ICE to respond and take the alien into federal immigration custody in a safe and secure environment.

Upon taking custody, ICE can initiate removal proceedings and return the alien to his or her country of origin once a final order of removal has been issued by an immigration judge. Additionally, in cases where the alien has re-entered the United States illegally after having been removed, ICE may reinstate the prior order of removal, and seek to remove the alien.

Lack of Cooperation with Detainers and the Impact on Public Safety

While many jurisdictions across the country cooperate with ICE's detainers and work closely with the agency to ensure the safety of local communities, in some cases, state or local laws, ordinances, or policies restrict or prohibit cooperation between local law enforcement and ICE. Additionally, some jurisdictions willfully decline to honor ICE detainers and refuse to timely notify ICE of an alien's release and may do so even when an alien has a serious criminal record.

Unfortunately, in recent years ICE has seen a trend in non-cooperation where some jurisdictions have ceased to cooperate with ICE's public safety efforts. Some of these jurisdictions have adopted local policies or ordinances prohibiting cooperation, and in the case of states like California and Colorado, have even passed legislation at the state level. Some of these policies restrict or prohibit cooperation with ICE and instruct law enforcement not to actively

assist ICE officers, while in more extreme cases, jurisdictions may willfully decline to honor ICE detainers and refuse to provide basic notification to ICE that they plan to release an alien who has been arrested for criminal activity from their custody. The end result of this failure to cooperate is the release of criminal aliens into the community where they may potentially reoffend.

A number of aliens who have been released under these circumstances have gone on to commit additional crimes, including violent felonies, which could have been prevented if ICE had been able to assume custody of these aliens and remove them from the country in accordance with federal immigration laws. In Boulder County, Colorado, ICE officers recently found and arrested a 56-year-old illegal alien who had been released from local custody twice after ICE detainers were ignored. The alien was arrested on local charges in March 2017 and released, was subsequently arrested for felony sexual assault on a child in November 2017 and again released, was convicted of sexual assault in July 2019, and remained at-large until ICE apprehended him in August 2019. Earlier this year, in Mecklenburg County, North Carolina, an illegal alien was arrested for a DUI and was released after ICE's detainer was ignored. In June 2019, the same alien was arrested again – this time for assault by strangulation, assault with a deadly weapon, and another DUI. Despite the severity of these charges, Mecklenburg County again ignored ICE's detainer, released him from custody, and the alien currently remains at-large.

Such public safety risks are not the only problem created by a lack of cooperation with detainers. In addition to the risk that criminal aliens will reoffend and harm additional victims, when jurisdictions fail to honor ICE detainers, ICE must conduct at-large operations within the community to locate these aliens. At-large enforcement actions require a much greater

expenditure of resources and can carry greater safety risks for the alien and the officers when compared to taking an alien into custody in the secure and controlled environment of a jail.

What is ICE Doing to Compel Cooperation?

DHS and ICE lack the authority to compel cooperation with immigration enforcement, and DHS has acknowledged that cooperation with immigration detainers is voluntary, although jurisdictions that prohibit or restrict any government entity from providing to or receiving from DHS information regarding the citizenship or immigration status of any individual are violating federal law, namely 8 U.S.C. § 1373.⁴

To assist in its enforcement efforts, DHS and ICE ultimately need legislation that would provide indemnification for state and local governments subject to civil liability based solely on compliance with immigration detainers and transportation of alien detainees. In the meantime, ICE will continue collaborating with these partners to help ensure that aliens who pose a threat to our communities are not released onto the streets to reoffend.

Conclusion

Strong working relationships with its partners are critical to ICE's public safety mission. However, one of the biggest impediments hindering ICE's efforts to remove dangerous criminals from our communities is the lack of cooperation from certain jurisdictions. Whether state or local laws, ordinances, or policies restrict or prohibit cooperation with ICE or jurisdictions

⁴ On May 31, 2016, the U.S. Department of Justice (DOJ), Office of the Inspector General (OIG) issued a memorandum entitled, [Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients](#), in which it noted concerns that laws and policies restricting interaction and cooperation with ICE "may be inconsistent with at least the intent of Section 1373 [of Title 8 of the United States Code (U.S.C.).]" On July 7, 2016, the Department of Justice's Office of Justice Programs provided guidance entitled, [Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373](#), to recipients of Justice Assistance Grant Program and State Criminal Alien Assistance Program grants.

willfully refuse to work with ICE, the result is that criminal aliens are released into the community where they may potentially reoffend and harm members of the public. Additionally, the lack of cooperation risks both public and officer safety, and unnecessarily expends already limited ICE resources. In keeping with its goal to build cooperative, respectful relationships with law enforcement partners and guarantee public safety across our communities, ICE is committed to maintaining and strengthening its relationships with state and local law enforcement, and continues to collaborate with its law enforcement partners to help ensure – to the greatest extent possible – that removable aliens who may pose a safety threat are not released into the community.

Thank you again for the opportunity to appear before you today regarding this important issue. I look forward to answering your questions.