

**OVERSIGHT OF THE ADMINISTRATION'S  
MISDIRECTED IMMIGRATION ENFORCEMENT  
POLICIES: EXAMINING THE IMPACT ON  
PUBLIC SAFETY AND HONORING THE VICTIMS**

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**HEARING**

BEFORE THE

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES SENATE**

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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**TUESDAY, JULY 21, 2015**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in Room 106, Dirksen Senate Office Building, Hon. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley [presiding], Hatch, Sessions, Cornyn, Lee, Cruz, Flake, Vitter, Perdue, Tillis, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, and Franken.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,  
A U.S. SENATOR FROM THE STATE OF IOWA**

Chairman GRASSLEY. For the benefit of the audience and the witnesses, generally, and in this case, too, Senator Feinstein is the Ranking Member for this hearing, and she and I will make opening comments, then we will go to our first panel.

This Committee continues to honor its pledge to conduct oversight over the implementation of the laws Congress has passed as well as the policies and practices of the executive branch. Today we will focus on how this Committee's immigration policies and practices are hurting American families. The Committee will hear powerful testimony from a number of relatives who have lost loved ones as a direct result of the administration's failure to deport aliens or its tolerance of sanctuary policies.

I will begin by extending a special welcome to our witnesses, especially family members of victims. I hope you will accept our deepest sympathies for the losses each of you have suffered. Thank you very much for your willingness to share your stories under difficult circumstances and to pay tribute to those who, though no longer with us in body, are surely with us in spirit.

Today we will honor Josh, Kate, Dennis, Danny, Grant, and many others whose lives were tragically cut short because of the administration's lax immigration policies. We had many families and relatives who wanted to testify today, but, unfortunately, we had to turn them away because we were limited on time and space. However, we welcome all testimony for the record and encourage

them to commemorate their loved ones with stories and written letters to this Committee.

We will examine the administration's policies from the top down. We will look at how Federal benefits are being granted to deportable criminals by U.S. Citizenship and Immigration Services, while criminals are being released by U.S. Immigration and Customs Enforcement, and how enforcement of the laws can be better achieved.

We will look at how we can improve cooperation between Government agencies, and we will look into how we can improve cooperation between the Federal Government and States and local law enforcement agencies. After all, we all work for the same taxpayers. We ought to be cooperating. We will look at sanctuary jurisdictions and try to understand why policies that protect criminal aliens are in place.

In the past few weeks, we have learned that there are thousands of detainees placed each year on Federal agents—by Federal agents on undocumented immigrants with criminal records that are ignored. According to Government data, between January and September 2014, there were 8,811 declined detainees in 276 counties in 43 States, including the Columbia District.

Of the 8,811 declined detainees, 62 percent were associated with over 5,000 individuals who were previously charged or convicted of a crime or presented some other public safety concern. Nearly 1,900 of the released offenders were arrested for another crime after being released by a sanctuary jurisdiction.

This is obviously disturbing—not only to me, but to most Americans. There is no good rationale for noncooperation between the Federal level and State and local law enforcement. Public safety is needlessly and recklessly put at risk when State and local officials provide sanctuary to lawbreaking immigrants just to make a political point.

This administration in too many cases has turned a blind eye to enforcement, even releasing thousands of criminals at its own discretion, many of whom have gone on to commit serious crimes, including murder.

The administration has also granted deferred action to criminal aliens who have committed heinous crimes after receiving this relief from deportation. I have written to Secretary Johnson about four specific cases in which such individuals have received President Obama's Deferred Action for Childhood Arrivals, and that is referred to as "DACA" in this town.

One of these beneficiaries was a known gang member when he applied and received DACA, then went on to kill four people in North Carolina. Another DACA recipient used his work authorization to gain employment at a popular youth camp in California, where he was recently arrested for child molestation and distribution of child pornography. I am still waiting for responses on some of these cases.

Further, the administration has completely failed to do anything about sanctuary cities, all while challenging States that took a more aggressive approach to enforcing the immigration laws.

I recently sent a letter to Attorney General Lynch and Homeland Security Secretary Johnson about sanctuary cities. I urged them to take control of the situation to ensure detainees are not ignored

and undocumented individuals are safely transferred to Federal custody and put into deportation proceedings. I implored them to take a more direct role in the matter, and on that—those letters I have not received a response.

This is not a new issue for this administration. I wrote to then-Secretary Napolitano and then-Attorney General Holder in 2012 and asked them to intervene in Cook County, Illinois, another sanctuary jurisdiction. Nothing happened. In fact, since then, administration officials have publicly stated that they neither believe detainees have to be honored, nor that they even want them to be mandatory.

Enforcing the immigration laws in this country is not a voluntary or trivial matter. Real lives are at stake. Things cannot continue this way. We are a Nation—Nation based upon the rule of law, and if that rule of law is not respected, only chaos will succeed.

That is why I am introducing legislation today that will hold sanctuary jurisdictions accountable. It will require the executive branch to withhold certain Federal funding if States or local law enforcement refuse to cooperate with the Federal Government in holding or transferring criminal aliens.

My bill will require that State and locals cooperate on criminal aliens or risk losing law enforcement-related grants that are distributed by Homeland Security and DOJ.

My bill will also require a mandatory minimum 5-year prison sentence in addition to a possible fine for individuals who enter the United States after having been deported. Current law does not require prison time and caps the possible prison sentence at 2 years. This section of my bill is aimed at individuals who ignore our laws time and again.

No more people should die at the hands of those who break our laws just by being here. No more families should have to go through what these families and others have gone through.

Again, I would like to thank our witnesses for taking the time to be with us today. Your strength and determination to change the unacceptable status quo will not go unnoticed.

I will now turn to Senator Feinstein, and after she goes, I will introduce the witnesses.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN,  
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Chairman Grassley.

I want to say that our Ranking Member, Patrick Leahy, would be here, but there is an urgent family appointment that he had to keep this morning, and so I sit in his stead. I know this is a hearing that he very much would have wanted to have attended.

Yesterday, I had occasion to meet with the Steinle family, and Jim Steinle is sitting front and center at the dock. What I saw was a very hurt family, but very resolute and very concerned about doing the right thing, whatever that may be in a case like this.

I want to voice my very clear sympathy and condolences to the family members that are here today. I cannot think of anything that is harder to do than what you are going to do today. I think your strength in doing it is noted and very much appreciated.

It is very clear to me that we have to improve cooperation between local, State, and Federal law enforcement. The overriding concern and a deep belief of mine is that convicted felons should not be removed from the country—should be removed from the country, but not released onto our streets.

When immigration authorities ask that a State or local law enforcement agency notify them of an impending release of an alien with a serious felony record, that request should be honored. I strongly believe that local law enforcement should have notified the immigration authorities in the case of the accused murderer of Kate Steinle. The man who killed Kate is a classic case of multiple felonies and prior deportations, and a simple phone call would have been enough.

That did not happen. In fact, the San Francisco County sheriff adopted his own policy on March 2015, just 4 months ago. The memo states, “SFSD staff shall not provide the following information or access to ICE representatives,” end of quote. One of the items listed in the department’s memo is, quote, “release dates and times,” end of quote.

In other words, the sheriff’s department barred its own deputies from informing ICE about an individual’s release date and time. That, I believe, is wrong. I believe it is not required by San Francisco’s ordinance as the mayor has made clear to the sheriff in a letter dated July 14th. Mr. Chairman, I would like to put that letter in the record, if I may.

Chairman GRASSLEY. Without objection, so ordered.

[The information appears as a submission for the record.]

Senator FEINSTEIN. Thank you. I agree with the mayor, and to prevent a similar tragedy, I hope and expect that my home State of California, and the city of San Francisco in particular, will agree to take part in the Department of Homeland Security Priority Enforcement Program, known as “PEP.” This program focuses on felons and others who are high priorities for removal from the country.

Under PEP, ICE can request notification of an alien’s release date from State or local custody so that they would have the opportunity, if the circumstances warranted, to take custody of that individual itself. In some instances, PEP also allows for ICE to lodge a detainer request with local law enforcement, asking that they hold an alien for up to 48 hours. It seems to me that a simple notification to ICE could have prevented Kate Steinle’s death.

I have urged Mayor Lee and the Board of Supervisors to participate in this new program, which the Secretary announced late last year. This program prioritizes those who threaten our Nation’s national security. I am pleased that Mayor Lee is taking this request seriously and is in the process of communicating with the Department of Homeland Security about participating.

We all know that most undocumented immigrants are otherwise law-abiding, hardworking, and just want to provide for their families. I believe that deeply. That is not the element of the undocumented population we are talking about today.

I am currently working on a bill, as is our Chairman, and I think others in this Committee, that would require State and local law enforcement to notify Immigration and Customs Enforcement of

the impending release from a detention center of an illegal alien who has previously been convicted of a felony if ICE requests such notification. This bill is a work in progress, and, Mr. Chairman, I look forward to hearing the testimony today and to working with other Members of this Committee so that we might produce a bill that is worthy of consideration and passage. I thank the Chair.

Chairman GRASSLEY. Thank you, Senator Feinstein.

Our first witness is Ms. Susan Oliver. Ms. Oliver is the widow of Deputy Danny Oliver, a police officer in Sacramento. Danny was killed while on duty by an undocumented immigrant who was previously arrested on two separate occasions on drug-related charges and twice deported. Ms. Oliver has established a foundation in her husband's name to help kids in school.

Our second witness is Ms. Grace Huang. She is public policy program coordinator for Washington State Coalition Against Domestic Violence, a nonprofit network of domestic violence programs founded in 1990.

Our third witness is Mr. Michael Ronnebeck, the uncle of Grant Ronnebeck. He was a 21-year-old convenience store clerk who was gunned down earlier this year by an undocumented immigrant. U.S. Immigration and Customs Enforcement released Grant's alleged murderer who was awaiting deportation. Grant was born in Iowa, but resided in Arizona, and had two brothers and a sister.

Our fourth witness is The Reverend Gabriel Salguero. Reverend Salguero and his wife are the co-lead pastors of Lamb's Church of the Nazarene, New York City. He is also founder of the National Latino Evangelical Coalition.

Our fifth witness is Mr. Jim Steinle of Pleasanton, California, the father of Kate Steinle, who was gunned down 20 days ago while walking on a pier in San Francisco alongside her father. Her alleged killer had seven prior felony convictions and had been deported five times. Sanchez was shielded by San Francisco's sanctuary policy which allowed for his release in March despite an ICE detainer placed on him.

The sixth person is Chief J. Thomas Manger. Chief Manger has been the chief of police, Montgomery County, since February 2004. Chief Manger also serves as president of the Major Cities Chiefs Association.

Our seventh witness is Dr. Brian McCann. Mr. McCann's brother, Dennis, was killed in 2011 by a drunk driver who was in the country illegally and driving without a license. U.S. Immigration and Customs Enforcement had placed a detainer on the drunk driver, but he was released under Cook County, Illinois, sanctuary city policies.

Our final witness is Ms. Laura Wilkerson of Pearland, Texas. She is the mother of Josh Wilkerson. Josh was 18 years old when he was kidnapped and murdered by his high school classmate, an illegal immigrant, after offering his classmate a ride from school. Josh's murderer was sentenced to life in prison and will be eligible for parole in 30 years.

I want to thank all of you for being here, and as I expressed to you privately our condolences, I say so now publicly, and you are very brave to come forward and testimony, and we welcome that very much.

We will start with Ms. Oliver. I know you folks have been told about a 4-minute rule. The red light comes on. If you have a longer statement, it will be put in the record. That does not mean that just exactly when the red light comes on I am going to gavel you down, but please cut it short, because this is a very important hearing, and we want to get the witnesses in. The most important thing after you tell your stories is for us to hear from the administration and to question the administration. Will you start, Ms. Oliver?

**STATEMENT OF SUSAN OLIVER, WIFE OF DEPUTY  
SHERIFF DANNY OLIVER, GARDEN VALLEY, CALIFORNIA**

Ms. OLIVER. Good morning. I just want to first state that I am honored that the bill has been named after my husband, Deputy Oliver, as well as Detective Davis, who were killed on October 24, 2014.

Over the past 9 months, my life has changed dramatically because of the loss of my husband, Sacramento County Sheriff Deputy Danny Oliver. Danny Oliver was a special person that knew that treating people with dignity and kindness resulted in stronger, healthier, and safer communities, and he worked every day to help make that a reality for communities that needed it the most.

As a 15-year veteran of the Sacramento County Sheriff's Office, Danny Oliver was not a man to boast or gloat of his professional accomplishments. In fact, when he was given a standing ovation at a community meeting, he felt unsure of how to handle this overwhelming approval. Danny simply felt he was doing his job, and that was all that was needed to feel accomplished.

My husband's last shift with the Sacramento County Sheriff's Office ended by doing something he had done countless times before in his career. He was policing his community and trying to make a difference. Danny was a POP officer, also known as a "Problem Oriented Policing" officer. His job was to identify possible community challenges and try to get ahead of them. He put himself into harm's way every day that he put his uniform on, and on Friday, October 24, 2014, my husband and father of two approached a car on his beat. This time it was the last time.

The last thing my husband attempted to do as a POP officer was to ask the man inside the car how his day was going. He never made it to the driver's window. At about 10:30 a.m., that man was in the country illegally and armed with numerous illegal weapons. He aimed one outside the car of a parking lot of Motel 6 in Sacramento and opened fire, killing my husband with a shot to the forehead.

I can honestly say that not a day goes by that this has not affected me. It may not be visible always. It may not be written in bold for all to see. It may not even be recognized, but it is always in the background of my mind. Sorry.

It is there daily, sometimes moment by moment, as it should be. Many people ask if I have gotten past that terrible day, and the answer is no. Honestly, I do not think I will ever get past that day. I lost the man I was married to for 25 years. Each day I look for parental backup for rearing my child, who is 12 years old, and I feel that loss.

Each day my children reach milestones. My daughter recently got engaged, and there will be a marriage that he will not be at. There will be school graduations and even our weekly family brunches that we held. I am reminded that I no longer have my husband by my side. I was with him since I graduated high school 25 years ago, and we watched each other grow up. We made careers together, and we raised two children. We could just look at each other and know what we needed. Perhaps it was support, a loving smile, or even an “I will talk to you when we get home” look. It is hard to build this trust and understanding, but we had it mastered with ease.

Because of the actions of one criminal, this all ended on October 24th. My life will never be the same.

Unlike law enforcement, there are few professions that consistently send our loved ones into harm’s way. It is frightening, always knowing that each time they walk out the door it could be the last time that you see them. At the same time, not many professions consciously or intentionally give the order to take a life through the use of deadly force in order to protect others who cannot protect themselves, an awesome responsibility that my husband understood clearly. This continues to create a lot of ongoing dialog within communities throughout the country as we see a lack of continuity among law enforcement groups and communities that they serve.

Every single day, law officers at the State, local, and Federal level put themselves, their loved ones, and their communities that they serve at risk when they are forced to release criminals who are illegal, who pose a threat to community safety—all in violation of current laws that require deportation. In just the last 2 years, ICE released back onto the Nation’s streets 76,000 convicted criminals who are in this country illegally. There are 169,000 criminals in the United States who are here illegally right now. That means there are 169,000 people on our streets who have criminal convictions and were formally and lawfully ordered deported, but who remain here to commit other crimes, to possibly kill someone else’s loved one.

The administration’s tolerance of sanctuary cities has also resulted in another 10,000 potentially deportable illegal immigrant criminals being released by local law agencies since January of last year. One hundred and twenty-one of these criminals have been ordered deported in the last few years and yet were released by ICE and have now been charged with additional homicide offenses. The man that killed my husband, Danny Oliver, was deported several times for various felonies before killing my husband on October 24, 2014. However, due to the lack of coordination between law enforcement agencies, he was allowed back into the country and in one day he committed another crime, only this time his illegal crime status impacted many in a direct and profound way when he shot and killed my husband.

It would be remiss if I did not also mention that it just was not my life that—it was not just my life that was changed that day. That same criminal eluded hundreds of officers from Sacramento to Auburn, California, during a 6-hour crime spree that also left Placer County Sheriff Detective Michael David Davis, Jr., dead, Placer

County Sheriff Deputy Jeff Davis wounded, and a motorist in serious condition from a gunshot to the head.

Many lives changed on October 24th. Today I honor my husband, Sacramento County Sheriff Deputy Danny Oliver, and the other fallen heroes throughout this Nation, who are always with us, in our hearts and in our memories. I wonder if I would even be here today talking to you about my loss if the Government better enforced immigration law. Unfortunately, this is now my reality.

Thank you for honoring Danny and the others who have made the ultimate sacrifice. I hope by being here today and telling you about the grief my family has unnecessarily endured I can help save the life of someone else's friend, husband, or father. I hope that my husband's death will not be in vain. I hope that I can be here to make a difference. My life is forever changed and saddened. Please help put policy in place to make sure that criminal immigrants who are in this country illegally are never allowed to dictate the life of a true humanitarian like my husband, Deputy Danny Oliver.

[The prepared statement of Ms. Oliver appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Ms. Oliver. Ms. Huang.

**STATEMENT OF GRACE HUANG, PUBLIC POLICY  
COORDINATOR, WASHINGTON STATE COALITION AGAINST  
DOMESTIC VIOLENCE, SEATTLE, WASHINGTON**

Ms. HUANG. Thank you, Chairman Grassley and distinguished Members of the Committee. My name is Grace Huang from the Washington State Coalition Against Domestic Violence. I am deeply honored to be here to comment on the impact of local law enforcement policies regarding Federal immigration enforcement on victims of domestic violence.

The issue of violence in our communities is challenging, complex, and deeply emotional. As someone who has worked with survivors of violent crimes for over 22 years, I know how important it is for people to feel that they can prevent future tragedies, and I want to extend my heartfelt condolences to the families here today.

Over the years in my work at the coalition, I have had the honor to work in helping families make it—work in the advocacy process in advancing effective policy solutions. Through open and honest dialog, I hope that we can work to find solutions that make our communities safer for everyone.

One crucial thing we can do is to build strong police and community relationships, which means establishing an environment of trust. If victims and witnesses do not feel safe coming forward, the police cannot do their jobs, and we are all less safe. Congress has affirmed the principle that immigrant victims and witnesses should feel safe to come forward by creating the U visa for victims of crime in 2000 and the Violence Against Women Act, which was recently reauthorized. I thank you all for everything you have done to make women and our communities as a whole, more safe. I ask that you remember these lessons as you work to address this new challenge.

As a victim advocate, I am deeply concerned that mandating local police cooperation with immigration enforcement will strengthen the hand of violent perpetrators, helping them silence

their victims and witnesses. I am also concerned that vulnerable immigrant victims brave enough to step forward will face detention, separation from their children, and swift deportation. This was what many communities encountered with Secure Communities, and the chilling effect it had on police-community relations was dramatic and counterproductive.

One example of this chilling effect is the case of Cecilia, a young Guatemalan girl living in Colorado. Cecilia was sexually abused by a family friend at the age of 5. Her parents, who were undocumented, were terrified of reporting the crime to the police after having been told by friends and family that they would be reported to immigration if they stepped forward. A year later, that same perpetrator sexually abused another child. In the end, after the father of that child contacted Cecilia's parents, they went to the police together, and the perpetrator was caught and prosecuted. Because of their initial fear to report, another child was harmed. When immigrants are afraid to come forward with information about a crime, the entire community is less safe.

When reaching out to police to address domestic violence may end up in deportation, law enforcement is effectively removed as an option for safety, which has life-threatening impacts. For example, one client, Maria, so distrusted the police that when her abuser tracked her down after she fled to another State, she tried to call her lawyer instead of calling 911. It was midnight, he was pounding on the door, and she was frantically calling over and over the closed office of her attorney, who was, of course, not at work. For Maria, the idea of calling the police was simply not an option that put her life in danger. Imagine being so fearful that even though somebody is trying to break into your house, you cannot turn to the police.

As victim advocates, we are also concerned that immigrant survivors will be caught up in deportation cases when there are mandates for local police cooperation with ICE. It is not unusual for immigrant victims to be convicted of crimes stemming from their victimization. For example, in California, Cindy, a Taiwanese woman on a student visa, was arrested and convicted of felony domestic violence charges and spent nearly a month in jail before she was able to speak to somebody in her own language. She had bitten her abuser while fighting him off when he tried to rape her. Although the jury determined that she had acted to defend herself, she was convicted of felony domestic violence because the jury determined that the force she used to defend herself was greater than the assault. Because Cindy was not automatically referred to ICE, she was able to complete her studies, expunge her criminal record, and become a productive member of society.

Policies limiting local police cooperation with ICE may provide just enough respite for victims like Cindy to access the resources they need. Again, I want to say that we in the domestic violence advocacy field greatly appreciate the work that Congress has done and many Members of this Committee in particular have done to support a coordinated community response to domestic violence.

Proposals that are under consideration now to limit funds to so-called sanctuary cities will allow violent crimes to go uninvestigated and leave victims without redress. Federal funding

of law enforcement supports critical training, equipment, and staff that assists victims all over the country every day. Without such funding, there will be cases that go uninvestigated, protection orders that will not be served or enforced, rape kits that will not be tested, child abuse and sexual abuse victims that will not have trained interviewers.

These victims are not limited to immigrants. We recognize the fact that there are victims both with lawful status and those without that are harmed by some immigrants. We all want justice for victims and to prevent future crimes. We urge Congress to proceed with measured, thoughtful policies in order to enhance the safety of all of our communities. Thank you.

[The prepared statement of Ms. Huang appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Ms. Huang. Now, Mr. Ronnebeck.

**STATEMENT OF MICHAEL RONNEBECK, UNCLE  
OF GRANT RONNEBECK, SACRAMENTO, CALIFORNIA**

Mr. RONNEBECK. Good morning, distinguished Committee Members. Grant Ronnebeck was a 21-year-old son, brother, nephew, and grandson. He was a bright young man with an infectious smile and love of life. He had a positive outlook on life, and everyone he met knew it. Grant had no enemies; he was a friendly, outgoing lovable guy.

As a 21-year-old American, he was just starting out in life, starting to realize his dreams, starting to follow his heart in matters of career choices, and just discovering his life's opportunities. His desire was to work his way up at the job he loved, working for the QuikTrip Corporation as he had for the previous 5 years, or possibly later to become a member of the law enforcement community.

He loved four-wheeling in the desert around his home near Mesa, Arizona, spending time with friends and family, and watching the Broncos play during the football season. He was a pretty typical young American man, but to us he was a very special family and community member.

At 4:00 a.m. on January 22, 2015, just 6 months ago, while working the overnight shift at his QuickTrip store, Grant assisted a man buying cigarettes. The man dumped a jar of coins on the counter and demanded those cigarettes. Grant tried to explain that he needed to count the coins before he could give the man the cigarettes. The man pulled a gun and said, "You're not gonna take my money," and, "You're not gonna give me my cigarettes." Grant immediately offered up the cigarettes to the man, who shot him in the—point-blank in the face, killing him. Seemingly unaffected, the man coldly and callously stepped over Grant's dying body, grabbed a couple of packs of cigarettes, and then left the store.

After a 30-minute high-speed pursuit through the streets of Mesa and Phoenix, Arizona, the man was taken into custody. Inside his car were the cigarettes and two handguns, one of which was believed to have been used to kill Grant.

Apolinar Altamirano, the alleged murderer, is an illegal alien. According to a news article detailing his 2012 arrest, he was a self-

proclaimed member of the Mexican Mafia and says he has ties to the Sinaloa drug cartel.

The news article states that in August 2012, he was arrested with two others after kidnapping and sexually assaulting a woman and burglarizing her apartment. She was allegedly held naked and against her will for a full week prior to escaping. He took a plea deal and pled guilty to a charge of felony burglary for that incident. He was sentenced to 2 years' probation and turned over to the Immigration and Customs Enforcement agency due to his undocumented status in the United States. He never served any time in custody related to that offense.

ICE, the Immigration and Customs Enforcement Agency, released the now convicted felon Altamirano on a \$10,000 bond pending a deportation hearing.

In the 2 years since then, while awaiting his deportation hearing, Altamirano has had two orders of protection filed against him, including one from a woman who claimed he threatened to kill her and pointed a gun at her boyfriend. ICE was reportedly notified of the protection orders by a Mesa Superior Court Judge. Altamirano was still allowed to remain free in our country.

In addition to Altamirano, ICE reported that they released 66,564 other criminal aliens back onto the streets of our country in 2013 and 2014 and another 10,246 as of March 2015. This group included aliens convicted of violent and serious crimes, including homicide, sexual assault, kidnapping, and aggravated assault. At least 123 American citizens have been murdered by one of those released criminal aliens, including my nephew Grant Ronnebeck.

There are a number of immigration bills that have been introduced in the last several months, among those: Grant's Law, for my nephew; Kate's Law, for Kate Steinle; The Davis-Oliver Act for law enforcement officers Danny Oliver and Michael Davis; and Jamiel's Law, for Jamiel Shaw—all Americans killed by illegal immigrants. Each of these potential laws have a specific component that would help protect American lives. I ask that each of you give consideration and priority to passing these important bills into laws.

It is my family's greatest desire that Grant Ronnebeck's legacy will be more than a fading obituary, a cemetery plot, or a fond memory. Instead, we want Grant's death to be a force for change and reform in the immigration policies of this great Nation.

In closing, I am asking you, our elected leaders, scholars, lawyers, to make these changes, to rise above your political differences, to set aside your personal interests, and to use your resources to make sensible immigration reform a reality in the coming months, with the safety and security of American citizens first and foremost in mind.

[The prepared statement of Mr. Ronnebeck appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Ronnebeck. Now, Reverend Salguero.

**STATEMENT OF REVEREND GABRIEL SALGUERO, THE LAMB'S CHURCH OF THE NAZARENE, NEW YORK, NEW YORK**

Reverend SALGUERO. My name is Gabriel Salguero. Together with my wife, Jeanette, I am the pastor of the multiethnic Lamb's

Church of the Nazarene where immigrants, police officers, whites, African Americans, and Asians worship together. I am also the founder of the National Latino Evangelical Coalition which represents some of the 8 million Hispanic evangelicals living in the United States. I offer my sincere thanks to Chairman Grassley, Ranking Member Feinstein, and the other Members of the Committee. I am honored to be here today.

I want to begin by saying that I am heartbroken by the senseless violence and tragedy that we are discussing here today. I have prayed and asked the Lord to bless these families and provide grace and comfort to each family member here today. I can only imagine that every family member, friend, and community member continues to reel from the shock, loss, and grief at the remembrance of these lost loved ones. My prayers and sincere condolences go to each of you and your families. Nothing I can do here today will heal that grief, but your families will remain in my prayers. I pray for an end to violent acts such as these, and I pray that those who would commit such acts face just consequences and redemption.

I am here to speak about my belief that we should take care to ensure that while we work to prevent these tragedies from occurring in the future we do not harm entire communities in the process. Faith organizations, including my evangelical community, have historically played a critical role in promoting community trust and providing safe haven to refugees, those fleeing violence, and other immigrants facing the daunting challenges of opportunity in the United States. I do not believe that the tragedies we discuss here today are the result of policies that seek to promote trust and cooperation with immigrant communities. The values of the sanctuary churches in the United States are deeply rooted in safety, family unity, and trust. These values are critical in the promotion of healthy, vibrant, and nonviolent communities. They are the foundation for hundreds of communities across the country who have chosen to embrace local law enforcement policies that foster and protect trust. These policies should be designed to prevent dangerous crimes, not encourage them.

In the midst of our collective grief, I pray we avoid criminalizing or casting collective blame on entire communities for the actions committed by one or even a small number of individuals. In order to uphold our criminal justice system, we must ensure that our communities feel safe enough to come forward and interact with law enforcement. Cities across the United States need to work on their role in collaborating with Federal immigration authorities and on the use of immigration detainers in an effort to ensure that survivors of domestic violence, human trafficking, and other serious crimes will cooperate with law enforcement and come forward. If we fail to create smart policies that promote trust, victims and witnesses will remain silent due to their fear that they or their loved ones face deportation after seeking protection from the police. Silence can create fear and expose all communities to greater risks.

We as a Nation should focus on solutions that will make our communities more integrated and, yes, more safe. I believe that legislation targeting immigrant communities will just lead to more crime as it may silence many of the more than 11 million immi-

grants who will fear cooperation with police at the risk of deportation. I urge Congress to resist politicizing the murders and the grief of these families with sweeping measures and to instead work with local communities and churches and others to ensure community safety.

Let us work together to reform our immigration laws. The faith community should work to keep families safe, to keep families together, and to keep children with their parents. The faith community should not permit our grief to turn us against each other or against entire communities.

Yes, our immigration system is broken, and it needs reform. We should not move forward with reactionary legislation that does not address the real issues at hand. The real solution to our immigration challenges is broad, just, and humane immigration reform which would place undocumented immigrants on an earned path to citizenship, get many people on the rolls—that way we know who the criminals are and who is not—allowing also those hardworking immigrants to contribute to their families, communities, and country.

As a pastor, I want to avoid scapegoating entire communities by passing legislation that focuses solely on deportation and not on integrating hardworking families in the United States. Let us work together to promote community safety. We can and should look at State and local policies carefully. I encourage communities to carefully tailor their policies to keep people safe. I encourage the Federal Government to carefully review its own policies and work with these localities across the country to ensure that our systems appropriately meet the goals of violence prevention against all community members. I do not encourage us to force States and localities to pursue one-size-fits-all policies.

As we continue to mourn and pray for these families, let us work together to find real solutions that promote peace and security, not fear and not collective punishment. I pray for an end to senseless acts of violence. I pray for every policymaker here and beyond to make rational and deliberate decisions. I pray for reform that promotes thoughtful community safety policies, immigrant integration, and commonsense comprehensive immigration reform. I pray for the comfort of each of the families speaking here today and those who are not here. I thank you again for inviting me here today.

[The prepared statement of Reverend Salguero appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Reverend Salguero. Now, Mr. Steinle.

**STATEMENT OF JIM STEINLE, FATHER  
OF KATHRYN STEINLE, PLEASANTON, CALIFORNIA**

Mr. STEINLE. First of all, on behalf of my family, I would like to thank the Members of this Committee for the honor to speak to you about our daughter, Kate.

All children are special in their own way. Kate was special in the way she connected with people. We call it the “Kate Effect.”

Kate was beautiful, kind, happy, caring, loving, and deep in faith. Kate had a special soul, a kind and giving heart, the most contagious laugh, and a smile that would light up a room. Kate

loved to travel, spend time with her friends, and most of all spend time with her family. In fact, the day she was killed, we were walking arm in arm on Pier 14 in San Francisco, enjoying a wonderful day together. Suddenly a shot rang out, Kate fell, and looked at me and said, "Help me, Dad." Those are the last words I will ever hear from my daughter.

The day Kate died, she changed her Facebook cover photo to a saying that said, "Whatever is good for your soul, do it." This truly describes Kate's spirit. After graduating from Cal Poly San Luis Obispo, she went to work for a title company and saved her money so she could see the world. She traveled to Spain, Thailand, Amsterdam, Dubai, and South Africa, just to mention a few. She even made her way to the slums of Mumbai, India, to reach out to her friend's mother's nanny. She spent time there with the woman's family and came back a changed person. Everywhere Kate went throughout the world, she shined the light of a good citizen of the United States of America. Unfortunately, due to disjointed laws and basic incompetence on many levels, the U.S. has suffered a self-inflicted wound in the murder of our daughter by the hand of a person that should have never been on the streets of this country. I say this because the alleged murderer is an undocumented immigrant who has been convicted of seven felonies in the U.S. and already deported five times. Yet, in March of this year, he was released from jail and allowed to stay here freely because of those legal loopholes.

It is unbelievable to see that so many innocent Americans have been killed by undocumented immigrant felons in recent years. In fact, we recently came across a statistic that says between 2010 and 2014, 121 criminal aliens who had an active deportation case at the time of release were subsequently charged with homicide—homicide-related offenses. Think about that: 121 times over the past 4 years, an illegal immigrant with prior criminal convictions that later went on to be charged with a murder when they should have been deported. That is one every 12 days.

Our family realizes the complexities of immigration laws; however, we feel strongly that some legislation should be discussed, enacted, or changed to take these undocumented immigrant felons off our streets for good. We would be proud to see Kate's name associated with some of this new legislation. We feel that if Kate's Law saves one daughter, one son, a mother, or a father, Kate's death will not be in vain.

[The prepared statement of Mr. Steinle appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Steinle. Now, Chief Manger.

**STATEMENT OF J. THOMAS MANGER, CHIEF OF POLICE,  
MONTGOMERY COUNTY POLICE DEPARTMENT,  
GAITHERSBURG, MARYLAND, AND PRESIDENT,  
MAJOR CITIES CHIEFS ASSOCIATION**

Chief MANGER. Chairman Grassley, thank you for giving me the opportunity to testify. I come to you this morning representing as the president of the Major Cities Chiefs Association, which represents the largest cities in the United States.

As cops, we see the good and the bad every day. We are witnesses to the immense benefits that immigration brings to our Nation, but we also see the sinister side. Our priority in local law enforcement is exactly what I think you would want and expect—the safety of our communities across the Nation—and our priority should be the prevention of crime and the protection of the public that we are sworn to serve. That is every resident of our community.

In order to do our job, local law enforcement has to have the trust and confidence of the communities that we serve. We fail if the public or any segment of the public does not trust the police and will not come forward when we need them or when they need us.

I want to talk to you this morning about the Major Cities Chiefs Association's policy with regard to immigration. I want to start by making a statement, and I want to be very clear.

While we do not believe that local law enforcement should be saddled with the responsibility of immigration enforcement, we do believe that it is our duty to cooperate with ICE in a manner that is consistent with our duty to protect the public. To this end, we have developed a policy which I think strikes the right balance, and I am pleased to share some of the aspects of that policy this morning.

First and foremost, immigration enforcement is a Federal responsibility. It is today and has always been. Local agencies cannot be expected to take on these additional duties.

Second, we must secure our border. Immigration is a national issue, and the Federal Government should first act to secure the national borders preventing any further illegal entry into the United States. Federal agents must consistently enforce existing laws prohibition employers from hiring undocumented workers.

Our member agencies are united in their commitment to continue arresting anyone who violates criminal laws of our jurisdictions regardless of their immigration status. Those individuals who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of law within any major city but will instead face the full force of criminal prosecution.

The decisions related to how law enforcement agencies allocate their resources, direct their workforce, and define their duties to best serve and protect their communities must be left in the control of local governments. The decision to have local police officers perform the functions and duties of immigration agents should be left to the local government. This shall not be mandated or forced upon them by the Federal Government through the threat of sanctions or the withholding of existing police assistance funding.

The Major Cities Chiefs Association supports the Priority Enforcement Program that has been developed by the U.S. Department of Homeland Security. DHS listened to our concerns, and they have included us in the development of this new program that includes procedures for notification to ICE by local police agencies.

My own jurisdiction, Montgomery County, Maryland, serves as an example of how the new program works well. While it is not our policy to inquire or investigate immigration status, we provide electronic notification to DHS whenever we make an arrest. Likewise,

we provide notification if such a person in our custody is to be released. This is the model policy of the Major Cities Chiefs and the policy of Montgomery County. Local law enforcement is cooperating with DHS through the notification process, but not engaged in routine immigration enforcement. In our view, this notification policy represents a balance that the Judiciary Committee should consider.

With recognition of immigration enforcement as a Federal responsibility, we ask the Committee to resist initiatives that would seek to force routine aspects of Federal responsibility upon local police.

Finally, regarding Federal funding, Federal assistance programs at the Justice Department and Homeland Security were established to strengthen criminal justice and domestic security, not to compel local agencies to perform Federal duties. Their purpose was to help local police and sheriffs, not to require that we take over the job of Federal agencies. It is right to call upon us for actions to protect the public from crime and violence, but it is wrong to demand that we engage in matters related solely to immigration enforcement by withholding Federal funds to coerce performance of Federal duties by local police. This is not why these programs were established.

We welcome this dialog and commit to a partnership with this Committee. Thank you.

[The prepared statement of Chief Manger appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Chief Manger. Now, Mr. McCann.

**STATEMENT OF BRIAN McCANN, BROTHER  
OF DENNIS McCANN, CHICAGO, ILLINOIS**

Mr. McCANN. On behalf of the McCann family, I want to thank you, Senator Grassley, and the other Members of the Committee for this opportunity to share with you my efforts to return justice to our family after the violent death of my brother 4 years and about 6 weeks ago.

Denny was crossing Kedzie Avenue on Chicago's North Side to visit with a client of his. He was a commercial insurance broker. The restaurant was named El Cid's, and he and the owner would frequently dine together in the evening. As he was crossing a walk at that international market, this kid, Chavez, came by, drunk as a skunk, and dragged him for about a block and a half and killed him.

Chavez was charged with aggravated DUI, and 2 days later ICE issued a detainer, and we went to court, a bunch of us in the family, I guess a week later for the arraignment, and they assured us—see, I did not know anything about detainers, but they assured us that the Federal Government had these holds and detainers and that no way would he be able to post bond and leave. His bond was \$250,000, so we were comforted, if you can use that word, that he would be prosecuted. And a few people in the neighborhood, one of them a retired judge, told me he would probably get 6 to 8 years. That is some measure of comfort that we were assured of.

Unbeknownst to us, that summer, members of the Cook County Board—in Cook County, they are the administrators of justice in

my hometown, Chicago. They worked tirelessly, without my knowledge—you know, we have this witness notification system in Illinois that is in the Constitution. Nobody notified me what they were doing. They ran through an ordinance after the August recess in September without going to Committee. You all know how important Committee work is. Cook County apparently did not in this case, and they got it passed 10 to 5. We were not even notified of that, nor was the prosecutor. She was not even aware of it. Somehow there is this lack of communication that the county passes this very important ordinance, and they do not even tell the 400, 500 assistant State's attorneys, because the lady who was prosecuting my brother's killer was never notified. Here I am sitting at home the Sunday before Thanksgiving, and I get a recorded message from some kid at the jail who said that Chavez left. He posted bond and ran. Who do I call on a Sunday? You know, nobody is working. I could not get a hold of the prosecutor. I got a hold of my niece, who is a deputy sheriff in the county, and she verified that, in fact, he did get released. I was not able to call the prosecutor until the next day.

She immediately runs to her supervisor, and they send out a couple of cops to look for him. Well, he is gone. You know, the brother said that he never sees him and that he lives in the basement. Lies were everywhere, you know.

Anyhow, long story short, we also learned—and I failed to mention this kid was prosecuted for a prior felony 2 years earlier, and he was put on probation. ICE was never notified because Secure Communities had just, I guess, gotten off the ground in 2008 or something, and so the notification, that system that police use, an electronic system, was—oh, I am going way over time here.

Anyhow, long story short, we have been fighting for the last couple years. We got a lawsuit pending. Judicial Watch is here, and they have helped us. We are before the Illinois Supreme Court currently. We worked with the prior ICE guy, Morton. He was very helpful. It has just been a pathetic miscarriage of justice visited upon my family and hundreds of other families across the country, and I am so glad you all were able to spend some time listening to this.

All eyes are on both the Senate and the House Judiciary Committee. I am convinced this is where resolution rests because the sanctuary jurisdictions, they are going to get away with literally murder passing these policies, and you guys got to do it.

I regret that my Senator had to leave and could not hear my testimony. Maybe I will talk to him later. All right. Thanks.

[The prepared statement of Mr. McCann appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. McCann. Ms. Wilkerson.

**STATEMENT OF LAURA WILKERSON, MOTHER  
OF JOSH WILKERSON, PEARLAND, TEXAS**

Ms. WILKERSON. Thank you for allowing me to tell the story of my son, Josh, and his murder.

My son's name was Joshua Wilkerson. On November 16, 2010, he was beaten, strangled, tortured until he died. He was tied up, thrown in a field, and set on fire. His killer, Hermilo Morales, was

brought here illegally by his illegal parents when he was 10 years old. He fit the DREAM kid description. He was sentenced to life in prison, which means it will be 30 years before he is up for parole. He will be a 49-year-old man who I do not expect to be deported, and I just hope he does not come to live in your city.

We had to hear this kid from the stand muttering about, “In my country, in my country,” never to finish that sentence. He went on to tell—we listened to him tell us repeatedly that his killing skills took over, that Josh had kicked his dog, his killing skills took over.

His parents somehow managed to provide lessons so that he acquired a black belt in mixed martial arts. Joshua had never been in a fight in his life, very quiet, old soul. He did not speak a lot, but when he did, you listened to him.

Like I said, he had never been in a fight in his life. His killing skills were those martial arts that somehow his parents provided here for him. Instead of getting Joshua home that day from school, we got an autopsy report that reads in part, “This body is received in a grey body bag. There is a tag on his toe that bears the name Joshua Wilkerson. He is a white male weighing 100 pounds. He is tied up with braided rope, 13 loops around his neck with a slip knot. It goes behind his back through his back belt loop. It goes to his hands and his feet behind his body. He has multiple fractures in his face and nasal cavity. His throat and his voice box are crushed. He was kicked so hard in the stomach that it sent his spleen into his spine and sliced it in two. It was painful. The medical examiner said it was torture. This body has significant skin loss on his buttocks, his abdomen, his penis, his hands, and his face. He has one stick of gum and a tardy slip in his pocket.”

This was our family’s 9/11 terrorist attack by foreign—a foreign invader, whether you want to recognize it or whether you do not. This Government continues to fail or even recognize that we have an issue. Americans are dying daily at the hands of criminals that we do not even know are here.

You are officially notified today there is a problem when this happens. You cannot deny it any longer. You cannot stand by and ignore our families, our American families. You are elected by Americans, not any other country. You should be for Americans. If you want to sit quietly on the sidelines, you have thrown your hat into the ring already. Your silence speaks volumes. You are either for Americans or you are not.

I will not give up control—another one of my children so that a foreign person can have a nicer life. I am not going to do it. You do not understand the pain. It is so deep in a soul in a place that you do not even recognize you have. There are not words to describe the pain to someone who has not gone through it.

I am not giving up another kid. Sanctuary city policies scream to the criminal element of all illegals in this country. There is a criminal element. It screams to them, “Come to our town, USA. We will protect you from our terrible police. We will protect you from these tough American laws that you, because you had a hard life, are not able to go through the same motions that an American is.” They are buying into that fact.

It is going to take another life lost by a Senator, a Congressman, the President, even another of today’s heroes, someone from Holly-

wood, before someone in a position moves on this. I urge you, you are in a position to do something about this for Americans.

A thank you to Mr. Trump for getting a message out about the Nation in 2 minutes that for 4½ years solidly, Maria Espinoza at the Remembrance Project and countless families like my own have been trying to say for 5 to 6 years. It feels good to be heard. Whether you love him or whether you do not, I felt heard.

Our family is shattered. It is shattered. It will never be the same. We will manage. We will go on. We function. We put on that happy face. My kids have changed, the surviving kids. Everything about us has changed.

It is by the grace of God that in our broken hearts we have a stream of memories of the loving relationship that we had with Joshua. Joshua had a very deep, intense spiritual relationship, leaving us 4 or 5 Scriptures in the weeks before he died. I am okay with where Josh is at today. I do not—it is not just about missing Josh. It is about what you are doing to an entire family, not just our immediate family, his friends, the teachers, the community, our extended family. It is incredible. I cannot even explain it to you.

America lost that day. You lost a good citizen that was on the brink of becoming who knows what. He had mentioned going into the Air Force like his older brother, who had to come home for 2 weeks and bury—he was out defending this country, Americans, and we had to bring him home for 2 weeks to bury his little brother who was not being defended right here at home. It is absurd to me.

Thank you for your time. I do want to say, too, in just a little bit of a rebuttal about—they are not scared to come here. We are inviting them. Sanctuary cities just say, “Come on down. You can have a pass in our city.” You know, you are tying policemen’s hands. I am not for mandating them to ask them where they are from, but if they pull somebody over for a reason, valid cause, and they are investigating them for something, they have a right to ask them. They have a right to ask me, stop me on the freeway, “Where are you going, Ms. Wilkerson? Where are you coming from? Do you have drugs?” I am going to answer those, and in about 15 minutes, hopefully, it will come out in the wash that I am okay to leave.

Why are you creating a class of people who seem to say we cannot do that? They are not afraid to come here. They are not afraid to traipse across the desert. I have been to the border. I have stood there with border agents and watched them come across from jet skis.

I will finish quickly. Sympathy has never trumped the law in this country, ever. You know, you sympathize with me. Can I go break a Federal law? Anyone? Anyone here like to let me do that?

Every one of them here threatened national security because we do not know who they are, so they are a threat. We do not know them. They make a decision to come here. They are not scared. They are invited by sanctuary city policies. They are not scared to stand in line for a handout that every American here has paid into the system for our children if need be. You know, they mistrust police because they come from countries that mistrust police. You know, they are not scared here.

I want you to know that our family is broken forever. We are forever broken. I thank you for your time, and I do not want the sym-

pathy. I want you to do something about it. Every one of you sitting here is in a position to do something. Just throw your hat into the ring for Americans. Quit sitting silent because it is going to help you get a vote. Throw your hat into the ring and take care of American families. Thank you.

[Applause.]

[The prepared statement of Ms. Wilkerson appears as a submission for the record.]

Chairman GRASSLEY. Thank you. First of all, thank you for your testimony. I have heard frustration and anger about our immigration policies. We can learn a lot from you about how our immigration system needs to be fixed, and for me that starts with border security.

Can I ask my Members, because we are here for oversight of the administration, how many of you have questions that you want to ask of this panel?

[No response.]

Chairman GRASSLEY. If none of you want to ask questions of this panel, then I will dismiss them after thanking them.

Thank you all very much for coming and lending your expertise to this hearing, and I will call the next panel.

[Pause.]

[Disturbance occurs in the hearing room.]

Chairman GRASSLEY. Could we have order?

Today's hearing deals with a very special issue. I trust that members of the public here will act accordingly. I want to note at the outset that the rules of the Senate prohibits outbursts, clapping, and demonstration of any kind. This includes blocking the view of people around you. Please be mindful that those rules as we conduct the hearing, and if it is not abided by, I, of course, would have to ask the Capitol Police to remove anyone who violates the rules.

Before our next panel is seated, I would ask to deliver an oath. Ms. Saldaña and Mr. Rodriguez, would you come, please? Before you sit and before I introduce you, I would like to ask you to affirm.

Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RODRIGUEZ. I do.

Director SALDAÑA. I do.

[Witnesses are sworn in.]

Chairman GRASSLEY. Thank you very much.

Leon Rodriguez is Director of U.S. Citizenship and Immigration Services. He was confirmed by the Senate on June 24, 2014. Director Rodriguez was born in Brooklyn, New York, graduated from Brown University, and earned his J.D. degree, juris doctorate degree, from Boston College.

Sarah Saldaña is Assistant Secretary for U.S. Immigration and Customs Enforcement. She was confirmed by the Senate December 16th last year. She was born in Corpus Christi, Texas, graduated from Texas A&I University and received her juris doctorate from Southern Methodist University.

Director Rodriguez, would you please begin. Then we will call the other Director.

**STATEMENT OF HON. LEON RODRIGUEZ,  
DIRECTOR, U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES, WASHINGTON, D.C.**

Director RODRIGUEZ. Thank you, Chairman, thank you, Ranking Member, thank you, Members of the Committee.

In August 1988, I was sworn in as an assistant district attorney in Brooklyn, New York, Kings County, New York. At the time that I was sworn in, New York City, like many other large jurisdictions throughout the country, was witnessing unprecedented crime rates: high homicide rates, high sexual assault rates, high robbery rates, high narcotics trafficking rates. It was into this environment that I started as a young, 26-year-old prosecutor.

Among my assignments as an assistant district attorney were homicide investigations, sex crimes, special victims prosecutions, organized crime investigations and prosecutions. During my tenure as an assistant district attorney, I sat by the side of many hundreds of victims of violent crime, family members of victims of violent crime, including homicides. I witnessed the same kind of grief without limit that I saw among the crime victims' families that you saw here this morning. I witnessed the sense of profound injustice that was felt by those families. I did everything I could as an assistant district attorney to honor the oath that I had taken in August 1988, and I have frequently remembered throughout my many years of Government service, frequently remembered and felt the grief and sense of injustice that I saw in those years in Brooklyn, New York.

I learned another lesson as an assistant district attorney, and that is that in law enforcement, one size does not fit all. One size fits all is the surest way to let violent criminals go free, to let the worst crimes go unaddressed. It is for that reason that there are homicide detectives who specialize in homicide. Those detectives are not asked to go and arrest the individuals who jumped the turnstile at the subway.

The DACA Program, the Deferred Action for Childhood Arrivals Program, provides a way to take young people who came to this country not of their own volition but were brought by their parents. It takes such young people who have not been convicted of a criminal offense, who do not present a threat to national security, who are not members of gangs, and who either are pursuing a course of study or have pursued a course of study, and does nothing more than to delay their deportation and to offer them work authorization.

Let me be clear about one of the points that I made here. Those individuals are not supposed to have committed and been convicted of a prior felony, significant misdemeanors, or multiple misdemeanors, and they may not be or have been a member of a gang.

As several of you are well aware, there were situations in my agency where that policy was not understood. As a result, in a small number of cases, approximately 20, individuals who were identified in law enforcement data bases as gang members were afforded deferred action nonetheless. That is unacceptable. We took

decisive steps to correct our procedures, to retrain our staff, to ensure that that bedrock requirement of the Deferred Action for Childhood Arrivals Program was fully understood. As a result, a number of those individuals have had their deferred action terminated. In a small number of cases, we determined that the individuals actually were not gang members at all after thorough investigation. You have my pledge that we will conduct our business at USCIS, at U.S. Citizenship and Immigration Service, in a way that prevents gang members from ever receiving deferred action.

Having said that, I realize the topics that we are here to talk about are important and grave ones, and I look forward to what I think is the very important dialog that, Chairman, you have convened today. Thank you.

[The prepared statement of Director Rodriguez appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Rodriguez. Now, Ms. Saldaña.

**STATEMENT OF HON. SARAH R. SALDAÑA,  
ASSISTANT SECRETARY, U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT, WASHINGTON, DC.**

Director SALDAÑA. Thank you, Chairman Grassley, Ranking Member Feinstein, and other Members of this distinguished Committee.

Like you all, and everyone actually in this country, I am greatly moved by the stories that I have heard this morning and the tragedies that have occurred and the pain, the very palpable pain that has been inflicted on the families that we heard from today.

To them I say, I am so sorry for the loss each of you has experienced, and I know many of you have shared those condolences as well. I say that not only as the Director of Immigration and Customs Enforcement, but I say it as a mother, a sister, an aunt, and a grandmother—one of my grandchildren being here today with me. I can only imagine what such a loss would be like.

I want to say that for over a decade, first as a prosecutor, then as a United States Attorney for North Texas, and now as the head of Immigration and Customs Enforcement, the largest law enforcement agency in the Department of Homeland Security, I am committed to do all I can to prevent violent crime. I have been and I continue today to do so. I consider myself a law enforcement officer and have for several years.

While the things we did as prosecutors will not bring back the victims of any violent crime, there is some very small solace that I gained, at least, in bringing the perpetrators to justice. I am very proud of that work.

As you know, the men and women of ICE play an integral role in public safety and in national security. Tragic situations like the ones that the family members find themselves in are deplorable and highlight the need to continue our work to focus on the apprehension and removal of convicted criminals who pose the greatest threat to public safety and national security.

This is exactly what our Priority Enforcement Program is designed to do. We spent months talking with all kinds of people from all of the stakeholders that are interested in our program in de-

signing it, and our objective is to take custody of dangerous individuals before they commit further crimes and before they are released into the communities.

As has been said before, it is not a one size fits all. We have been working across the country to bring people to the table to work with them to reach their communities and the needs of the communities when it comes to public safety.

Just as Senator Feinstein has done in San Francisco, I am asking for the help of each one of you and those other Members of the entire Senate to assist us in this effort to try to have jurisdictions who have not cooperated with us in the past to start doing so now. I urge you, quite frankly, as a part of all that, to help with respect to a comprehensive change to immigration law. It is complex, it is broken. This is—these are the statutes and the codes of regulations that our folks have to deal with every day, and I implore your help in that regard.

Secretary Johnson has made it clear that our borders are not open to illegal migration. As such, ICE in our Enforcement and Removal Operations Directorate, ERO, is dedicating our resources toward the removal of individuals considered enforcement priorities. We are making some progress.

Along the southwest border this year, apprehensions are down 110,000. That I see as a significant positive sign, 34 percent from last year at this time.

Likewise, our interior enforcement efforts are also paying off. Of those people detained in our detention centers, 96 percent of them meet our top two priorities; 76 percent of them meet our top priority. I believe that our people are doing a good thing and focusing on where the focus should be with respect to these hardened criminals.

You all know, of course, the enforcement work and the investigative work that our side of the house does, Homeland Security Investigations, very fine work with respect to transnational crime with very good results, and one in particular I want to point out with respect to gang enforcement. We had an operation recently called “Operation Wildfire,” which netted 32,000 criminal arrests and 1,000 gang members in that particular group, some charged with criminal offenses; of those 1,000,—913,—and it is very meaningful work as well.

I do know that we are going to focus on the enforcement and removal side, and I stand ready to take any questions of this Committee.

[The prepared statement of Ms. Saldaña appears as a submission for the record.]

Chairman GRASSLEY. I thank both of you very much for being here, and most importantly, I want to thank you for coming and listening to the testimony of the first panel. I am going to ask questions, then Senator Feinstein will. Then because the Finance Committee is meeting on taxes upstairs, I am going to have to turn over the meeting to Senator Sessions, if he will do that, please.

I will start with you, Mr. Rodriguez. You said that certain actions of people in your Department were unacceptable in regard to DACA, and so a natural follow up of that is somebody did not do their job right. In this particular case, somebody probably did not

do their job right, and we know that people have died as a result of it. Then if it is unacceptable, who has been fired or disciplined for providing DACA to gang members?

Director RODRIGUEZ. Senator, there was action taken to correct and counsel individuals who did not understand, back in 2013, the proper manner in which to utilize the TeX database, which is the law enforcement database that identifies individuals as gang members. We have undertaken extensive efforts to ensure that both the policy that very clearly excludes gang members from deferred action and the processes of our agency are fully understood.

I would also add that we have run the entire population of deferred action DACA recipients back through the TeX database to identify all those instances where gang membership was not handled appropriately by our officers. There has been counseling in appropriate instances.

Chairman GRASSLEY. Since there were 323, how many were changed after review?

Director RODRIGUEZ. Actually, sir, as I indicated, there were—of the 600,000, nearly 700,000 DACA recipients, we identified 20 cases in which an indication of gang membership appeared in the law enforcement databases for individuals who had previously received deferred action. Eight of those individuals have already been terminated. Others have been turned over to ICE for appropriate handling. Several others continue to be adjudicated. In a few cases, we actually determined that notwithstanding the identification as gang members in the database, they were not, after investigation, gang members.

Chairman GRASSLEY. What process, if any, do you have in your agency in place to learn about DACA recipients' criminal activity in order to immediately terminate the benefit?

Director RODRIGUEZ. We obviously have ongoing contacts and discussion above all with ICE. We are notified in situations where individuals have either been convicted of a crime or where information is discovered that they are gang members. When we receive that information, we act on it.

We are also in the middle of the DACA renewal process right now. Some individuals have been identified as being gang members during the course of that process and, of course, have been denied renewal and other appropriate action taken.

Chairman GRASSLEY. Does your agency require an interview in every DACA applicant who has a criminal record?

Director RODRIGUEZ. We do do interviews in those cases where in order to resolve an outstanding issue, for example, one related to either criminality or gang membership, we do utilize interviews in those cases to resolve those concerns.

Chairman GRASSLEY. Ms. Saldaña, in March, you told the House Judiciary Committee that you supported mandatory detainers. The following day, you changed your position. Sanctuary cities, as you have heard today, do very little to protect the public safety. They are in place to protect certain groups of law breakers, but there are real consequences. Can you tell the family members here today, including the Steinle family, that you do not think State and local law enforcement officials should have to abide by detainers of criminal aliens?

Director SALDAÑA. I am not going to say that, Senator Grassley. What I am going to say is that we are working very hard—very hard—with respect to a whole host—there were about 200 last time I checked—of jurisdictions—and when I say “jurisdictions,” I am talking about counties, cities all over the country who have declined to cooperate with us in the past.

As the Secretary testified last week, Senator, we are making some progress. We have actually identified the top almost 50 jurisdictions that we have had little progress with in the past couple of—several months, and we are going and meeting with those local officials to try to engage them in why the PEP program is actually different from what their experience was with Secure Communities.

You heard from some of the witnesses this morning that there is some fear out there and some concerns about even the impact on local law enforcement if they—there is a feeling of distrust between a community and law enforcement. My answer—the question to me was would it be helpful. Clarity is always helpful to law enforcement, but what I would like to do is, since we have just rolled out this program—we have been working on the design and implementation of it for months, but we just rolled out this program. I want us to be given a chance to work with folks.

As U.S. attorney, my whole existence relied on relationships with State and local law enforcement. I had to work with sheriffs, DAs all across North Texas, to try to get them to work with us, and it is a mutual cooperation. They help us and we help them, and I would like to continue those efforts through PEP.

Chairman GRASSLEY. Can you admit, yes or no, that sanctuary cities pose a problem to public safety?

Director SALDAÑA. I do not know exactly what “sanctuary cities” definition is, but I do know—and I have said this in the past, sir, and so has the Secretary—that not cooperating with us does expose our officers to greater risk because now they have to go out at large and try to recover some of these convicted criminals. It is a resource expenditure much greater than it would be if we could just get these people from the jails directly into our custody and through the process.

Chairman GRASSLEY. Senator Feinstein.

Senator FEINSTEIN [presiding]. Thank you very much, Mr. Chairman. Let me thank the two witnesses and the very moving witnesses we heard in the prior panel.

I would like to put in the record the record of Lopez Sanchez because you see the felonies and you see the number of deportations, and you really see the failure of the system. The question really comes what to do about it.

[The information appears as a submission for the record.]

It is clear to me this man was convicted and served time in more than one State, deported five times, kept coming back, and this is how it ended. It should not happen that way. Maybe the price on deportation is too low because it does not seem to be a deterrent at all, at least in this case.

Mr. Ronnebeck said the following: “ICE reported that they released 66,564 other criminal aliens back onto the streets of our country in 2013 and 2014, and another 10,246 as of March 2015.

This group included aliens convicted of violent and serious crimes, including homicide, sexual assault, kidnapping, and aggravated assault.” Then it goes on and says 123 Americans have been murdered by one of those released criminal aliens, including Mr. Ronnebeck’s nephew. Are those numbers correct?

Director SALDAÑA. They are.

Senator FEINSTEIN. Okay.

Director SALDAÑA. They are, Senator.

Senator FEINSTEIN. Okay. Then how does it happen that of those numbers, an additional 123 Americans have been murdered by them?

Director SALDAÑA. How is it that happened? Or how is it that they came to be—

Senator FEINSTEIN. Yes. It seems to me we have got one size fits all that you do for the worst felon what you do for someone without that kind of record.

Director SALDAÑA. You have really struck on the heart of our efforts in talking to jurisdictions who have not been working with us in the recent past. We recently tried to tell them, “Work with us. Let us look at your statutes. Let us look at what you have passed, and let us see if, one, we have to urge you to try to tweak it; or, two, if we can work within it in whatever ordinance or legislation there is.”

I truly believe, in my heart of hearts, that we can bring reasonable minds to the table to work something out, and that is why we talk about one size not fitting all. It is because we are really trying to accommodate the needs of the communities that are so different—west coast, east coast, north and south. I come from Texas. Our problems there are not the same as the problems in California or New York, or in the heartland.

That is one of the beauties of PEP, and, again, I need local and State law enforcement—

Senator FEINSTEIN. Let me ask you what should happen to somebody convicted of seven felonies in this country in a number of different States and someone who has been deported five times and comes back to eventually commit a heinous crime.

Director SALDAÑA. Of course—

Senator FEINSTEIN. What should—how should that be prevented?

Director SALDAÑA. My belief is in developing those relationships and communication. Here there were—it was a three-way law enforcement communication: the Bureau of Prisons, the sheriff’s office, and Immigration and Customs Enforcement. I am doing all I can to try to look into—and we actually have directed my senior staff to start opening doors, and there have been some conversations already with the Bureau of Prisons, which is overseen by my old Department, the Department of Justice—

Senator FEINSTEIN. Right.

Director SALDAÑA [continuing]. To try to talk about, at least with respect to Federal agency—to Federal agency, what we can do better. I invite your thoughts.

Senator FEINSTEIN. One last question. Supposing the sheriff did consult with you, the city did consult with you. The record is still there: seven felonies, five deportations, and he came back, and he has tried a number of different States and managed to commit felo-

nies there, too. What would happen to him? What would you do with him?

Director SALDAÑA. We would probably, with someone with that kind of a record, we would, if he came into our custody, present him to the U.S. Attorney's Office for prosecution.

Senator FEINSTEIN. On what?

Director SALDAÑA. On illegal reentry, and there are escalating punishments if you have—depending on your criminal record, and so we can do that. Right now it is up to 20 years, depending on the nature of the person's background.

Senator FEINSTEIN. Are there cases where you have done that?

Director SALDAÑA. Oh, yes. Oh, yes.

Senator FEINSTEIN. Can you tell me approximately how many? Where somebody with multiple deportations and multiple felonies actually goes, based on the last deportation, to jail, to Federal prison for a long time?

Director SALDAÑA. We have presented on every occasion that those facts arise. Unfortunately, the prosecution decision is not up to us. It is up to the U.S. Attorney's Office. They have their own priorities. I cannot quibble with that. We do present it every time we see those facts, ma'am.

Senator FEINSTEIN. Let me ask you, there are Members here who have bills that would like to put a minimum sentence on deportation that is violated; in other words, the individual comes back. What do you think of that?

Director SALDAÑA. I have got to start with, quite frankly, I would like, rather than a piecemeal approach to this tremendous problem, a more comprehensive approach to reform. If we are just looking at that, I would like to take a look at that language and what the statute provides. This fellow in Ms. Steinle's case actually had served several sentences for illegal reentry, and substantial—not insubstantial sentences.

Senator FEINSTEIN. Yes, I have—

Director SALDAÑA. The average sentence is 18 months to 2 years. In this case, we had 36, 56, 46 months that this individual served. Obviously, it did not deter him.

Senator FEINSTEIN. Right. My time is up. I will put in the record two different copies of the criminal record of Mr. Lopez Sanchez. [The information appears as a submission for the record.]

Senator FEINSTEIN. Senator Sessions.

Senator SESSIONS. Thank you. Thank you, Senator Feinstein. You made some important points.

I would note that San Francisco proudly calls itself a sanctuary city. They are not hiding it. They are proud of it. They have directed their police chiefs and product officers in that accord, too. We are focused, I think, more today on the sheriff's department, who even the mayor has concluded acted improperly.

I would offer for the record a letter just a week ago on behalf of the San Francisco deputy sheriffs that work for the sheriff there, and that letter to the sheriffs says this: "As evidenced by the tragic death of Kate Steinle on July 1st, the Department's refusal to coordinate much less cooperate with Federal law enforcement agencies recklessly compromises the safety of sworn personnel, citizens, and those who merely come to the San Francisco area. This asso-

ciation hereby demands that the Department immediately rescind the directives and comply with the statutory and contractual obligations to meet and confer in good faith.” They go on to say, “Moreover, it is the association’s sincere belief that any changes that the Department might pursue should honor Ms. Steinle’s life by correcting the Department’s flawed philosophy so that the people of San Francisco—citizens, visitors, employees alike—are safer in the future.”

Ms. Saldaña, you are in charge of filing the detainers and dealing with these issues. Do you agree with that letter from the deputy sheriffs of San Francisco?

Director SALDAÑA. I would agree certainly with the essence of what the question—

Senator FEINSTEIN. Could you put on your microphone, please?

Director SALDAÑA. Thank you, Senator.

Senator FEINSTEIN. Thank you.

Director SALDAÑA. Let us get cooperation, let us do all we can to do—because we are all in the same business, and that is, public safety.

Senator SESSIONS. You are exactly right. What this is all about is protecting public safety. Isn’t it a fact, Ms. Saldaña, that everybody that would like to come to the United States should not—is not entitled to be admitted on their demand?

Director SALDAÑA. That is why we have these statutes and the process, sir.

Senator SESSIONS. You make evaluations based on people, and if they have certain risk factors or if they get here legally or illegally and they evidence dangerous tendencies, they can be deported?

Director SALDAÑA. That is certainly laid out in the statute.

Senator SESSIONS. That is required in certain instances you the statute. It says they “shall be deported.”

Director SALDAÑA. There are mandatory provisions, yes, sir.

Senator SESSIONS. I think that we have a serious problem here, and I believe it is directly from the top of this administration, and I believe you have been directed to carry out administration policies. When you were asked about the sanctuary city reform, as Senator Grassley said, you said absolutely amen. The next day, did you have a conversation with someone and decided to change your statement on that?

Director SALDAÑA. As I said before, Senator, truly my response was a straight-out law enforcement response. What I did the next day was to clarify, I am not going against what we have—all our efforts in establishing and now implementing the PEP program. We want to work with those jurisdictions. That is what I have always done, is try to set up relationship with State and—

Senator SESSIONS. I agree with you. You were a United States attorney, and you gave a law enforcement response, which is, “This is unacceptable.” Every jurisdiction in America that I know of participates in a detainer policy that honors detainers from other jurisdictions. They do not ask whether the case is a good case or not. They do not retry the case. If a United States Federal, State, or local jurisdiction places a detainer hold on a prisoner, that is honored. Isn’t it a historic and really unbelievable act that major cities

in this country are refusing to comply with that basic requirement of law enforcement?

Director SALDAÑA. This is why I needed the next day to clarify, sir, that yes, we need to get there, but we have got this program that we are about to roll out, and it is all hands on deck. We cannot afford not to work together in this area. It is too dangerous.

Senator SESSIONS. What if they do not cooperate? What if they just refuse, as they refused before—didn't your predecessor, Mr. Morton, call on Chicago, Cook County, to stop its sanctuary policies?

Director SALDAÑA. I am sorry, sir. I was not following that. I am not aware what Mr. Morton did.

Senator SESSIONS. He made a clear statement about it, and it was a call on them to change. The administration apparently has changed and stopped pushing it, and now after these events that have achieved so much publicity, you are beginning to talk about it again.

Mr. Rodriguez, you represent the Citizenship and Immigration Service. Your council president has made a series of statements—Mr. Palinkas, he is the head official—saying, quote “USCIS adjudications officers are pressured to rubber-stamp applications instead of conducting diligent case review and investigation. The culture at USCIS encourages all applications to be approved, discouraging proper investigation into red flags, and discouraging the denial of any applications. USCIS has turned into an approval machine.”

He goes on to say: “USCIS officers who identify illegal aliens that, in accordance with law, should be placed into immigration removal proceedings before a Federal judge are prevented from exercising their authority and responsibility.”

He goes on to say—Ms. Saldaña, the ICE officers' moral is reported to be the lowest in the entire Federal Government. They filed a lawsuit against your predecessor, the officers association did, claiming that they are being ordered to violate their oath to enforce the law. What actions have you taken to end this and create—and meet with the officers to create a system in which they are encouraged to follow the law, not violate the law?

Director SALDAÑA. I listen, Senator. I have been to several of our offices across the country. I wish I had time to do all of them in my first year on the job. I do go there, and I do listen. I meet with union officers. I meet with employees top to bottom, and we discuss what our mission is and how it is so important and how commonsensical it is to focus on the most heinous crimes and convicted criminals. I get a very good response.

I—and, by the way, I may now be a named defendant in that lawsuit. I think I have been replaced in there. I take those allegations seriously, and I work with our employees across the country to discuss it.

Senator SESSIONS. I have never seen the kind of morale problems that I see from Mr. Palinkas' statement to you, Mr. Rodriguez, in your official actions, and you, Ms. Saldaña, and your predecessor really. This is not healthy. It is very bad, and it is a product of the trends we are seeing of nonenforcement rather than enforcement.

Senator FEINSTEIN. Thank you, Senator Sessions. Senator Durbin is not here. Senator—excuse me. Senator Schumer is not here. Senator Durbin—

Senator SESSIONS. Senator Durbin is here.

Senator FEINSTEIN. I will call on Senator Durbin.

Senator DURBIN. Thank you very much, Madam Chair. First, I was not able to stay at the hearing for Brian McCann's testimony. Brian McCann is from Chicago. I agreed to speak at an Alzheimer's Association research meeting, came back, got him on the phone. We are working with him through the FBI to try to help bring this fugitive to justice who is responsible for this terrible tragedy in his family. I want to put that on the record.

Let me see if I can put some perspective on this for a minute. There seem to be two or three basic elements here that we ought to keep in mind. First is the belief of local law enforcement that if they are called on to enforce status crimes—that is, persons who are here undocumented—that it could infringe on their ability to maintain order in a community. If every time a police car drove by, folks in a certain neighborhood thought they are looking for undocumented people, those folks are less likely to step up and cooperate with police to find real wrongdoers, real criminals, so that they would be brought to justice. That seems to be a starting point I have heard over and over again. Ms. Saldaña?

Director SALDAÑA. I agree. I have heard it also because I have met with quite a few officials, and they have a tough job. We all have a tough job. I recognize those arguments.

One jurisdiction in Oregon has been sued, and in other jurisdictions, and in these days of tough financial budgets, I can understand why people are concerned about being exposed to constitutional challenges like they have been in some of the law offices.

Senator DURBIN. What the President has proposed in both DACA and DAPA—DACA referring to young people, DREAMers who were brought here as children and are undocumented, and DAPA for those millions who are here undocumented, working, raising families and such. In both instances, the President has insisted that there be a criminal background check before they are even given a temporary—a temporary—permission to stay, to either live, go to school, or work. Is that not true?

Director SALDAÑA. Certainly—and my colleague, Director Rodriguez, can speak more clearly to this, but, yes, that is my understanding.

Senator DURBIN. Director Rodriguez, out of 680,000 who have successfully applied for DACA status, DREAMers who were able to stay on a temporary basis for a few years and not be deported, of that number, 680,000, I am told that roughly 323, about one-half of 1 percent, have either been engaged in crime or had a criminal record to the point where they were disqualified from the DACA Program. Is that close to what you have heard?

Director RODRIGUEZ. That is correct. Most of those were as a result of criminal convictions. Some of them were because of information received that they either were gang members or presented threats to national security.

Senator DURBIN. They were disqualified from the program.

Director RODRIGUEZ. Correct. By the way, Senator, I would cite that as an instance where we did not rubber-stamp, as Mr. Palinkas, my union head, suggested. We have certainly dug into those allegations.

Senator DURBIN. The President's proposal, when it comes to the millions who are here undocumented, they, too, will not only be subjected to a criminal background check before they are eligible to stay and work on a temporary basis, they are subject to review every time that permit comes up to see if they have committed a crime. Is that not true?

Director RODRIGUEZ. That is correct, Senator. It is a multistep process of biographic and biometric checks that are conducted on all such individuals to eliminate criminals, eliminate threats to our national security, eliminate gang members from access to those—

Senator DURBIN. For the record, on both of these programs, DACA and DAPA, proposed by President Obama, there has been general opposition from the other side of the aisle. What the President has proposed for regular criminal background checks about these people living who are undocumented in America has been resisted. That has been a starting point in each of these proposals.

Yesterday, I spoke to Jeh Johnson, the Secretary of Homeland Security. He just visited in Chicago to meet with some of our political leaders to talk about the specific issue that brings us here today. What do we do about those who are convicted of crimes and also undocumented? They are working now to come to an agreement through the PEP program that there be an understanding that certain levels of crime will result in a reporting. They have not reached an agreement—do not get me wrong—but they are moving in that direction.

Can you explain to me the difference between a civil detainer and a criminal detainer and whether that is significant to our conversation here?

Director RODRIGUEZ. Senator, I think I am a little—I do have some insight into those distinctions based on prior positions that I have held as a Federal prosecutor and also as county attorney in Montgomery County. Given that it is Director Saldaña's portfolio, I think I may defer to her.

Director SALDAÑA. Yes, quite frankly, I am not familiar with the distinction that way. More importantly, it seems to me that there are—when there is a criminal case that has been presented to the United States attorney, they have accepted it. There will be a criminal warrant and a detainer notice sent to, if the person is in somebody's else's custody, and that has—it is a court order. It is not administrative, which is the large part of what our function is. Our function is civil and administrative.

There are some groups of illegal immigrants that we do refer to the U.S. attorneys for criminal prosecution, but that is only where the—that is the only place the criminal documentation would arise.

Senator DURBIN. What I am trying to get to is this: If we are dealing with someone who is incarcerated and who has been found guilty of, let us say, a serious felony—no questions asked, it is over the line, serious felony—from your point of view, what you are asking is that before they be released in their undocumented status there be a report to your agency?

Director SALDAÑA. A notice.

Senator DURBIN. A notice to your agency?

Director SALDAÑA. Yes. Please advise us with respect to the notification part where there is not—we have not actually established probable cause, or where we have, a detainer.

Senator DURBIN. Instead of dealing with the serious felon, we are dealing with a question of illegal reentry. An illegal reentry may occur, if I am not mistaken, someone who has been deported from the United States and attempts to return, even if there is no criminal history other than that action of returning after deportation. Is that correct?

Director SALDAÑA. Yes, that is right, and the U.S. attorneys across the country are not necessarily enforcing those because of their priorities. That is just too low level an offense.

Senator DURBIN. The suggestion that we make a mandatory minimum 5-year sentence for people who have been deported and come back across the border, let us say, with no other criminal—no criminal history and no other history from the Government's point of view, that seems to me to be an invitation for a lot of prosecutions.

Director SALDAÑA. We are stretched on our resources already, and we are focusing on convicted criminals. To expand it to just illegal entries or reentries would be a very big problem for us.

Senator DURBIN. Thank you very much.

Senator SESSIONS [presiding]. Thank you. I believe Senator Lee has yielded to Senator Cruz. Good. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman, and thank you to Senator Lee. Thank you to the witnesses for being here. The testimony we have heard today is powerful.

Ms. Saldaña, you are a Texan. You were a prosecutor in our State. You had a good reputation as a prosecutor. You are serving in an administration that consistently refuses to follow the law. We heard this morning the very real consequences of that.

In March, when you were testifying before the House, you were asked about sanctuary cities, cities like San Francisco that defy Federal law, and because of their defiance of Federal law, Kate Steinle is no longer with us. She was murdered because of the refusal of local officials to recognize Federal law.

You were asked in that House hearing, Should Federal law compel State officials to comply with Federal law? Your answer, and I want to quote verbatim, was, "Thank you. Amen. Yes."

In my view, that was the former Federal prosecutor speaking and giving an answer. Yet the next day, you issued a statement retracting what you had said and saying, in fact, although you had said, "Amen," which is a pretty powerful statement from the heart, you did not, in fact, mean that Federal law should force local officials to comply with Federal laws.

I want to ask you what political officials pressured you to change your statement.

Director SALDAÑA. Not a single one. This came from—the original statement came from my heart. The clarification came from my heart. I do not mean to quibble with you, Senator. I respect you greatly. I will say this, the question was not asked—the question was very specific. Would it be helpful for detainers to be manda-

tory? The law enforcement response there is clarity is always helpful. I wanted to be sure that people were not reacting to that as an indictment of PEP or working with communities, and that is what I am committed to do.

Senator CRUZ. Let me make sure I understand your testimony correctly, then. You said then it would be helpful, as in presumably helpful is good, is beneficial, is something you support. Are you saying then that ICE supports making it mandatory to comply with Federal detainees?

Director SALDAÑA. No.

Senator CRUZ. It is helpful, but you do not support it?

Director SALDAÑA. No, sir. I support what we have proposed and what we have been—

Senator CRUZ. You just said it is helpful—

Director SALDAÑA [continuing]. Hours on—yes, sir.

Senator CRUZ. You just said it is—but you do not support it.

Director SALDAÑA. Clarity is always helpful, but cooperation and working with our State and local partners, something I have always done, I will continue to do it, and I am committed to see it through with respect to these jurisdictions that have not been working with us.

Senator CRUZ. It is difficult to work in an administration where you are required to take a position where, although something would be, in your own words, helpful, you nonetheless do not support it. Let me shift to a different topic. In the year 2013, how many criminal illegal aliens did the Obama administration release?

Director SALDAÑA. In 2014, it was a little over 30,000.

Senator CRUZ. How many murderers?

Director SALDAÑA. In that year, sir, I cannot remember the number right now, but I know that we had—the statistic that was said earlier, the 4-year period from 2010 to 2014, there were 121 persons who committed crimes afterwards. I cannot provide you the exact number.

Senator CRUZ. How many rapists?

Director SALDAÑA. I am not sure right now. I would have to pull that number.

Senator CRUZ. How many drunk drivers?

Director SALDAÑA. Same answer. I can certainly break that down for you. In fact, I think we are working on that right now. It has been requested before.

Senator CRUZ. Yesterday, how many murderers did the Obama administration release?

Director SALDAÑA. Senator, I do not know the answer to that question, but I want the American people to understand our job and our mission, if I may. We do not release people willy-nilly. We release people pursuant to these statutes and regulations. There are only a limited number of crimes that we are required to detain people. It is mandatory. They are spelled out here very clearly, many of them related to drug distribution and conspiracies.

With the rest of the people, as you know very well, *Zadvydas* requires us to release some. I think that is a small percentage of the total. Also, the immigration courts have a half-a-million-case backlog. They have the proceedings they go through; they will order re-

lease because many of these folks challenge their bond or their detention.

In the rest—and I think it is like 49 percent this past year—in the rest, where ICE has discretion, where this statute has given us discretion, we have very well trained, very well experienced law enforcement officers who look at the entire case, just like a magistrate judge or a Federal judge does—

Senator CRUZ. Ms. Saldaña, I want to note that your testimony here, when I asked you how many criminals ICE released in 2013, you were off by a factor of three. You said 30,000. The correct answer is 104,000. There were 68,000 criminals, criminal illegal aliens, that ICE declined to begin deportation proceedings against despite the fact, as Senator Sessions observed, the Federal law that you are holding up there says they shall be deported, the Obama administration refused to deport them. That is 68,000.

In addition to that, there were 36,000 in deportation proceedings with criminal convictions that the Obama administration released. I would note that among those were 193 murderers with homicide convictions, were 426 people with sexual assault convictions, were over 16,000 criminal illegal aliens with drunk-driving convictions, released by this administration because this administration refuses to follow the law.

Director SALDAÑA. Sir, those numbers, I am looking straight at them. You asked me, I thought, about 2014. That is 30,558. The good news is at least that went down from 2013, when it was 36,007.

Senator CRUZ. You are omitting the 68,000 criminal illegal aliens that ICE did not begin deportation proceedings against at all, and you have got to add both of those together. It is over 100,000.

Director SALDAÑA. Yes, sir, that is absolutely right, all done pursuant to this statute that the Congress has outlined.

Senator CRUZ. Ms. Saldaña, you heard the testimony from the victims' families. I have introduced Kate's Law in the Senate, a mandatory minimum of 5 years in prison for anyone apprehended with an illegal reentry. Does ICE support Kate's Law?

Director SALDAÑA. I sure would like to look at that. I have not had a chance to. I am not sure when it was introduced, if it has been.

Senator CRUZ. It was introduced last week.

Director SALDAÑA. Okay. I have not had a chance to look at it. I am sorry, Senator. I am certainly willing to look at any proposal along those lines and consider it and work with you if I find some objection to it.

Senator CRUZ. Ms. Saldaña, I will note in your opening statement here you said, after listening to the victims' families, that you were so sorry for their losses. Yet the Obama administration keeps doing it. When I asked you how many murderers were released yesterday, you do not know. There is a reason the American people are upset. If President Obama had the courage of his convictions, he would come and look in the eyes of these men and women who have lost their sons, their daughters, their mothers, their sisters, their brothers, and the administration would stop releasing murderers and rapists. It is within your power to follow Federal law,

and this administration refuses to do so, and that is altogether unacceptable. Thank you.

Senator SESSIONS. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Senator Sessions, and thank you to both you, Director, and also to you, Assistant Secretary, for your work.

I know Senator Grassley had to step out for another hearing, but I wanted to thank him for bringing together the first panel of witnesses. I thought their testimony was moving, and I know from being a former prosecutor how difficult it can be for victims and their families to come forward. I am sure some of the families are still in the room today, so I thank you for being willing to come forward today.

I also wanted to thank Senator Feinstein for her frankness in criticism of the sheriff in her own State. Clearly, there should have been cooperation, and they should have been working with ICE, and I think it is very important to remember that there are some of us that are willing to look at these policies and look at them in a way to figure out what best helps public safety. Deputy Secretary, you talked about some of the work that is being done to work with these local jurisdictions, and I listened to the head of the Major Cities Chiefs talk about their policy, which he made clear was cooperating with ICE. Clearly, that did not happen in the case in San Francisco.

Are there other sheriffs and other law enforcement people who have taken that position and have policies where they are not going to—and I understand the mayor said that was not what happened in San Francisco, but where they are not going to work with you and notify you when a repeat felon is being released?

Director SALDAÑA. The last time I checked the number of communities that had passed some kind of ordinance or legislation, it was a little bit over 200, about 208.

Senator KLOBUCHAR. But these vary. Is that correct?

Director SALDAÑA. Excuse me?

Senator KLOBUCHAR. Do they vary?

Director SALDAÑA. Oh, tremendously.

Senator KLOBUCHAR. Okay. What I am talking here about is, I think, the most glaring thing, this idea that someone who has been deported several times, been convicted of lengthy felonies, that there was no notification to either try to deport him or, as you made the better point, for someone who is a repeat felon like that, bring them to the U.S. Attorney's Office. Do you know how many have that policy that was as severe as what the sheriff did in San Francisco?

Director SALDAÑA. Maybe a handful. Maybe a handful. You know, we have identified, I think I said earlier, the top 49 jurisdictions who have not been cooperating with us that would have the greatest impact with respect to their immigrant populations in their communities, and we have made real progress. As the Secretary testified last week, about 33 of them have now said over the efforts of the Secretary, the Deputy, and quite a few officials, that they will work with us. In some manner, we are working with them.

Senator KLOBUCHAR. It just seems like in a case like this it should be mandatory that something gets reported to ICE, and that is what I am trying to grapple with, and I know Senator Feinstein is.

Director SALDAÑA. It is a very commonsense approach, Senator. I agree with you. I think PEP covers that. These are severe, heinous, and dangerous criminals that we are targeting and that we are working—trying to work with these jurisdictions to say can't we all agree on this category of individual and this criminal history.

Senator KLOBUCHAR. We used to have cases sometimes—in fact, I was just reading about one where we had convicted a man of murder. He had hacked up his wife into pieces, left her head in a bowling ball. It was a horrible case. He was from Russia, and he has been making requests to go back to Russia, and my successor is saying no to that. I remembered the pressure you would sometimes get, not necessarily from defendants—you would not care about that—but from sometimes family members, people say, “Oh, send them back to the other country.” I think it is an argument clearly for serving out sentences in the U.S. for public safety. Then, also, you brought up the U.S. Attorney's Office, and obviously they cannot handle all these cases. When there are these serious ones with a number of felonies, I would think this should become more of a priority when it comes to these prosecutions. Has there been discussion about this with the Justice Department at all?

Director SALDAÑA. Yes. I have actually met with the Deputy Attorney General and discussed where we can work together to strengthen this. I have met with the Border and Immigration Security Subcommittee of the Attorney General's Advisory Committee of U.S. Attorneys, and we have discussed specifically what can you do to help us make an impact with respect to some of these cases, and they seem very interested and cooperative.

Senator KLOBUCHAR. I have been a supporter of comprehensive immigration reform, and I think there is a lot of focus on things that we need for our economy with that bill and allowing, you know, everyone from engineers on to be able to get green cards and to stop training our competition, and there are many important things in that bill. It is a bipartisan bill. I think one of them, as you know, Director, is also more money for the border, more money for enforcement, those kinds of things. Do you think that that would be helpful as well to pass some kind of comprehensive immigration reform? Either of you can answer this.

Director SALDAÑA. Essential. I mean—

Senator KLOBUCHAR. I am talking about from a public safety perspective.

Director SALDAÑA. Yes. It is like one of these very wise victims indicated this morning, when you hear something that simply stated, you wonder why do we get bogged down. That was put aside political interests and let us get to work on a better immigration system, comprehensively.

Senator KLOBUCHAR. Did you want to add to that?

Director RODRIGUEZ. I would like to add to that. One of the issues that we have heard about this morning is the notion that individuals who are here illegally, we do not know who they are.

They are not registered. They are off the grid, essentially. Both what the Deferred Action Programs and, more helpfully, comprehensive immigration reform provides is a way to know who those people are, to hold them accountable, to know who they are in those rare instances where they do commit crimes. That is just one example of many where public safety would be promoted by immigration reform.

Senator KLOBUCHAR. The last thing I wanted to bring up is just a different issue to me, and I do not want it to get scrambled into it, and that is, the U visa program for victims of crime and witnesses. We have worked hard on this. I had many experiences where people would be preyed upon because they thought they had power over them because a family member or something else could be deported. The U visa program has been helpful in bringing cases, as one of the witnesses pointed out who worked in the domestic violence area. Could you speak to that?

Director SALDAÑA. I can certainly. I prosecuted human-trafficking cases, and we often requested T visas. I am happy to say that many of the victims that were involved in some of these cases actually ended up staying in the country and applying for residency and ultimately, I am sure, citizenship and will make extraordinary American citizens if they get to that point.

Senator KLOBUCHAR. All right. Thank you very much, and we look forward to working with you.

Senator SESSIONS. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to both of you for coming here, for your willingness to serve our country, and your willingness to talk to us today.

I believe that the great majority of those who have come to the United States in violation of our laws have probably done so for very sympathetic reasons and have probably been living their lives in a way that, aside from the illegal manner in which they chose to enter the country, are otherwise living good lives, respectable lives.

This fact does not—and I do not think ever can—vest them with the right to citizenship, and it certainly cannot override the need that we have to ensure that U.S. citizens are protected from violence, including the type of violence that might result from someone who came here who should not have come here, someone with a known criminal record who has been allowed to remain here in violation of our laws.

I have spoken at length in other hearings and on the floor of the Senate about some concerns I have about the use of a legal remedy known as parole within our immigration law. For those who are not steeped in immigration law, parole is a very narrow exception, one that allows a person to enter the country temporarily. The law governing parole within the immigration context is fairly specific. It points out that this needs to be narrow, and it needs to be either for urgent humanitarian reasons on the one hand or a significant public benefit on the other hand.

This temporary parole is meant to allow people to enter the country for temporary, finite occasions, such as the need to get medical treatment. That would be an urgent humanitarian reason to allow someone to get parole. Or if we are talking about significant public

benefit, we might add to that the hypothetical of someone needing to come in to testify as a witness at a trial.

These things are temporary, and they are time sensitive. The temporary nature of parole and its narrow nature is very important because once you have been granted parole, if you have been paroled into the country, you have removed an otherwise present and significant legal impediment to gaining access to citizenship. If parole is abused, if it is granted excessively, indiscriminately, or outside of the framework of what the law allows, this, you can understand, could really create a giant gaping hole in our immigration laws.

The President has cleverly, and some might say surreptitiously, spread the definition of parole wide enough to give DACA and DAPA recipients access to citizenship in circumstances in which citizenship would otherwise be not available to them. We are now seeing the President expanding that program again, expanding yet again the use of parole.

First, as Vice President Biden announced in November, the Department of Homeland Security and the Department of State are establishing a refugee parole program that would allow those who failed to get refugee status to enter the country under parole. I reiterate, parole is meant to be a temporary admission to get past the border on a case-by-case basis, either for urgent humanitarian reasons or for a significant public benefit. It is not a substitute for refugee status and should not be used to permanently relocate non-refugees to the United States where refugee status is not available.

Second, the President announced in a report released just last week that the Department of Homeland Security will propose an expanded parole program for entrepreneurs. Entrepreneurs are valuable. We all love entrepreneurs in this country. In fact, we have a lot of programs that are designed specifically to help encourage more entrepreneurs, not just within the United States but to come here from other countries, because we like entrepreneurs. Any program that encourages entrepreneurs to come into the United States, to this country, should be established by statute, by law, not shoehorned into a narrow exception that is meant to allow the administration to step outside the normal process only under extraordinary circumstances.

Mr. Rodriguez, we will start with you. Do you believe these programs are consistent with the limited intent and the temporary nature of statutory text regarding parole?

Director RODRIGUEZ. Thank you, Senator, for that question. The short answer is yes, I do, and I do precisely for the point that you made, which is that these are programs that are meant to be limited—they are meant to either afford a permanent immigration benefit—nor are they meant to be utilized by everybody.

Senator LEE. You agree with my characterization of the—

Director RODRIGUEZ. I do not agree with your characterization of the programs. I agree with—

Senator LEE. You agree that they are limited?

Director RODRIGUEZ. That is correct, that these programs are limited. When we talk about the Central American Minors Program, it is a limited number of individuals who will be able to seek parole. There are very specific requirements, very specific cir-

cumstances which afford people that parole, and parole is, as you say, a temporary program.

Senator LEE. Okay. You agree that it is intended to be temporary and limited. Yet when we look at—in the DACA application for advanced parole, there is a form called Form I-131, and it defines the statutory term “significant public benefit,” again, which historically was understood to refer to something like the need for someone to come into the country to testify at a trial. It defines that to include semester-abroad programs and meetings with clients. Do you think that is a fair interpretation of the statute? Is it fair to shoehorn meetings with clients or semester-abroad programs into significant public benefit, something intended to give somebody the right to enter the country to testify at a trial?

Director RODRIGUEZ. Understand what we are talking about when we talk about the advanced parole. These are individuals who are participants in a deferred action, not a parole program, whose ability to temporarily remain in the United States is under a Deferred Action Program. They are——

Senator LEE. Okay. If it is not a parole program, then why are you using parole for them?

Director RODRIGUEZ. That is basically the manner in which those individuals on either a humanitarian or significant public interest basis are able to then reenter the United States.

Senator LEE. Reenter the United States——

Director RODRIGUEZ. It permits them to temporarily leave the United States and then return to the United States.

Senator LEE. When they return, they have had a significant impediment that would otherwise exist to their pathway to citizenship lifted.

Director RODRIGUEZ. It does not make them qualify for either legal permanent resident status or for citizenship. In fact, like anybody else, they need to have an actual basis. There must be a family member——

Senator LEE. Correct—no, it is not independently adequate. It removes an impediment that would otherwise be there, namely, by virtue of the fact that they entered illegally, that would impede them from getting a green card but for the use of parole. Isn't that right? Is that correct?

Director RODRIGUEZ. It is correct to a point, sir. The critical aspect is they need to qualify for whatever the basis is, be it for residence, for a visa, for citizenship. They need to qualify that. Advanced parole will not make them qualified.

Senator LEE. It will not make them qualified, but it is a condition precedent, a condition without which they could not otherwise have gotten there. You have distorted this law. You have manipulated it beyond what the statutory text would bear, and that does cause me great concern. I see I am over my time. Thank you very much. Thank you, Mr. Chair.

Senator SESSIONS. Thank you, Senator Lee. That is a technical and important issue. It will be Senators Vitter, Perdue, and Tillis, in that order. Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman. I also want to thank the Full Committee Chairman and Senator Flake for a lot of work and cooperation with me on legislation which we want to bring for-

ward and will be bringing forward to stop sanctuary cities policy, to put teeth in existing Federal law which says that local law enforcement has to cooperate with immigration enforcement. I thank you. You have been very active on that, and the Full Committee Chairman and Senator Flake and others who were working with me on that, and hopefully I think we are going to move that soon in Committee.

Thanks to you both for your service. Ms. Saldaña, the White House, through the press secretary, recently suggested that the murder of Kate Steinle was made possible because Republicans refused to pass the large immigration bill, which included an amnesty, during the last Congress. Do you agree with that?

Director SALDAÑA. Sir, I decline to engage in this political discussion. I am just interested in law enforcement and making sure that the immigration laws are enforced.

Senator VITTER. Okay. Do you agree or disagree with that suggestion?

Director SALDAÑA. I have no opinion one way or the other. I am focused on a very important job under the immigration laws and really would prefer to work on that and answer questions related to that than political questions. That just does not advance the ball for—

Senator VITTER. I agree it does not advance the ball, and I agree Josh Earnest's statement was insulting to a lot of people, including the victims.

Let me ask you this. How is your action to block sanctuary city policy through the Priority Enforcement Program going to be any more effective than it has been through the Secure Communities Program? Obviously, it has been completely ineffective through that.

Director SALDAÑA. Lots of controversy, lots of litigation arising out of the Secure Communities. The differences are significant, particularly, I believe, as we talk to more jurisdictions, they will see this more clearly, the distinctions are material.

For example, one of the problems in that *Clackamas County* case was that there is no basis to detain someone at the State or local level beyond 48 hours, which is what our request was, to detain them 48 hours beyond what their underlying offense called for.

Under PEP, we will have—we are only asking for 48 hours' notice before the release of an individual, unless we have probable cause, in which case we have got indications of a true violation with evidence that we can show the local jurisdiction. Then we ask for detaining that person the 48 hours.

Senator VITTER. Under this new policy to try to stop these abuses from happening, first of all, I am glad that we are finally doing this from the administration. Under this new policy, what is going to happen if and when the local jurisdiction does not comply?

Director SALDAÑA. This is one of the things I am considering. I, along with the victims this morning, do not want to see their lives go—you know, without being—

Senator VITTER. I hope we can all agree about that, but the bottom line is there is no consequence now, there are no teeth now. Nothing happens to these local jurisdictions. If this is a brand-new

day brought on by these horrific incidents, what is going to happen to these local jurisdictions?

Director SALDAÑA. I am in the middle of looking at that because, as you know, we just started implementing PEP within the last couple of weeks.

Senator VITTER. You do not know that anything is going to happen to them.

Director SALDAÑA. No. We are going to work toward that, sir. I want to talk to more jurisdictions to understand exactly what the problems are with respect to their accepting our—cooperating with us. Once I understand their local problems, I think I can help them better to help figure out a solution. I do not want to be one of these people that comes in and says—

Senator VITTER. After you say, “Pretty please,” three times—

Director SALDAÑA [continuing]. “I am the Federal Government, and I am here to help you.”

Senator VITTER. After you say, “Pretty please,” three times and they do not comply, is there going to be any negative consequence?

Director SALDAÑA. I am looking at that, sir, and working with the Secretary to see what we can do with respect to that.

Senator VITTER. You have not determined yet that there will be any negative consequence?

Director SALDAÑA. The program has been in effect for about 3 weeks, sir. We just started. We asked for a chance.

Senator VITTER. There were some victims’ families here who asked for a chance, and their chance is gone in terms of their family member. Three weeks—this has been going on for years, and you still are not prepared to say that there is ever going to be any negative consequence to those jurisdictions. When is that going to change?

Director SALDAÑA. I presume when you all address comprehensive immigration reform, perhaps it can be addressed there.

Senator VITTER. Oh, now, we are going to the Josh Earnest line, right?

Director SALDAÑA. The what, sir?

Senator VITTER. Ridiculous. We are going to the political line you just disavowed.

Director SALDAÑA. Comprehensive immigration reform to me is not political. It is an essential legislative effort to try to get—

Senator VITTER. Absent Congress passing that bill that you and the Obama administration prefer, you do not think right now we can stop sanctuary cities from flaunting Federal law? You do not think right now there can be any negative consequences when they do not properly cooperate under existing Federal law with immigration enforcement?

Director SALDAÑA. That is what I understand you all are working on.

Senator VITTER. Are you working on it? You have the authority to do that now.

Director SALDAÑA. Sir, not according to certain jurisdictions. A court, a Federal district court in Oregon, for example, has ruled against us on mandatory detainers, even citing the language that says “shall.” I am looking forward to looking at the legislation that

is being proposed to address these questions. I want a solution, too, sir.

Senator VITTER. We have been asking for a solution to that about sanctuary cities for years. There has been absolutely no effort from the administration before. There is a promise of an effort, but still today after these tragedies, you are not prepared to say that you support any negative consequence to sanctuary city jurisdictions if they do not properly cooperate. I eagerly await you all to finally say that, to finally say, yes, there needs to be some consequence, because that is the only way it is going to stop throughout hundreds of jurisdictions around the United States.

Director SALDAÑA. Senator Vitter, I offer you my assurance if you would like my input with respect to any legislation you propose to try to resolve this or advance the ball.

Senator VITTER. I am asking for your input right now. What should the negative consequence be that you will support?

Director SALDAÑA. I am hopeful that I do not have to hit somebody over the head with a Federal hammer and work with these State and local jurisdictions, which have their own specific problems to address. I think you understand that, Senator, and that is why I would like to work with you to try to address it jurisdiction by jurisdiction.

Senator VITTER. Unfortunately, the biggest thing I understand is that you are not prepared today as we speak, even after these horrible tragedies, to support a single negative consequence against a sanctuary city jurisdiction if they do not properly cooperate with immigration enforcement. That is unfortunately the biggest thing I understand. If that is incorrect, please tell me how. I am eager to hear that.

Director SALDAÑA. It is incorrect.

Senator VITTER. Okay. What negative—

Director SALDAÑA. I would love to see—

Senator VITTER [continuing]. Consequence will you support?

Director SALDAÑA. Whatever you all propose with respect to legislation, I would like to work with you on it to see what we can do to help our communities as opposed to put road blocks in their way in their community policing.

Senator VITTER. Will you tell us what you would support in that regard right now?

Director SALDAÑA. You know, sir, I am so focused on trying to correct the problem through our PEP program that I would be happy to work with you with respect to any legislation you propose.

Senator VITTER. Thank you.

Senator SESSIONS. Thank you, Senator Vitter. I would note there was nothing in the Gang of Eight comprehensive bill that fixed the sanctuary city problem. It was just one of the loopholes in that legislation. Senator Perdue.

Senator PERDUE. Thank you, Mr. Chairman, and thanks to both of you for being here today. This is a tremendously important crisis, as I would call it, not just an immigration crisis but a national security crisis. There are only 6 reasons why 13 Colonies got together in the first place—6 reasons—and one of those was to provide for the national defense. We heard from six families this morning. There are many other thousands out there who have

similar experiences, including in my home State, with similar tragedies. We both have got to work together and solve this thing.

We heard this morning that between 2000 and 2014, over 100 convicted criminal aliens were released and then subsequently arrested again for murder after they had been released. Those convicted criminals were in our communities because the Government let them go free instead of deporting them.

In 2013 alone, ICE released over 36,000 criminal illegal immigrants into American communities. These illegal aliens had almost 90,000 convictions on their records, including 193 murder convictions and over 16,000 drunk-driving convictions.

All told—and I know this is a debatable number, but all told, according to the Center for Immigration Studies, there are over 340,000 criminal illegal immigrants walking the streets right now. I would argue that this is a national emergency. It is absolutely outrageous, in my opinion. I do not think there are innocent parties in this debate.

In 2000 in my home State, we had a 16-year-old kid killed by an illegal immigrant. Today, 15 years later, the perpetrator of that crime is still at large. This is unconscionable when you hear the stories of these families. We could bring thousands in here. It is time for us to do something.

I just have a real quick question, Director Saldaña, and thank you for your service in Texas and now nationally. If you had this perpetrator in California in your custody—you had answered this question earlier. I just want to ask it again for clarity. What is ICE's policy? What are you driving in your organization? How would you have treated this particular incident where they were released back to the custody of the authorities in San Francisco?

Director SALDAÑA. As we mentioned earlier, the difference between a criminal warrant and a notice of detainer from ICE, we expect for other jurisdictions to respect the court orders that we get when we get a judicial warrant or a criminal warrant. So we—

Senator PERDUE. What if they do not?

Director SALDAÑA. That is not an issue we have when it comes to court orders. We take them to court then and say this individual—this jurisdiction has failed to honor this court order. I mean, that has teeth, right, when it is coming from a Federal judge or even a local judge. Then we ask other jurisdictions to honor our criminal warrants that we get in our investigations. To us it is a mutual benefit, and we would honor that criminal warrant typically.

The Secretary testified last week on something I know he and I are going to have many more conversations about, and that is, what more could be done to try to ensure that where we have a jurisdiction that is not cooperating with us, that we work in this case with the Bureau of Prisons or someone else to try to ensure we get custody of that person.

Senator PERDUE. I want to come back to the Bureau of Prisons in just a second, but in that particular case, I am a little confused because—and this is not a trick question, but I want to know that the policy is consistent in your organization about how you would have treated that particular perpetrator, because just last week one of your senior officials inside your staff told the Judiciary Com-

mittee staff that, in their opinion, ICE would have done exactly the same thing as the BOP did in that particular instance and would have released that individual back to the authorities in San Francisco. Is that pretty much correct?

Director SALDAÑA. That is correct, sir. Here is the deal. Here is how, typically, law enforcement works. We have a criminal warrant signed by a judge. We call the jurisdiction—or we see that, and we call the jurisdiction and say, “Are you—is this still a live warrant? Are you going to pursue prosecution?” We work with that jurisdiction. If the answer—depending on what the answer is, we work with that jurisdiction to ensure where are we going to get the biggest bang for our buck. Is it the State prosecution or the Federal prosecution? That is where that cooperation is so important and why I truly recommend against forcing these jurisdictions, because that breaks relationships.

Senator PERDUE. I am not worried about relationships. I am worried about results, and right now we have got cities not adhering to Federal law. I just think that is a tremendous problem whether it is regarding immigration or highway issues.

Let me change topics. We just mentioned PEP earlier. You know, we sent a letter, several Senators sent a letter to Secretary Johnson a couple weeks ago. We still have not received a response yet, by the way, but we are concerned about PEP. I really believe that, as we said to the Secretary, it is pretty clear that PEP will lead to the release of additional, maybe thousands of additional criminal aliens from Federal custody. I am really concerned about what effect that could have just like we heard this morning.

Let me ask you this. With regard to these communities and PEP, given that these communities did not previously honor ICE detainers or cooperate with Federal immigration at all, why do we have confidence that they are going to work with us on PEP? Why do we think that is going to be a better approach?

Director SALDAÑA. Because of the distinction, the differences that we have weaved into the new PEP program. I mentioned one earlier, and that is, we are removing the objection, the constitutional objection that we are detaining people or asking for them to hold people without a basis. They have already completed their State or local sentence, and so now we are saying, okay, do not hold them 48 hours in the typical situation, just give us notice of 48 hours before.

We have got some differences to communicate to them and to show them, and I think they make a difference in many cases. I do not know—I do not remember if I shared with you, Senator. I would like you to know this. We have identified the top 49 jurisdictions that have the greatest impact based on their illegal populations, and 33 have already said they are going to work with us in one way or another. Eleven are still in the process of considering it. We are going to keep working that, and that will have a great impact.

Senator PERDUE. Thank you. Director Rodriguez, I am almost out of time, but I want to talk about the *Martinez* case with regard to the exception relative to gang membership and the potential loophole. I mean, this seems pretty obvious to me. We talked about this in an earlier Committee hearing, but I would like to get your opin-

ion on isn't this just another loophole for someone to falsely claim a threat that if they were to go back home, they are under threat, therefore they should get asylum here?

Director RODRIGUEZ. It is certainly our view that, you know, you should not be able to use your prior criminality as a way to claim a particular social group. We do think that rulemaking is the right path to resolving the right way to handle this issue, and we can certainly meet, Senator, and talk more about solutions to the issue that you have presented.

Senator PERDUE. Thank you, Mr. Chairman.

Senator SESSIONS. Senator Flake, are we going to Senator Tillis, or are you going next? Is that—Senator Tillis. All right. Thank you.

Senator TILLIS. Thank you, Mr. Chair. Director Saldaña and Director Rodriguez, thank you for your service. I know you have got a tough job.

A lot of people have quoted some numbers, but I want to make sure that we unify around what I think are very, very important numbers. The Center for Immigration Studies estimates that there are some 347,000 criminal immigrants at large today. According to a March 2d report, ICE Weekly Departures and Detentions Report, there are 168,000 convicted criminal immigrants who had final orders of removal but are now at large in the United States.

In 2013, I think that Senator Perdue mentioned there were some 36,000 aliens released. They represented a total of 88,000 convictions: 193 homicide convictions, including one willful killing of a police officer with a gun; 426 sexual assault convictions; 303 kidnapping convictions; 1,075 aggravated assault convictions; 1,160 stolen vehicles; 9,187 dangerous drug convictions; and 1,670 drunk-or drug-driving convictions.

After they were released—now, that is what they mounted. By the way, that is on average, if my back-of-the-napkin math is right, releasing someone who is convicted of a homicide some two or three times a week.

After these people were released, 1,000 were convicted of another crime following their release. This is a significant problem. Those stats were only for 2013. We could quote stats before and after that. It is a serious problem, and I think that it is something that the sanctuary cities need to recognize.

Senator Saldaña—or Director—

Director SALDAÑA. Quite a promotion, sir. Thank you.

Senator TILLIS. I am not sure.

[Laughter.]

Senator TILLIS. I guess I am a little bit confused with the PEP program. I understand that you are trying to work with local law enforcement, but to a certain extent it seems to me that we are really excusing the fact that they are not really reading at least the spirit of the law, and some would say the letter. We have talked about whether or not we should pass legislation to be very specific about the mandatory requirements, and you do not want to do it, and it seems to me that a part of that is because you are concerned with the relationship damage that could be done by forcing them. Is that accurate?

Director SALDAÑA. Sir, as I said, the local—our local law enforcement relationships are vital, not just to what we do in immigration.

I mentioned Homeland Security Investigations earlier. We rely on our local law enforcement partners to assist us with crime that is part of the Homeland Security investigations—

Senator TILLIS. I understand that, but shame on them if they all of a sudden are not going to cooperate on these other matters of homeland security, because we want to take a very specific direct stand that they should obey the law. I mean, that to me is like, well, we will do a favor here, cut them some slack so they will work with us. That is their job. That is what they are sworn to do.

Director SALDAÑA. Yes, and just because I have worked here in law enforcement over a decade, I just want to be sure you understand. Most of the jurisdictions work with us every day. Thank goodness they do. Let me set some context here. I think mentioned about a little over 200 jurisdictions that are not, that have passed some kind of ordinance or other legislation not to work with us. There are thousands of jurisdictions that do already. I am very proud of my home State of Texas that has 254 jurisdictions in it, and we have very good relationships with 99.9 percent of those. Please do not assume that these 208 represent the total number of—the vast majority of jurisdictions out there.

Senator TILLIS. I understand. I do think, though, that we need to keep in mind that the numbers that I went through are significant, and each and every year there is roughly the same sorts of numbers. This is a significant challenge. I do not feel like for the bad—what I would consider bad actor cities, sanctuary cities, shame on them. They need to cooperate with you all. You need to be able to do your job. They need to help you do your job, not because it is some sort of favor or accommodation, but because that is their responsibility.

The last question that I have relates to the DACA program, and, Director Rodriguez, this may be appropriate for you. I asked the Secretary when he was here if he felt certain—you are probably familiar with the Rangel-Hernandez quadruple murder down in Charlotte, 20 minutes from where I live. That was someone who was granted deferred action, determined he did have some affiliation with gang violence, and he was one of the cases that I think spurred your review of the other actions.

Are you absolutely certain that we have scrubbed those who have received deferred action and that we do not have another Rangel-Hernandez out there waiting to happen?

Director RODRIGUEZ. I will take that as really two questions. The first is, am I absolutely certain? I am satisfied that my staff engaged in a very thorough process of running the entire DACA cohort back through the law enforcement databases that we use to identify gang membership. I do believe that the label of gang member in that database is a reliable label so that if the individual is identified, that gives us what we need to either deny them outright or to conduct further investigation. So, that as we speak today, that does leave me with confidence that as of the date that we did that review, we were able to address all cases of gang membership.

If we have future cases where people either become gang members or commit crimes, we will address those, as we have. We will terminate DACA in the manner that we have in other cases.

Senator TILLIS. Thank you. Thank you, Mr. Chair.

Senator SESSIONS. Senator Flake.

Senator FLAKE. Thank you, Mr. Chairman. Ms. Saldaña, in response to a letter that I sent to you, along with Chairman Grassley, you mentioned that in the *Altamirano* case, he, quote, “posted \$10,000 bond after his immigration hearing, which means that he became obligated to report to ICE upon demand, and that at the time of the most recent criminal offense, ICE had not triggered his obligation to report on demand.”

He was released from custody in January 2013. He was arrested for murder January 22, 2015, over 2 years. Was there any contact with ICE during that period between ICE and Mr. Altamirano?

Director SALDAÑA. He was in proceedings. He is involved with the court, with the immigration courts. Whether ICE had some communication with him in that 2-year period, I do not know, Senator.

Senator FLAKE. Do you know if the immigration court or anybody had any contact with him?

Director SALDAÑA. You know, I have not looked at that specifically, sir.

Senator FLAKE. Is that typical for somebody to go 2 full years with seemingly no contact at all?

Director SALDAÑA. It can happen given the half-a-million-case backlog with the immigration courts.

Senator FLAKE. ICE’s policy for triggering a convicted alien’s obligation to report, you mentioned that you did not see him because there was nothing that triggered an obligation to report. Has that policy been changed in terms of triggers for reporting? In light of this case and others, has there been any change?

Director SALDAÑA. Not that I am aware of, sir.

Senator FLAKE. How many times has ICE revoked bail for those that have been put out on bail like this?

Director SALDAÑA. Oh, it happens with some regularity. I cannot give you a percentage, but I am happy to provide that to you for a specific period.

Senator FLAKE. One thing that was just striking about this is the lack of cooperation and coordination and even notification between Federal and local officials. In response to the letter that Chairman Grassley and I sent to you, you mentioned that ICE is working to implement a new initiative called the “Law Enforcement Notification System,” or LENS. In your testimony, you mentioned that LENS has been deployed in 11 States, and full implementation is expected by the end of the year. What is stopping that from being implemented in the other 39 States?

Director SALDAÑA. Because we have to work with each State office that gets notices out to their counties and communities. Some, like mine, have a lot of counties. It is complex. We have to make our systems compatible to talk, and so we started with 3 States as test cases, Texas being one of them. It worked pretty well there. We have expanded it now to a total of 11, and there is a period of time that you have to work out kinks, because we want to be sure to get this right, and that is what we have been going through right now, is just the test program. We passed that. We now have expanded it to the 11. We are liking what we are seeing, and I think we will be there by the end of the year.

Senator FLAKE. Is this being handled with a little more urgency now?

Director SALDAÑA. I would like to see it done earlier than the end of the year, sir. I will stay on it, I assure you, to make sure it gets done as quickly as we possibly can.

Senator FLAKE. By the end of the year, you believe that we will be able to say that in all 50 States we have better notification requirements?

Director SALDAÑA. Yes, sir.

Senator FLAKE. Thank you. Ms. Saldaña, in Director Rodriguez's testimony he mentioned that 43,375 new DACA requests were denied; 414 renewal requests have been denied. Of these approximately 44,000 denied requests, how many have been deported?

Director SALDAÑA. Of what requests? I am sorry, sir.

Senator FLAKE. There are 43,375 DACA requests that were denied, and then 414 renewal requests have been denied. If somebody is not able to access DACA, then they are still eligible for deportation, or that is demanded. How many of those have been deported?

Director SALDAÑA. I cannot give you the specific number, but they go in—whether they are DACA or not eligible, sir, we look at ours the same way we do anybody else. DACA does not get them a free pass. We have to look at them on a case-by-case basis as to what is the next step, whether we detain someone, you know, what level of bond we place if we release them, that kind of thing. It is all done on the whole facts and circumstances surrounding that individual, including criminal history.

Senator FLAKE. If they have done something or have an offense that makes them ineligible, you would assume that they are being looked at now. Can you give me any ball park of how many of those have been deported of the 44,000 DACA cases, that people who were not able to access DACA?

Director SALDAÑA. I assure you I will get that to you, sir, as soon as I can get someone to look at it and get us an accurate number for you. I would rather not throw out a ball park.

Senator FLAKE. All right. Thank you. Mr. Rodriguez, in the case of the murder of Kate Steinle, the individual, Mr. Sanchez, was here in the country illegally, obviously. He had been deported five times. That means that he was able to come back across the border illegally five times. Obviously, border security is something that we are very concerned about in Arizona and this Committee is extremely concerned about.

There is one program that we have had, Operation Streamline, in Arizona, a secure or assure consequences program, and it has helped significantly in Yuma. We have been able to bring repeat crossings down significantly. Yet the Department of Justice seems to be now backing away from that program. What are your thoughts there?

Director RODRIGUEZ. Senator, as you know, I administer the immigration benefits structure. I do not operate border security—

Senator FLAKE. I understand that, but—

Director RODRIGUEZ. I certainly support border security. I am sure Commissioner Kerlikowske would be able to address those concerns that you have, sir.

Senator FLAKE. They are serious concerns. We want to make sure the programs that we actually have working continue, and we have one that is working here in Arizona, and we are very concerned that it is not being fully implemented. The fact that Mr. Sanchez was able to so easily return across the border five times in the case in California is very disturbing, but not surprising, frankly. I thank you for your testimony. I appreciate it, Mr. Chairman.

Director RODRIGUEZ. Thank you, Senator.

Senator SESSIONS. Thank you, Senator Flake. The Streamline Program, I do not think either one of you operate that, but I hope you will fight for it, because backing away from it, as Senator Flake has said, was very much a retrograde step. We are also familiar with the 287(g). Ms. Saldaña, you know—you talk about cooperating with State and local officials. Your Department, Homeland Security, has dramatically weakened the 287(g) program, which trains local law enforcement officers how to properly and legally assist the Homeland Security in carrying out its function. Do you support the 287(g)? What is the status of that?

Director SALDAÑA. Yes. I am not sure what you are talking about with respect to weakening. We welcome any 287(g) partners, and it is not—

Senator SESSIONS. I would ask you then to just check the records and see if there has not been a diminution of the 287(g) program, which I think should be expanded regularly.

Director SALDAÑA. There has been, sir, but it is not because of us not wanting that partnership. It is because jurisdictions have either withdrawn or are not coming to the table anymore.

Senator SESSIONS. We think it could be advanced and should be. Look, what the American people know and what the families of victims of violent crime know is that this administration has consistently and steadfastly placed the goal of amnesty above the goal of public safety. Time and time and time again, that has been the fact. You are just functionaries in that system. You have been asked to do a system, but within the rules been given by the political leaders. It is just not right, and it is wrong. We need to do more about that, and we need to see that end.

If this administration had spent one-tenth of the effort on enforcement and protecting people from crimes and punishing people who are criminals who violate our immigration laws rather on amnesty, we would be a lot safer today. Many of the people that have been injured, robbed, or killed by illegal aliens would be alive today. That is just fact. Everybody knows it. I am concerned about it.

Ms. Saldaña, Chris Crane is the head of the association that ICE Officers Association, 7,000 officers. They are the ones that filed a lawsuit against your predecessor saying that he was ordering them to carry out policies that required them to violate their oath to enforce the law. I have never heard of anything like that.

The statements, Mr. Rodriguez, that your officers said, 12,000, led by Chris—Ken Palinkas, are just stunning in their criticism of supervisors and political leaders. Morale is down, and it is because they are not doing what they are paid to do, and they know it.

This is what Mr. Crane says, Ms. Saldaña, “ICE is crumbling from within. Morale is at an all-time low as criminal aliens are released to the streets and ICE instead takes disciplinary action against its own officers for making lawful arrests. It appears clear that Federal law enforcement officers are the enemy, not those who break the laws,” end quote.

He goes on to say, “ICE officers requested a meeting with President Obama and are still waiting. In that time, the White House has met with big business, big labor, illegal alien activists. The administration has ramped up its nonenforcement directives, putting officers and the public in danger. Every day, dangerous and violent criminal aliens are released back into our communities.”

Those are the true facts of the situation here, and you can do better if you had leadership that would let you do better. We could do so much better. We have added thousands of officers since the last dust-up in 2007 over amnesty. We ought to be in a position that we can make real progress.

Director SALDAÑA. Senator, may I say something on that point?

Senator SESSIONS. Yes, you may.

Director SALDAÑA. I am very—that is one of the first things that caught my attention when I joined the agency late last year or early this year. I am putting a lot of effort in trying to engage employees and what they do.

I will tell you this, though, I have met with Mr. Crane several times now. I have met with Mr. Trumka, the head of the AFL–CIO, as well, to discuss our mutual—their concerns, our mutual interests, and I will say, when I get out in the field—this is somewhat inconsistent with the portrayal that you have just described of our employees. They are so proud of the work they do, and they are so proud of being able to focus on criminal convicted aliens and removing them from the country. They go about their business in a very efficient and good way, and they take pride in that. I just want to mention that to you because that is a fact. I mean, that is what I have seen as I have traveled across the country.

Senator SESSIONS. I believe the facts show that this administration, in a host of ways, has failed to take strong action to help those officers do their duty and comply with their oath.

Mr. Rodriguez, Secretary Jeh Johnson, your supervisor, testified recently before the House, and you said that, “Comprehensive immigration reform, had it passed, we would know who the criminal aliens are.” That is not so well said because I do not think anyone that has a criminal warrant out for them or has a history of criminal activities is going to register for any of these programs that you have got. In fact, Mr. Johnson admitted as much, saying, “Most criminals do not subject themselves to criminal background checks.” I agree with that.

You are not saying, are you, that if we call for people to come and register on the DACA or the President’s executive amnesty, that people with criminal records are going to waltz in and file with you so they can be arrested, are you?

Director RODRIGUEZ. Let me point out a few things, Senator, Chairman, if I may. One, some have, to their detriment. Even in the DACA program, some who had disqualifying criminal records did come and apply, and in many cases became the subjects of no-

tices to appear. Part of my point also is that those who were not criminals, those who committed no other illegal act other than their illegal entry into the United States but who are not murderers, robbers, or rapists are now on the record so that should they become criminals down the line, we know who they are.

For the most part, I think you are right. Your ordinary criminal will not register in the manner you described. They know what the detriment is.

I would also, Senator, if I could, invite you to tour a field office with me, because if you did that with me, you would see what I have seen, is that our officers take pride in their work, they feel empowered in their ability to do their work, and they exercise their discretion, and the chips fall where they will, meaning that if there is a case to be denied, they do that. I have seen them do it first-hand.

Senator SESSIONS. With regard to this DACA program and the process of providing a legal status to people in the country illegally, isn't it a fact that you have set it up so that there will not be in-person interviews for the people?

Director RODRIGUEZ. Yes, my point, it is—

Senator SESSIONS. Isn't it a fact that experts tell us that an in-person interview is critical to a proper evaluation of a person who is applying for legal status?

Director RODRIGUEZ. We do do in-person interviews in those cases that raise concerns that need to be investigated by our officers.

Senator SESSIONS. How do you know if it is going to raise concern if you have not met with them?

Director RODRIGUEZ. Because, again, another one of the things that I do is look through our files, and I know that at the time we are reviewing the file, there is extensive information about that individual, where our experienced, trained officers can identify if there is the kind of information about that individual that warrants an actual—

Senator SESSIONS. Mr. Palinkas has been very clear in his opinion of what is going to work in the real world, and it has been set up so there will be very few in-person interviews, and he says that denies your officers the ability to make rational choices that can protect the public safety. I guess you just disagree with him on that.

Director RODRIGUEZ. I respectfully do.

Senator SESSIONS. With regard to your processes, is it true that over 95 percent of the DACA applicants have been approved, or maybe 99 percent?

Director RODRIGUEZ. I would not be able to tell you the specific percentages other than to say that there are a significant number who have been denied or—

Senator SESSIONS. You do not know what percentage have been denied?

Director RODRIGUEZ. I could not, as I stand before you, other than to say that it is a substantial number who have been denied because of criminality or national security—

Senator SESSIONS. Would you say less than one-half of 1 percent is a substantial number?

Director RODRIGUEZ. I would not say what the percentage is.

Senator SESSIONS. You do not know? I mean, you are the Director of this program.

Director RODRIGUEZ. What matters to me is the manner in which—

Senator SESSIONS. I just asked a question. What matters to me is what percentage are being denied.

Director RODRIGUEZ. Again, I could not tell you as I sit here before you. Again, I know that a significant number have been denied because of these kinds of—

Senator SESSIONS. I am looking at a sworn statement by Mr. Palinkas in the lawsuit in Texas that we have referred to. “According to the most recent data I have seen”—this is his quote under oath quote—“According to the most recent data I have seen, USCIS reports a 99.5-percent approval rate for all DACA applicants. The approval rate is high because USCIS leadership”—you—“prevented immigration officers from conducting case-by-case investigations of DACA applications. Leadership has intentionally stopped proper screening and enforcement, and in so doing, it has guaranteed that applications will be rubber-stamped for approval, a practice that virtually guarantees widespread fraud and places public safety at risk.”

I will ask you, does this process allow for person-to-person interviews for even a substantial minority of—

Director RODRIGUEZ. As I mentioned, when there are concerns that warrant such an interview, yes, the process does allow for it.

Senator SESSIONS. It goes on to say, “As explained above, by routing DACA applications through service centers instead of field offices all over the country, USCIS management has intentionally created an application process that bypasses traditional in-person investigatory interviews with trained USCIS adjudications officers.”

Now, the way this will work, I guess somebody sends in an e-mail or mails in a document—is that what they do?—and they are approved based on that?

Director RODRIGUEZ. There is obviously a lot of information that is collected—

Senator SESSIONS. How? How is the information—

Director RODRIGUEZ [continuing]. From the requesters.

Senator SESSIONS [continuing]. Collected?

Director RODRIGUEZ. There are specific items that are required as part of the initial request. There are requests for evidence that are subsequently sent to the requesters. There is a full suite of biographic and biometric checks to examine either criminal history issues or national security issues. That forms the entirety of a file. In those cases where those raise concerns, then, yes, those are referred for interviews.

Senator SESSIONS. Let me show you—go further with what Mr. Palinkas said under oath. “For example, a new USCIS computer system—a new USCIS computer system to screen applications known as Transformation has proved to be a disaster as the agency has spent upwards of \$2 billion for a system that would eventually allow an alien, now referred to as a customer, under USCIS pol-

icy,”—as I previously stated—“to upload their own information via the internet for adjudication purposes.”

There will be information sent through some \$2 billion computer system by internet, and there will not be an interview of most of the applicants. Isn't that correct?

Director RODRIGUEZ. I am not sure that—no, I really do not agree with that premise at all, Senator. A few things.

One, I believe we are—we have turned the corner on the transformation process. There is no doubt that historically there was a development approach that was not working. We recently launched the replacement green card; that has gone very, very well. It actually built a number of functionalities that we are going to be able to apply to other forms.

The use of electronic filing as the means of receiving and then adjudicating applications does not change which programs will have interviews associated with them. That is not set to change as part of the transformation process.

Senator SESSIONS. Look, it is not going to be an in-person interview. Mr. Palinkas has said for years now they are overwhelmed and cannot do the kind of proper background check. You need to be defending the people's public safety. If you need more money to do this, you need to ask for it. If you want to rubber-stamp the process, keep doing it the way you are doing it.

Ms. Saldaña, Section 1373 of Title 8 of the U.S. Code provides, among other things quote, “a Federal, State, or local government entity or official may not prohibit or in any way restrict any Government entity or official from sending to or receiving from ICE information regarding a citizenship or immigration status, lawful or unlawful, of any individual,” close quote.

Don't you think that resolutions by city councils or State governments or sheriffs in certain jurisdictions directing their officers not to honor detainers or otherwise notify ICE that they have arrested someone that is unlawfully in the country could violate or would violate Section 1373?

Director SALDAÑA. You know, all of that is part of litigation, Senator. Quite frankly, I think we have taken that position in litigation that that is the case.

Senator SESSIONS. That they did have to supply information? In other words, you have taken the position, which I think I understand you correctly, you are correct to say, cities, you have to comply with this law?

Director SALDAÑA. Yes. Again, is it more practical to work through all this morass of litigation? Or can we work with these jurisdictions to try to get them to cooperate? I think it is the latter.

Senator SESSIONS. I understand you are saying that, but forgive me if I am not persuaded. This has been going on for many years. It came up in 2007 when we had a debate about all of this. It was wrong then, and it is wrong now. It has gotten to be—I think it is 300 or so jurisdictions that are sanctuary jurisdictions out of, what, 17,000 maybe? Some are very big cities that have very large immigrant populations. It is a huge matter, but most cities are cooperating. If you want to know what I hear, the complaints about the Federal Government enforcement from our law enforcement officers, it is that you will not allow them to help you, that if they

arrest somebody and they call your office, nobody comes, nobody cares, nobody responds. That is the big problem we have got in the country, maybe bigger than the other.

At any rate, I hope that you will understand, Ms. Saldaña, that your talking with them is not going to change the situation. Do you have any cities that have indicated to you they are going to make a change in their policy?

Director SALDAÑA. I mentioned the numbers earlier, sir. Just as a matter of focus, we have looked at these 49 in particular, and 33 are working—have come and said that they will work with us in some way or another—again, tailored to their needs. We have only had 5 that really have said, of those 49, no. We will continue working with them.

Senator SESSIONS. I am sure that after all the events of the last few months, they certainly should be willing to listen about this. I have serious doubts that we are going to see any change unless Congress takes some action or unless this administration takes some action.

Ms. Saldaña, one problem I know you have that I am sure is frustrating to you is countries not taking back criminals that you have arrested and ordered deported. Can you tell us the status of that situation?

Director SALDAÑA. Yes. As you know, the Department of State obviously has a vast interest in this, and I have worked with the Department of State and met with the individual who oversees these relationships, and we are working very closely to try to open doors.

I went to China a couple of months ago, Beijing in particular, and China has been a challenge for us. We signed together kind of an astounding agreement that they will actually have two people here to help process Chinese going back to the country who we are repatriating from this country. That is some progress. We continue to work with them. I have worked with South American countries. I visited Guatemala and El Salvador, and we continue to work with my counterparts there to try to ensure that we have—and we actually have signed a memorandum of understanding with them regarding their citizens.

Senator SESSIONS. Working with them is one thing, but this has been going on for years also, many years. How long have you been in office?

Director SALDAÑA. Seven months.

Senator SESSIONS. Seven months, so I cannot blame you for all that has gone on—

Director SALDAÑA. Oh, you can.

Senator SESSIONS [continuing]. Over the years. I want you to know I understand that you have professional training and you understand the world. Are there powers and actions the U.S. Government can take without legislation that would put pressure on these countries to accept back individuals who we have ordered deported?

Director SALDAÑA. Obviously, this is in the province of the Department of State largely because there are relationships with international countries. Yes, I understand that they have some authorities to do that.

As you know, Senator, it is a very complex picture when it comes to international relationships, and one agency's issues may not hold sway over the bigger picture in the relationship with that country.

Senator SESSIONS. I remember Senator Specter, the former Chairman of this Committee, a number of years ago was outraged by all of this and actually offered legislation that would mandate reducing—or mandate a reduction of visas from countries that do not comply. Doesn't it cost you a lot of money and create huge time involvement in dealing with situations where a country will not take back one of their own?

Director SALDAÑA. It is a great challenge, sir, and that is where we face issues under *Zadvydas*, for example, where we cannot get papers of cooperation from those countries, and we actually have to release them under that Supreme Court opinion after a certain period of time.

Senator SESSIONS. Under a Supreme Court opinion, if a country will not take them back and a year goes by?

Director SALDAÑA. I think it is actually more like 180 days.

Senator SESSIONS. One hundred eighty days, you have to release—

Director SALDAÑA. We can extend that period of time, but there is a point at which we have got to release them.

Senator SESSIONS. That takes a lot of your officers' and agents' time and effort.

Director SALDAÑA. It does, sir.

Senator SESSIONS. You have to pay to house people in high-quality prisons while you are waiting on this instead of being able to deport them promptly.

Director SALDAÑA. Yes, that is correct.

Senator SESSIONS. I think—I have a recollection—was it Mr. von Raab, the Customs chief in years gone by, when he shut the border down with Mexico over some disagreement over their responsibilities? It caused quite a stir. He just closed the border. I would just say to you, Ms. Saldaña, I think it is time for the State Department and your Department to stand up and say we are not going to accept this anymore. If you do not accept back promptly people we deport, then you are going to suffer serious consequences. Any relationship that deals in visas is a reciprocal relationship, isn't it? That if we accept people, then they agree to take them back. Likewise, if they accept individuals from the United States and they deport them, we accept them back. Is there a law that requires that? Or is that just State Department agreements with these countries?

Director SALDAÑA. I am sorry. You are way above my knowledge here when it comes to the State Department and—

Senator SESSIONS. You are going to have to stand up to the State Department. It looks like we all are. This cannot continue. We do not have the money to continue to bicker with these countries for years and years and years and not get this matter settled. We will try to work on that, and I think legislation would be appropriate, too, although it is not necessary. If the President and the State Department stood up and were clear on it, it could be fixed promptly, in my opinion.

I may submit some additional questions for the record, but we are having some problem getting answers to our questions. Mr. Rodriguez, when do you plan to send us your responses to our questions for the record following the March hearing on oversight of your agency?

Director RODRIGUEZ. As soon as possible. I thought we had satisfied all of those requests. We will make sure to get those to you as soon as possible.

Senator SESSIONS. I do not believe we have.

Director RODRIGUEZ. If there are outstanding requests, I am obviously not happy about that, and we will act quickly to respond, sir.

Senator SESSIONS. Thank you. The record will remain open for 1 week, and if there is nothing further—but I will say one more thing.

Both of you are good law officers. You know how the system works, and I hope you know that things are not going as well as they should. A lot of that is because of administration policy. At some point you will have to decide whether you are going to execute that policy or not. Some of the policies I think cannot be defended. I respect your integrity, and I appreciate your commitment to your country and your service to your country. The hearing is adjourned.

Director RODRIGUEZ. Thank you, Chairman.

Director SALDAÑA. Thank you.

[Whereupon, at 1:12 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

## APPENDIX

### Miscellaneous submissions

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**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Hearing on "Oversight of the Administration's Misdirected Enforcement Policies:  
Examining the Impact and Honoring the Victims"  
Tuesday, July 21, 2015**

This committee continues to honor its pledge to conduct oversight over the implementation of the laws Congress has passed as well as the policies and practices of the Executive Branch. Today, we will focus on how this administration's immigration policies and practices are hurting American families. The Committee will hear powerful testimony from a number of relatives who have lost loved ones as a direct result of the administration's failure to deport criminals or its tolerance of sanctuary policies.

Let me begin by extending a special welcome to our witnesses, especially family members of victims. I hope you will accept our deepest sympathies for the losses you have each suffered. Thank you very much for your willingness to share your stories, and for paying tribute to those who, though no longer with us in body, are surely with us in spirit in this room.

Today, we will honor Josh, Kate, Dennis, Danny, Grant, and many others whose lives were tragically cut short because of this administration's lax immigration policies. We had many families and relatives who wanted to testify today, but unfortunately, we had to turn them away because we were limited on time and space. However, we welcome their testimony for the record and encourage them to commemorate their loved ones with stories and written letters to the committee.

We will examine the administration's policies from the top down. We'll look at how federal benefits are being granted to deportable criminals by U.S. Citizenship and Immigration Services, why criminals are being released by U.S. Immigration and Customs Enforcement, and how enforcement of the laws can be better achieved.

We'll look at how we can improve cooperation between the government agencies here today. And, we'll look into how we can improve cooperation between the federal government and states and local law enforcement agencies.

We'll look at sanctuary jurisdictions and try to understand why policies protecting criminal aliens are in place.

In the past few weeks, we have learned that there are thousands of detainees placed each year by federal agents on undocumented immigrants with criminal records that are ignored.

According to government data, between January and September of 2014, there were 8,811 declined detainees in 276 counties in 43 states, including the District of Columbia.

Of the 8,811 declined detainees, 62 % were associated with over 5,000 individuals who were previously charged or convicted of a crime or presented some other public safety concern.

And nearly 1,900 of the released offenders were arrested for another crime after being released by a sanctuary jurisdiction.

This is disturbing – not only to me, but to most Americans. There is no good rationale for non-cooperation between the feds and state and local law enforcement. Public safety is needlessly and recklessly put at risk when state and local officials provide sanctuary to lawbreaking immigrants just to make a political point.

The Obama administration, in too many cases, has turned a blind eye to enforcement, even releasing thousands of criminals at its own discretion, many of whom have gone on to commit serious crimes, including murder.

The administration has also granted deferred action to criminal aliens who have committed heinous crimes after receiving this relief from deportation. I have written to Secretary Johnson about four specific cases in which such individuals have received President Obama's Deferred Action for Childhood Arrivals, or DACA.

One of those beneficiaries was a known gang member when he applied and received DACA, then went on to kill four people in North Carolina. Another DACA recipient used his work authorization to gain employment at a popular youth camp in California, where he was recently arrested for child molestation, and distribution of child pornography. I am still waiting for responses on some of these cases.

Further, the administration has completely failed to do anything about sanctuary cities, all while challenging states that took a more aggressive approach to enforcing the immigration laws.

I recently sent a letter to Attorney General Lynch and Homeland Security Secretary Johnson about sanctuary cities. I urged them to take control of the situation to ensure detainees are not ignored and undocumented individuals are safely transferred to federal custody and put into deportation proceedings. I implored them to take a more direct role in the matter. I have not received a response.

But, this isn't a new issue for the Obama Administration. I wrote to then-Secretary Napolitano and then Attorney General Holder in 2012, and asked them to intervene in Cook County, Illinois, another sanctuary jurisdiction. Nothing happened. In fact, since then, administration officials have publicly stated that they neither believe detainees have to be honored, nor that they even want them to be mandatory.

Enforcing the immigration laws of the United States is not a voluntary or trivial matter. Real lives are at stake. Things cannot continue this way.

That is why I'm introducing legislation today that will hold sanctuary jurisdictions accountable. It will require the Executive Branch to withhold certain federal funding if states or local law enforcement refuse to cooperate with the federal government in holding or transferring criminal aliens.

My bill will require that state and locals cooperate on criminal aliens or risk losing law enforcement related grants that are distributed by the Department of Homeland Security and the Department of Justice.

My bill will also require a mandatory minimum 5-year prison sentence in addition to a possible fine for individuals who enter the United States after having been deported. Current law does not require prison time and caps the possible prison sentence at 2 years. This section of my bill is aimed at individuals who ignore our laws time and again.

No more people should die at the hands of those who break our laws just by being here. No more families should have to go through what our witnesses have experienced.

Again, I'd like to thank our witnesses for taking the time to be with us today. Your strength and determination to change the unacceptable status quo won't go unnoticed.

**Senator John Cornyn***Statement on Sanctuary City Policies and the Release of Criminal Aliens*

Mr. Chairman, thank you for calling this important hearing to honor the memory of crime victims.

I appreciate the brave testimony we have heard today and am glad that this Committee has given a voice to the families of victims—who are too often forced to suffer in silence. As elected representatives, it is our responsibility to help keep dangerous criminals off the streets. Because Congress has plenary power over our nation’s immigration laws, we have a special duty to ensure that these laws are enforced in a manner that protects public safety.

“Sanctuary city” and “catch-and release” policies are an affront to the constitutional authority of Congress and our important work to safeguard American communities. I believe in zero tolerance for dangerous criminal aliens who are apprehended by law enforcement. If you violate our laws, enter the country illegally, and proceed to commit a criminal offense, you should be swiftly apprehended, detained, and removed from the United States.

Unfortunately, the Obama Administration and sanctuary cities across the country have undermined the enforcement of our immigration laws against criminal aliens. Since President Obama took office, at least 195,000 illegal immigrants who committed serious crimes have been released from federal custody without being removed from the United States. This is the numerical equivalent of releasing 94% of the current federal prison population. These are not “petty” offenders but include thousands of individuals convicted of the following types of crime: homicide, sexual assault, kidnapping, aggravated assault, domestic violence, and drug trafficking. It is unacceptable for the Obama Administration to release so many dangerous criminal aliens back into our communities. I hope that we get some straight answers and explanations out of them today.

But it is also unconscionable for state and local officials to ignore lawful requests from the Department of Homeland Security to detain criminal aliens so that they can be removed from the United States. And under “sanctuary city” policies across the United States, this is exactly what happens—government officials refuse to cooperate with federal immigration law enforcement, putting dangerous offenders back on the streets. In Fiscal Year 2014 alone, sanctuary city policies allowed

approximately 12,000 of these criminal aliens go free without being removed from the United States as required by law. These policies hurt our security, decrease public safety, and undermine the public's trust in government. But, most importantly, "sanctuary city" and "catch-and-release" policies turn law-abiding citizens into victims. When we refuse to enforce the laws against criminals, families and communities pay the price. The testimony we have heard today demonstrates this sad fact.

The vast majority of immigrants in the United States are law-abiding individuals seeking a better life and their chance at the American Dream. These immigrants enrich our culture and strengthen what it means to be an American. This hearing is not about those individuals. But criminals, whether immigrants or non-immigrants, should be punished as the law requires. "Sanctuary city" and "catch-and-release" policies are disrespectful to the sacrifices of the millions of law-abiding immigrants in our country today. And these policies recklessly gamble with the safety of every single American community.

I hope that this hearing and the testimony of these victims' families will send a clear message that we should no longer tolerate the release of dangerous criminals who entered our country illegally. I once again thank the Chairman for holding this hearing, and thank the families for their strength and courage.

**Statement Of Senator Patrick Leahy (D-Vt.),  
Ranking Member, Senate Judiciary Committee,  
Hearing on “Oversight of the Administration’s Misdirected Immigration Enforcement  
Policies: Examining the Impact on Public Safety and Honoring the Victims”  
July 21, 2015**

I thank all of the witnesses for appearing before us today and for sharing your experiences. I want to extend my deepest condolences to those of you who are speaking in memory of a loved one. We have come together to listen and to learn as we work to make our communities safer.

As we remember the victims of these senseless crimes and work to understand what went wrong in each of these tragedies, it is important to acknowledge that there will be no easy answers. There is no simple solution. There are, however, several principles that can guide our efforts to improve the law in the wake of these terrible crimes.

First, we must put aside our partisan politics. Whether as elected officials or political candidates, we have an obligation to put the best interest of our communities, and our nation, first. The witnesses before us today are not here to score points, and all of us should uphold the same standard. We on this Committee have demonstrated our ability to address the complicated issue of immigration with professionalism and respect. Last Congress, after weeks of debate and hundreds of amendments, we reported out an historic and bipartisan bill that addressed many of the issues we have before us again today. I was deeply disappointed when that bill, which passed the Senate 68-32, was blocked from any consideration by the Speaker of the House of Representatives. If we are serious about addressing immigration reform, we must return to that *comprehensive* approach that would have strengthened our borders, kept families together and held employers accountable.

Second, we must look at the facts and not be misled by rhetoric. We must not, for example, blame a whole community for the reprehensible actions of a few. The perpetrators of the terrible crimes we will hear about today must be held accountable. There are no excuses to be made for the damage they have caused. At the same time, those crimes should not be used as an excuse for demonizing an entire community. Recent claims by some that most immigrants are criminals are outrageous and irresponsible. These claims are also simply wrong. Recent publications by both the American Immigration Council and the Cato Institute present overwhelming data demonstrating that immigrants are *less* likely than individuals born in the United States to commit crimes.

Similarly, claims that the Federal government is not enforcing immigration laws are incorrect. In fact, the Obama Administration has committed unprecedented resources to enforcement efforts at the border and in the interior, spending nearly \$18.5 billion a year on enforcement, which exceeds all other Federal criminal law enforcement spending combined. Under President Obama, the Federal government has removed more individuals than under any other president.

Third, in our understandable drive to act in response to these senseless killings, we must resist the urge to hastily adopt legislation that has the unintended consequence of making us less safe. The renewed attention to the role of State and local police in immigration enforcement following

Ms. Kathryn Steinle's tragic death is important. As we examine that role, we must listen to the experience of law enforcement officers on the ground. These dedicated men and women have committed their lives to protecting the communities they serve and their voice should carry significant weight with us.

Law enforcement leaders from across the country, including the Major Cities Chiefs and the Major County Sheriffs, have expressed concern about *mandating* State and local law enforcement's cooperation with Federal immigration enforcement through legislation. Police chiefs and sheriffs from across the country told us in a letter yesterday that "Immigration enforcement at the State and local levels diverts limited resources from public safety. State and local law enforcement agencies face tight budgets and should not be charged with the Federal government's role in enforcing Federal immigration laws." At a House hearing last week, Secretary of Homeland Security Jeh Johnson testified, "I do not believe that mandating through Federal legislation conduct of sheriffs and police chiefs is the way to go. I think it will be hugely controversial; I think it will have problems with the Constitution. I want to see us work cooperatively with State and local law enforcement and I believe they are poised to do that."

Those on the front lines who work with victims of crime are also concerned about a chilling effect if local law enforcement officials are perceived to be enforcing immigration laws. In a recent letter expressing concern around proposals to mandate cooperation, the National Task Force to End Sexual and Domestic Violence wrote: "Policies that minimize the intertwining of local law enforcement with ICE help bring the most vulnerable victims out of the shadows by creating trust between law enforcement and the immigrant community, which in turn helps protect our *entire* communities." When victims and witnesses of violent crime are afraid to go to the police, dangerous criminals are not identified and go unpunished. "These criminals remain on the streets and continue to be a danger to their communities," they wrote.

As we evaluate options for responding to these tragic cases, we should also learn from past mistakes. The controversial Secure Communities program led to the deportation of thousands of non-violent immigrants. It separated parents from their U.S. citizen children and severely undermined the trust between law enforcement and immigrant communities. A core tenant of that program has also raised significant constitutional concerns by several Federal courts. Those courts have held that detention by State or local law enforcement based solely on a civil immigration detainer issued by Immigration and Customs Enforcement (ICE) violates the Fourth Amendment. As a result of these concerns, jurisdictions across the country, including some very conservative communities, adopted policies limiting or ending the practice of honoring immigration detainers issued by ICE.

As the Committee once again turns its attention to immigration, we must remember that reform requires a comprehensive response. We cannot only address the issue of enforcement. We must also focus on how to keep families together, hold employers accountable and modernize our immigration system. I strongly believe that any policy changes needed to address the tragedies discussed here today can be accomplished while still promoting trust and cooperation with immigrant communities. That relationship is critical to keeping us all safe and ensuring that our communities remain vibrant and welcoming places to live.

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Testimony of

**GRACE HUANG,**

Public Policy Program Coordinator of the  
Washington State Coalition Against Domestic Violence and  
Steering Committee Member of the  
Asian Pacific Institute on Gender-Based Violence

Submitted to the Committee on the Judiciary  
Of the U.S. Senate

July 21, 2015

**INTRODUCTION**

Thank you, Chairman Grassley and distinguished members of the Committee. As the Public Policy Program Coordinator at the Washington State Coalition Against Domestic Violence (WSCADV), I am deeply honored to be able to comment on the impact of state and local law enforcement policies regarding federal immigration enforcement on victims of domestic violence.

The issue of violence in our communities is challenging, complex and deeply emotional. I appreciate your willingness to listen. As an advocate for the survivors of crime, I know how important it is for people to feel that their voices are heard and I want to extend my heartfelt condolences to the families here today. Through open and honest dialogue I hope that we can work to find solutions that make our communities safer for everyone.

Since 1990, WSCADV, a membership organization of 74 domestic violence shelter and advocacy programs has been the leading voice in Washington State in addressing domestic violence. In partnership with the National Network to End Domestic Violence (NNEDV), the Asian Pacific Institute on Gender-Based Violence, and the National Taskforce to End Sexual Violence, we have successfully worked as an agent of change -- educating society about the severe and long-lasting impact of domestic violence, addressing victim-blaming attitudes, making systems that victims face more accessible, challenging injustice, and advocating for legislation and policies that support justice for victims of domestic violence. I have worked in the violence against women field for over 22 years, and my testimony reflects the lessons we have learned as advocates, and from the survivors of these terrible crimes, about how we can best improve the safety of our communities. The most important thing we can do is build strong police/community relationships and that means establishing an environment of trust. If victims and witnesses of crime do not feel safe to step forward, the police cannot do their jobs and we are all less safe.

As you evaluate proposals offered in response to these tragic cases, I urge you to also remember the decades of experience we have developed in the domestic violence community and victim advocacy community generally. We know that when immigrant victims are reluctant to come forward we are all less safe. Congress affirmed that principle by establishing the U visa for victims of crime and the Self-Petition process under the Violence Against Women Act and has repeatedly reaffirmed it by reauthorizing that critical law. I thank you all for everything you have done to make women and our communities as a whole more safe. Please remember these lessons as you look to tackle this new challenge.

**INCREASING ACCESS FOR IMMIGRANT COMMUNITIES  
ENHANCES COMMUNITY SAFETY FOR ALL**

As a victim advocate, I am deeply concerned that mandating local police cooperation with immigration enforcement will strengthen the hand of violent perpetrators, helping them silence their victims and those who witness their crimes. I am also concerned that vulnerable immigrant victims brave enough to step forward will face detention, separation from their children, and swift deportation. This was the dangerous cycle many communities encountered with the aggressive policies of Secure Communities and the chilling effect it had on police/community relations was dramatic and counterproductive.

A good example of this chilling effect is the case of Cecilia, a young Guatemalan girl living in Colorado. Cecilia was sexually abused by a family friend at the age of five. Her parents, undocumented immigrants, learned about the abuse but were terrified of reporting the crime to the police. They were told by friends and family that the police could not be trusted and they would be reported to immigration and deported if they stepped forward. A year later, the same perpetrator sexually abused another young child. In the end, after the father of that child contacted Cecilia's parents, they went to the

police together and the perpetrator was caught and prosecuted. But because of their initial fear to report, another child was harmed. When immigrants are afraid to come forward with information about a crime, the entire community is less safe.

As another example, a few years ago in Seattle, where I live, there was a string of over two dozen sexual assaults targeting Asian women who were waiting for the bus. Because of the strong police/community relationship in Seattle, many of the immigrant victims were willing to come forward and share information with the police and the perpetrator was caught.

### **DOMESTIC VIOLENCE IN IMMIGRANT COMMUNITIES**

Building strong relationships between law enforcement and the immigrant community is important for the safety of a community in general, but it is particularly critical for immigrant victims of domestic violence. At WSCADV, we strongly adhere to the philosophy that *all* victims deserve to live lives free from domestic and sexual violence. It takes the *entirety of our communities*: advocates, police, prosecutors and the courts, as well as friends, families, religious leaders, employers, and the community at large to support victims, and to remove barriers to their safety. It is incumbent on us that the systems we as a society have created to address domestic violence are accessible to even the most marginalized and vulnerable of victims. Immigrant victims, like all survivors of domestic violence, experience physical violence, emotional abuse, coercion, threats and intimidation, isolation, economic abuse, and sexual abuse. In addition, perpetrators of domestic violence against immigrants use culture and cultural taboos, children and child custody, and economics to enhance their control.<sup>1</sup> Most relevant in

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<sup>1</sup> Raj, Anita, and Jay Silverman, "Violence Against Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence," *Violence Against Women* Vol. 8 No. 3, March 2002, 369.

this instance, abusers often use *immigration status* as a tool of control.<sup>2</sup> Tragically, many abused immigrants do not have legal immigration status precisely because their abusive spouses have deliberately blocked or withheld that status as a tool of abuse.<sup>3</sup> Abusers threaten their victims that they will and have them deported if they tell the police, that that they will never see their children again. I personally have worked with a survivor whose abuser contacted ICE during the pendency of divorce and child custody proceedings, resulting in my client's arrest at the courthouse during a court proceeding, ultimately resulting in my client being deported. While some humanitarian provisions of U.S. immigration law seek to reduce these vulnerabilities, many obstacles remain to immigrant victims' access to safety and justice. We greatly appreciate the work that many Senators and many members of this Committee have done in support of legislation that has offered legal protections for immigrant victims of domestic violence, sexual assault and trafficking, most notably the Violence Against Women Act, which was recently reauthorized again in 2013. These protections, first passed in 1994, have allowed tens of thousands of immigrant victims to escape daily ongoing and escalating abuse and control by batterers, sexual assault perpetrators, traffickers and other criminals.

Congress has repeatedly recognized the United States immigration laws inadvertently deter immigrant women from taking action to protect herself and her children from abuse.<sup>4</sup> As Congress found, “[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.”

For immigrant victims and their children, fear of deportation is one of the primary reasons that few seek any help, unless the violence against them has reached *catastrophic*

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<sup>2</sup> Mary Ann Dutton et al., *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 55 (2000).

<sup>3</sup> Leslye Orloff, Mary Ann Dutton, Giselle Aguilar Hass, & Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L. J. 43, 60 (2003).

<sup>4</sup> H.R. Rep. No. 103-395, at 26.

proportions. A recent research report on the collaboration between ICE and local law enforcement found that 44% of Latinos overall and 70% of undocumented Latinos, are less likely to contact the police to report they have been the victim of a crime if they fear it will lead to inquiries about immigration status.<sup>5</sup>

The National Domestic Violence Hotline, which receives thousands of calls weekly from victims all over the United States, administered a survey over a six-week period in 2012, to over 1300 callers who identified as Latina survivors of domestic violence. Of those surveyed, 39% of Latinas who indicated that they had been born in a foreign country reported that they were afraid of calling the police or going to court for reasons relating to immigration status. For example, one caller stated: “Yes, I’m afraid because I have heard many cases of people reaching out for help and being deported instead.” In addition, survivors stated that abusers often threaten them that they will be deported if they call the police. They also feared being separated from and losing custody of their children if they were to be placed in immigration detention.

Another recent study among Asian and Pacific Island victims found that over a quarter of Asian first-generation respondents surveyed mentioned being unwilling to contact law-enforcement for help with domestic violence for reasons related to their immigration status, ranging from being undocumented to being on conditional permanent residency status (via marriage to the partner), as well as concern for their partner’s immigration status (being worried that doing so might have resulted in their partners being deported).<sup>6</sup>

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<sup>5</sup> See Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (University of Illinois at Chicago (May 2013), available at [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)

<sup>6</sup> Mieko Yoshihama, Deborah Bybee, Chic Dabby, & Juliane Blazevski, “*Lifecourse Experiences of Intimate Partner Violence and Help-Seeking Behavior among Filipina, Indian, and Pakistani Women: Implications for Justice System Responses. Final Report*” (2010) NCJ 236174 (2010) Washington, DC: National Institute of Justice, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/236174.pdf>

**THE EFFECTS OF LOCAL POLICE COOPERATION WITH IMMIGRATION ENFORCEMENT ON IMMIGRANT VICTIMS**

Mandating local law enforcement cooperation with immigration enforcement will deter immigrant domestic violence survivors not only from reporting crimes, but also from seeking help for themselves and their children - depriving them not only of the law enforcement protection, but also of other critical resources and support in their communities. In jurisdictions where local police enforce immigration laws, undocumented immigrants are afraid to drive, go to community organizations or churches, or even seek medical help for their children. In such jurisdictions, many survivors of domestic violence remain in the shadows—afraid to call the police or often, even to reach out to helping organizations for assistance.

In Washington State, the Washington State Domestic Violence Fatality Review Project, reviews events leading up to domestic violence homicides, in order to identify gaps in policy, practice, training, resources, information, and collaboration, and to make recommendations to improve the response to victims in order to prevent future deaths. The Domestic Violence Fatality Review Project has found that Hispanic and Latina and Asian and Pacific Islander women, along with other women from communities of color in Washington State, are at 2.5 to 3.5 times greater risk for domestic violence homicide than white, non-Hispanic women, in Washington. Experts on fatality review panels identified one of the explanations for these disparities to be that the legal vulnerability relating to immigration status compromises safety planning for immigrant domestic violence victims. When law enforcement agencies actively collaborate with federal Immigration and Customs Enforcement (ICE) or the Border Patrol, it can result in an immigrant victim, or the abuser being detained or deported as a result of calling police.<sup>7</sup> Effectively,

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<sup>7</sup>The reports of the Washington State Fatality Review can be found at: <http://dvmortalityreview.org/fatality-review-reports/> Findings relating to the disparity in homicide rates can be found in the 2008 and 2010 reports.

for many vulnerable victims, reaching out to local law enforcement for assistance to address domestic violence is removed as an option for safety.

For example, not too long ago I was working with domestic violence advocates in my state who were advocating on behalf of Mirabela,<sup>8</sup> who was in immigration detention. Mirabela had been arrested in a domestic violence incident, and because she did not speak English, her abuser, who had legal status, had been able to convince the police officers she had assaulted him. While in jail, she was interviewed by ICE and an immigration detainer was placed on her. When she posted bond following her arraignment, due to the ICE detainer, she was transferred to ICE custody and deported, leaving her two U.S. children behind with her abuser.

Another example is Maria,<sup>9</sup> an immigrant survivor of serious domestic violence, who was represented by the National Immigrant Justice Center, fled from Texas to Northern Indiana, where her abuser tracked her down. When he came to her house at midnight, she was too afraid to call 911, instead, frantically calling her lawyer who was not at work. Ultimately her abuser was not able to get into the house, but victims are put in life-threatening danger when they feel that law-enforcement is not a safe option.

These two cases illustrate why the Secure Communities program made it much more difficult for domestic violence advocates to encourage victims to come forward and seek help from law enforcement.<sup>10</sup> We still have very little information about how the PEP program will be implemented, which makes it extremely difficult to provide information to victims to help inform their safety planning. As you move forward, I ask that you take into account the experiences and voices of those serving victims as you

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<sup>8</sup> A pseudonym.

<sup>9</sup> A pseudonym.

<sup>10</sup> Radha Vishnuvajjala, "Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent," 32 B.C.J.L. & Soc. Just. (2012)

consider any proposal and remember the experiences of the past which did not serve our communities well.

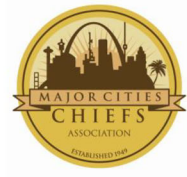
In addition to a fear of coming forward, survivors of domestic violence are not infrequently convicted of crimes as a result of their victimization, and policies that limit local police cooperation with immigration enforcement may provide just enough respite for them to access the resources that they need. For example, advocates in California worked with Cindy, a woman from Taiwan on a student visa, who was arrested on felony domestic violence charges and held in jail for almost a month. Cindy spoke English but did not have the level of comprehension and vocabulary to understand her situation. Once Cindy was able to speak to a Mandarin speaking domestic violence advocate, she was able to explain to someone what had happened. Cindy had been dating a colleague who was very controlling, forcing her to have sex with him against her will on several occasions. She never told anyone about these incidents. One day he came to her apartment unannounced and began to rape her again. This time Cindy fought him off and bit his ear. He backed away, shocked, and called the police. When they responded to the scene the police arrested Cindy. Cindy was ultimately charged and convicted of felony domestic violence. The jury had determined that she had acted to defend herself, but the force that she used was greater than the assault. Ultimately the judge sentenced her only to probation and time served, but she still had a felony assault conviction on her record. Because she was not automatically referred to ICE, Cindy was able to successfully complete her studies, expunge her criminal record, and work to be a productive member of our community. Unfortunately, not all survivors are able to access the bilingual and bicultural advocacy services needed to untangle the situation, and there are undoubtedly numerous victims who would face certain deportation, especially in circumstances where there are policies to refer all non-citizens to ICE.

**FEDERAL FUNDING FOR LAW ENFORCEMENT SERVES VICTIMS FROM ALL COMMUNITIES**

As mentioned earlier, we greatly appreciate the work that Congress, and many members of this Committee have done in support of legislation that has helped countless victims of domestic violence, including supporting the coordinated community response to address violence against women. Law enforcement officers play a crucial role in that response to domestic and sexual violence, and federal funding supports critical training, equipment, and agency staffing that assists domestic and sexual violence victims. Without such funding, there will be domestic violence cases that go uninvestigated, protection orders that will not be served or enforced, rape kits that will go untested, and child sexual abuse victims that will not have trained interviewers, and these victims are not limited to immigrants. Proposals that reduce resources to jurisdictions that are working hard to increase access to all communities will allow violent crimes to go uninvestigated and leave victims without redress due to reductions in funding.

**CONCLUSION**

We recognize the fact that there are victims, both with lawful status and without, that are harmed by some immigrants. We all want justice for victims and to prevent future crimes. We urge Congress to proceed with measured, thoughtful policies in order to enhance the safety of all of our communities.



**MAJOR CITIES CHIEFS ASSOCIATION**



**TESTIMONY OF**

**TOM MANGER, CHIEF OF POLICE, PRESIDENT OF THE MAJOR CITIES  
CHIEFS ASSOCIATION**

**ON BEHALF OF**

**MONTGOMERY COUNTY POLICE DEPARTMENT**

**AND**

**MAJOR CITIES CHIEFS ASSOCIATION**

**BEFORE THE**

**JUDICIARY COMMITTEE**

**CHAIRMAN GRASSLEY, PRESIDING**

**UNITED STATES SENATE**

**HEARING:**

Oversight of the Administration's Misdirected Immigration Enforcement  
Policies: Examining the Impact on Public Safety and Honoring the Victims

July 21, 2015 10:00 AM



Chairman Grassley, Ranking Member Leahy, thank you for the opportunity to testify on the impact federal immigration enforcement policies and operations have on local law enforcement.

Chairman Grassley, we thank you for presiding over this hearing, as this demonstrates your commitment and deep concern about local law enforcement, immigration enforcement, and public safety. Senators, today I speak to you as the President of the Major Cities Chiefs of Police, representing the largest cities in the Nation, as well as Chief of my own department. The Major Cities Chiefs is comprised of the law enforcement agencies from every major urban metropolitan area, providing policing services for millions.

As cops, we see the good and the bad every day. We are witnesses to the immense benefits that immigration brings to our Nation, but we also see the sinister side. We see first-hand how immigrants become victims of the worst criminals and also how illegal aliens may become the worst criminals themselves, engaged in drug trafficking, human trafficking, and all manner of crime.

The recent tragedy in San Francisco brings us together for a discussion of how immigration enforcement relates to the role of local law enforcement and we confront this question yet again – what should be the priorities of local police and sheriffs?

Our priority is what you would expect – certainly what each of you here today seeks from us - the safety of our communities across the Nation. Our priority is the prevention of crime and the protection of the public we are sworn to serve.

I am here to share with you the policy adopted by a vote of our membership, the 67 largest cities in America. We hope you will agree that our position represents a reasoned balance between conflicting demands.

#### Limited Role of Local Police and Sheriffs

Immigration enforcement is today, and always has been, a Federal responsibility. With limited resources and capabilities, local agencies cannot be expected to expand our role into immigration enforcement. Immigration is on a list of multiple examples of Federal jurisdiction which are vital but simply not our job. Customs enforcement, national defense and many other examples may be cited. We do not have the funding, resources or training to take on duties that are not part of our job in the first place. Surely no member of the Committee would want to hear from their own community that we did not respond to a call for help because we were off enforcing immigration laws.

#### Community Trust

To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. Whether we seek to stop child predators, drug dealers, rapists or robbers – we need the full cooperation of victims and witness. Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.



#### Legal Authority

Courts have expressed the view that local police lack the authority to arrest and detain persons solely due to immigration status. We train cops that these powers are to be used only when there is probable cause. Moreover, the potential inclusion of civil detainers with no judicial review or authority into our automated systems can create confusion and expose our agencies, officers and deputies to liability. To this end, we have asked DHS to pursue a warrant option with the Department of Justice in order to confirm when an arrest is clearly lawful.

#### Policy Statement

While immigration enforcement is not our role, it is our duty to cooperate in a manner that is consistent with our duty to protect the public. To this end, we have developed a policy which strikes this balance, and I am pleased to share it with the Committee today. **Major Cities Chiefs' policy statement was adopted by a vote of our membership and consists of nine points.**

- 1) **IMMIGRATION IS A FEDERAL RESPONSIBILITY**  
Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Any immigration enforcement laws or practices should be nationally based, consistent, and federally funded.
- 2) **WE MUST SECURE THE BORDERS**  
Immigration is a national issue and the federal government should first act to secure the national borders preventing illegal entry into the United States. We support further and adequate funding of federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border patrol agents.
- 3) **FEDERAL AGENTS MUST ENFORCE LAWS PROHIBITING THE HIRING OF UNDOCUMENTED IMMIGRANTS**  
The federal government and its agencies should continue its enforcement of existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration. Additionally, this will serve to reduce the exploitation of individual workers.
- 4) **FEDERAL AGENCIES MUST CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION MAKING**  
Major Cities Chiefs and other representatives of the local law enforcement community should be consulted and involved in any process to develop a national initiative or practice impacting local police agencies. The inclusion of local law enforcement at every level of development will take advantage of their perspective and experience in local policing.
- 5) **COMMITMENT OF CONTINUED ENFORCEMENT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS**  
Our member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those individuals, regardless of their citizenship status, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.



- 6) **FEDERAL FUNDING**  
The funding of any initiative concerning the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland security activities.
- 7) **CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY**  
The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear Federal legislation.
- 8) **CLARIFICATION OF IMMIGRATION AND CUSTOM ENFORCEMENTS PROGRAMS AND THE PURPOSE OF THE N.C.I.C. SYSTEM**  
Clarification of the Immigration and Customs Enforcement's program goals and oversight of its mission and implementation is strongly encouraged. Further, the integrity of the N.C.I.C. system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees in the system continues to create confusion for local police agencies subjecting them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.
- 9) **LAW ENFORCEMENT PRIORITIES**  
The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities must be left in the control of local governments. The decision to have local police officers perform the function and duties of immigration agents should be left to the local government. This shall not be mandated or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

**Priority Enforcement Program (PEP)**

We support the recent proposed policies and procedures developed by the U.S. Department of Homeland Security. DHS leadership listened to our concerns and they have included us in the development of this new program, including the procedures for notification to ICE by local police agencies.

My own jurisdiction, Montgomery County, serves as an example of how the new program works well. While it is not our policy to inquire or investigate immigration status, we provide electronic notification to DHS when there is an arrest. Likewise we provide notification if such a person in our custody is to be released. That is the policy of Major Cities Chiefs, and that is the policy of Montgomery County. Local law enforcement is cooperating and with DHS through the notification process, but not engaged in routine immigration enforcement. In our view, this notification policy represents a balance which the Judiciary Committee should embrace.

**The Way Forward**

Chairman Grassley, Ranking Member Leahy, and Distinguished Senators of the Committee - those of us on the front lines look to you for leadership.

With recognition that immigration enforcement is a Federal responsibility, we ask the Committee to resist initiatives which seek to force routine aspects of this Federal responsibility upon local police.



The Committee should expect the police to cooperate and follow established procedures, but you should not expect us to do the job of a Federal agency – whether customs, aviation security, border security or immigration.

Federal assistance programs at the Justice Department and the Department of Homeland Security were established to strengthen criminal justice and domestic security, not to compel local agencies to perform Federal duties. Their purpose was to help local police and sheriffs, not to require that we take over the job of Federal agencies. It is right to call upon us for actions to protect the public from crime and violence, but it is wrong to demand that we engage in matters that relate solely to immigration status. Surely the Committee recognizes that withholding Federal funds to coerce performance of Federal duties by local police is not why these programs were established.

We welcome this dialogue and commit to a partnership with this Committee. We are joined by our common purpose - to ensure justice and to keep our communities safe from crime and violence.

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BRIAN MCCANN  
CHICAGO, ILLINOIS  
b.cann@sbcglobal.net

Testimony, U.S. Senate Judiciary Committee. Tuesday July 21, 2015, 10 A.M.

On behalf of the McCann family I want to thank you, Senator Grassley, and the other members of the Judiciary Committee for this opportunity to share with you my efforts to return justice to our family after the violent death of my brother Denny on June 8, 2011 in Chicago, Illinois.

Denny was crossing Kedzie Avenue on a marked crosswalk four years ago and was violently struck by a drunk driver who dragged Denny under his car for a block in an attempt to flee before Denny died. The family was notified by the Chicago Police and the killer was placed into custody and charged with Aggravated DUI causing death. Two days later ICE issued a detainer because the young man was an illegal alien with a prior felony. The family was assured by the Cook County prosecutor that the defendant would not be allowed to post bail and be released. Three months later the Cook County Board passed the ordinance that effectively requires the Sheriff to ignore detainers. During the intervening weeks after Denny's violent death Cook County President Toni Preckwinkle and former mayoral candidate and Commissioner Jesus Garcia pushed for the ordinance and rammed it through on September 7, 2011. Two months later the killer made bail and absconded to Mexico.

Perhaps the most disturbing aspect of this whole ordeal was that we also learned that this illegal alien was prosecuted for another felony two years earlier and ICE was never notified then. He was removed from probation February 2011 and four months later killed Denny. In short Denny would be alive today and enjoying the birth of a new granddaughter born two weeks ago if the Cook County criminal justice system that included the county board did their job.

I received confirmation that he is indeed in Mexico from the FBI and is currently driving a truck. I had to prevail on my Congressman to get the FBI to cooperate with my request for information and action. I have not heard from the Bureau in over six months.

Three months later I worked with a few commissioners to amend the ordinance and that turned out to be more of a charade on their part than a serious effort. I asked the commissioner who represents my district and others many times at the very least to bring it to a vote and they refused. During that same period I was monitoring the efforts of former ICE Director John Morton in his correspondence with Ms. Preckwinkle. His January 4, 2012 letter made it clear that the ordinance was a clear impediment and in the few months since the ordinance was passed 268 detainers were ignored and many of the aliens who were the subjects of these detainers were felons. He reminded Preckwinkle that the ordinance was a violation

of federal law. Five weeks later he wrote another letter and made a reasonable request, in my view. First, that ICE agents be allowed to interview detainees and have access to records. Second, that the agents would take custody of the alien with a detainer on the day of the prisoner's release.

For the next several months I remained steadfast via phone calls and correspondence in my efforts to get an amendment passed by requesting that the Cook County Board invite independent experts to meet with the commissioners and President Preckwinkle and that request was ignored as well.

It became clear to me that the Cook Board had no intention of revising its policies despite the consequences. I found it very frustrating that federal agencies-especially ICE-did not follow through on it's warnings to Cook County and took no further action to compel the county to drop the policy. Nor has the federal government attempted to sanction the county, such as withholding federal funding.

The following October a family friend told me about the good works of Judicial Watch and I met with their chief litigator Paul Orfanedes the next month. A few months later a press conference was held at the State of Illinois Building announcing the filing of my lawsuit entitled Brian McCann v. Thomas J. Dart , on April 22, 2013. In the lawsuit we challenged Sheriff Dart's refusal to honor immigration detainees or cooperate with Immigration Customs Enforcement (ICE) in identifying deportable criminal aliens. At the time Cook County jails had released as many as 1,000 criminal aliens sought by ICE in the previous 18 months.

We continue this legal fight to the present day. Just last month we filed a petition for review with the Illinois Supreme Court. Because ICE no longer routinely issues detainees we are no longer challenging Dart's refusal to honor them. However, we continue to challenge the Sheriff's policy of prohibiting and restricting communications and the exchanging of information with ICE officials about a person's citizenship or immigration status. Now under PEP (Priority Enforcement Program) even if ICE requests that Cook County notify them of the impending release of a deportable criminal alien, Cook County would not comply. I find this unacceptable and will fight this policy in the courts until the end.

I remain very concerned that the current immigration enforcement policies seem to encourage jurisdictions like Cook County and San Francisco to continue their non-cooperation policies. If I understand the new Priority Enforcement Program, it does two problematic things: first it does not guarantee that illegal aliens such as Saul Chavez will ever be priorities for enforcement because so many exceptions are allowed. Second, even if the illegal alien criminal is considered a priority for deportation, the PEP program does not require local agencies to turn over illegal aliens to ICE-they can simply ignore ICE's request for custody. Secretary Johnson has stated that he does not think that the federal government should try to discourage sanctuary policies.

For many years, as a veteran I have been an active member of the American Legion and took a supportive interest in their POLICY ON IMMIGRATION. The policy states clearly that we should secure the borders, eliminate the jobs magnet and social services for illegals, no amnesty, reduce the number of illegals and effectively screen and track foreign visitors.

Finally, I have been an active supporter of The Remembrance Project National Director Maria Espinoza who for the past five years has been maintaining contact with the thousands of family members who have lost loved ones due to these unsafe sanctuary policies. Maria is here today with other family victims.

Good Morning.

Over the past nine months, I have experienced the reality of my thoughts through the loss of my husband. Danny Paul Oliver was a special person that knew the reality of humanity. Danny was not a man to boast or gloat of his accomplishments. In fact when Danny was given a standing ovation at a community meeting, he felt unsure on how to handle the overwhelming approval. Danny simply felt he was doing his job and that was all he needed to feel accomplished.

Danny Paul Oliver, my husband's last shift ended as a 15 year veteran of the Sacramento Sheriff's deputy by doing something he would have done countless times before in his career, Danny was walking toward a car to see what the occupants were doing on his beat. Danny prided himself on helping communities and feeling like he was truly making a difference. Danny was a POP officer also known as a Problem Oriented Policing. My husband and father of two never made it to the driver's window on Friday October 24, 2014. At about 10:30 a.m., a man armed with numerous weapons aimed one out of the car from the parking lot of a Motel 6 at Arden and Ethan Way in Sacramento and opened fire, killing my husband, Danny Paul Oliver, with a shot to the forehead as my husband simply asked how the armed man's day was going.

I can honestly say that a day doesn't go by without a daily influence on me and it has affected all the events of my life since it took place on October 24, 2014.

It may not be always visible,

It may not be written in bold print for all to see,

It may not even be recognized as always running in the background of my mind.

But it is there.....ever present, Daily and sometimes moment by moment, as it should be. Many people ask if I have gotten past that terrible day. The answer is no, and I think it will always be no. Who can honestly lose the person that was supposed to experience the love we had, the affection for our children and the amount of accomplishments together after 27 years. It is a rare few.

Each day I look for parental back up to child rearing and I feel the loss.

Each day my children reach mild stones like a wedding engagement, graduations, and our weekly family brunches, I am reminded that I no longer have my husband. I was married for 25 years to my high school sweet heart and we

watched each other grow up. We could just look at each other and know what one another needed. Perhaps support, a loving smile, or even a “we will talk when we get home” look. It is hard to build this trust and understanding but we had it mastered with ease.

Few professions, send our loved ones into harm’s way – many times knowing that the outcome could result in the loss of a friend or loved one. Nor do many professions, consciously and intentionally give the order to take a life – furthermore to command the use of deadly force.

An awesome responsibility indeed that continues to center around peace or lack there of within Communities across the nation.

Every single day, law officers at the state, local, and federal level are forced to release criminal aliens who pose a threat to community safety—in violation of current laws that require deportation. Additionally, in the last two years, ICE released back onto the streets 76,000 convicted criminal aliens. There are 169,000 criminal aliens at large in the United States right now who have criminal convictions and were formally and lawfully ordered deported. The Administration’s tolerance of sanctuary cities has also resulted in another 10,000 potentially deportable arrested aliens being released by local law agencies since January of last year. And, 121 of the criminal aliens who’ve been ordered deported in the last few years were released by ICE have now been charged with additional homicide offenses. The man that killed my husband, Danny Oliver, was deported several times for various felonies. However, due to the lack of coordination between law enforcement agencies, he was allowed back into this country.

Today I honor my husband, Deputy Danny Paul Oliver, and the other fallen heroes, who are always with us, in our hearts and in our memories. I wonder if we would be having this speech about my loss if the government enforced immigration laws as we see them in print.

Thank you for honoring him and the others who have paid the ultimate price. If the loss of my loving husband and father of our children could have been avoided, I hope, I can be a voice to explain the grief we have endured. My life is forever changed and saddened. Please help put policy in place to make sure that criminal

immigrants are not allowed to dictate the life of true humanitarians like Deputy Danny Paul Oliver.



**U.S. Citizenship  
and Immigration  
Services**

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WRITTEN TESTIMONY

OF

**LEON RODRIGUEZ**

**DIRECTOR**

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

**“Oversight of the Administration’s Misdirected Immigration  
Enforcement Policies: Examining the Impact on Public  
Safety and Honoring the Victims”**

BEFORE

THE SENATE COMMITTEE ON JUDICIARY

JULY 21, 2015

10:00AM

226 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC

Chairman Grassley and Ranking Member Leahy and distinguished members of the Committee, I appreciate the opportunity to appear before you today to testify about Deferred Action for Childhood Arrivals (DACA).

Even before joining USCIS, I was keenly aware of the agency's proud history of administering immigration services with quality and integrity for individuals from all over the world. Like you, I fully understand just how critical it is for USCIS to successfully deliver on its mission in support of the fundamental values of our nation, whether they are economic, humanitarian, or for other national interests. As I approach my one year anniversary as Director of USCIS, I am tremendously proud to lead an organization in which thousands of dedicated public servants administer our complex immigration system fairly, effectively, and professionally while working tirelessly to strengthen and improve our processes each and every day. As a former state and federal prosecutor, I am fully committed to ensuring that our immigration system is protected against individuals who pose a threat to our national security and public safety or seek to defraud the system.

It is truly an honor and a privilege to work alongside the men and women of USCIS. As the son, grandson and great-grandson of immigrants who came to the United States fleeing persecution and hoping for a better future, I know firsthand that our nation's immigration laws and policies can change lives, provide opportunities to future generations, and contribute to our economic growth and well-being. As I have regularly said, every USCIS file contains the story of one family's hopes, dreams, and all too often, suffering.

I was drawn to the USCIS mission not only because of my family's experience, but also because I am a patriot devoted to our country's values of freedom, equality, hard work, and enterprise. Immigration is the very foundation of our nation's identity, and I am committed to ensuring that our immigration system is equipped to protect our nation while supporting our long-standing tradition of welcoming immigrants, workers, refugees, and new Americans to our shores.

#### Deferred Action for Childhood Arrivals (DACA)

This Administration has worked diligently to focus our limited immigration enforcement resources on national security, public safety, and border security. As a part of that commitment, on June 15, 2012, then-Secretary of Homeland Security Janet Napolitano announced that certain individuals who came to the United States as children and meet several key guidelines can request deferred action and permission to work for a period of two years. As explained by Secretary Napolitano, the DACA process supports DHS-wide efforts to prioritize overall enforcement resources more efficiently to focus on the removal of criminals, recent illegal border crossers, and those non-citizens who pose a threat to national security or public safety, while recognizing the humanitarian principles that also underlie our immigration laws. As Secretary Napolitano stated in her 2012 memorandum, the individuals favorably considered for DACA are "young people brought to this country as children."

USCIS first implemented DACA in August 2012. Under DACA, children and young adults may be considered on a case-by-case basis for deferred action if they meet certain threshold guidelines, including that they were under the age of 31 as of June 2012, pass criminal and

national security background checks, were present in the United States in June 2012 and have lived here continuously for at least five years as of that date. All individuals requesting DACA are subjected to biographic and biometric background checks against various national law enforcement databases before USCIS will consider their DACA request. These systems include data on immigration history, public safety, national security and criminal watchlists, and other law enforcement concerns such as gang membership.

Each DACA request is considered on a case-by-case basis by an adjudicator who must make a determination about whether a specific requestor meets the applicable guidelines, whether they pose a threat to public safety or national security, and whether other factors are present that might adversely impact the exercise of discretion. DACA does not confer legal status on the recipient; it is an exercise of prosecutorial discretion to defer the removal of an individual for a specific period of time and may be reconsidered or terminated at any time.

USCIS adjudicators evaluate the evidence each DACA requestor submits in conjunction with the relevant DACA guidelines. Adjudicators assess the appropriate weight to accord such evidence, and ultimately determine whether the evidence is sufficient to satisfy the guidelines and whether there are any other factors that, in the exercise of discretion, would make the grant of deferred action inappropriate. An adjudicator may issue a Request for Evidence (RFE), which requires the requestor to submit additional evidence in support of the DACA request before the request will be decided. Since the inception of DACA through March 31, 2015, USCIS issued more than 200,000 RFEs in the process of reviewing DACA requests. Failure to respond to an RFE may result in denial of the request.

Individuals accorded deferred action pursuant to DACA are considered for employment authorization under longstanding USCIS regulations, which stipulate that persons with deferred action who demonstrate economic necessity may be authorized to work in the United States for the duration of their deferred action. In addition, DACA recipients are permitted to request a renewal of their deferred action and work authorization when their initial two-year period nears expiration. The DACA renewal period began in August 2014, two years after the first requests were accepted. DACA is funded exclusively through the fees requestors submit with the applications for employment authorization accompanying the initial DACA request and request for DACA renewal.

USCIS publishes [quarterly data](#) on the number of DACA requests received, accepted, granted and denied. Since the inception of DACA through the end of March 2015:

- USCIS has received 1,175,689 DACA requests.
  - More than 71,000 of these requests were rejected and returned at the outset before being considered. Rejections may occur for a variety of reasons, such as the DACA request submitted is incomplete or without fee, or the requestor fails to meet the age guideline.
- Of the 1,104,594 DACA requests accepted by USCIS, 748,789 were initial requests and 355,805 were renewal requests.
  - Of the 748,789 initial requests, USCIS approved 664,607 and denied 43,375; 40,807 remained pending.

- Of the 355,805 renewal requests, USCIS approved 243,872, 414 have been denied, and 111,519 remain pending.
- Denials may occur, for example, when a DACA requestor does not meet the continuous residence or education guidelines, was deemed to pose a threat to national security or public safety, or was otherwise deemed not to warrant deferred action based on the case-by-case review of each application.

These data indicate the volume of requests USCIS has received, the care with which requests are reviewed, and the number of individuals who have received deferred action. These statistics, however, do not illustrate the human face of DACA. Hundreds of thousands of DACA recipients are now able to come out of the shadows, attend school without fear, work to support themselves and their families, and contribute to their communities.

These figures represent real people. I recently learned about the situation of twin sisters who were born in Mexico and were brought to the United States by their mother at age five. As time passed, these sisters became proficient in English and continued to excel academically. Prior to DACA, these young women, who had spent nearly their entire childhood in the United States, did not know if they would ever go to college because they were undocumented. The sisters were accorded deferred action pursuant to DACA, and went on to graduate from high school with honors. Now, they attend a prestigious college and have said they are committed to continuing to work hard so they can give back to the university and the nation.

These sisters are just two of the many examples of young people who are now able to fully contribute to their communities and to this nation because they can finally emerge from the shadows, and give back to the community. Indeed, DACA is part of a greater DHS effort to ensure that valuable and limited enforcement resources are spent wisely and focused on those individuals who are a danger to national security or a risk to public safety rather than the three young people I just described. It is this very principle that serves as the foundation of President Obama's Immigration Accountability Executive Actions.

#### Immigration Accountability Executive Actions

Recognizing the need to fix our broken immigration system, President Obama requested that the Department of Homeland Security and the Department of Justice undertake a rigorous and inclusive review to assess the initiatives the Administration could pursue--within the confines of the law and the Executive Branch's authority--to increase border security, better focus enforcement resources, and ensure accountability in our immigration system. In conducting his review, Secretary of Homeland Security Jeh Johnson considered the advice and input from the men and women charged with implementing the policies as well as the views of Members of Congress and a broad range of stakeholders.

Following this review, on November 20, 2014, Secretary Johnson issued ten memoranda to the DHS workforce outlining a series of immigration initiatives that President Obama announced to the American people the same day. Included in the ten memoranda were initiatives designed to crack down on illegal immigration at the border, prioritize deporting felons rather than families,

and promote public safety by allowing certain undocumented immigrants who have family ties to the United States and who pass criminal and national security background checks to request consideration for deferred action.

Several of the initiatives announced would directly affect USCIS, including:

- Expanding the population who may be considered for deferred action under DACA to individuals who entered the United States before the age of 16 and have lived in the United States continuously since January 1, 2010, regardless of whether an individual was older than 31 years of age in June 2012, and immediately granting periods of deferred action and employment authorization of three years (rather than two) to any person granted DACA under the existing 2012 guidelines (and for those who would later be granted DACA under the expanded 2014 guidelines);
- Allowing certain parents of U.S. citizens and lawful permanent residents to request deferred action and employment authorization for three years, known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), provided, among other things, that they have lived in the United States continuously since January 1, 2010, pass required background checks, and are not enforcement priorities;
- Modernizing, improving and clarifying immigrant and nonimmigrant visa programs to grow our economy, and create jobs and promote family unity; and
- Promoting citizenship education and public awareness for lawful permanent residents and providing an option for naturalization applicants to use credit cards to pay the application fee.

After the President's announcement and the issuance of the Secretary of Homeland Security's memoranda, the men and women of USCIS immediately began efforts to implement each of these initiatives. As outlined in the Secretary's November 20, 2014 memorandum entitled, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are Parents of U.S. Citizens or Permanent Residents*, USCIS was directed to begin accepting DACA requests under the new criteria within 90 days and DAPA requests no later than 180 days of issuance.

In addition, the guidance stated, "The period for which DACA and the accompanying employment authorization is granted will be extended to three-year increments, rather than the current two-year increments. This change shall apply to all first-time applications as well as all applications for renewal effective November 24, 2014. Beginning on that date, USCIS should issue all work authorization documents valid for three years, including to those individuals who have applied and are awaiting two-year work authorization documents based on the renewal of their DACA grants."

The months that followed were a period of intense activity as USCIS continued to consider DACA requests under the existing 2012 guidelines and as we readied the agency to accept DACA requests from an additional group of individuals under the new guidelines in anticipation of a February 18, 2015 launch. Preparations were also undertaken for the intended May 2015 implementation of DAPA, which included initiating hiring actions, form revisions, and IT system modifications. Throughout these preparations, USCIS adjudicators also continued to

process high volumes of initial DACA requests and renewals under the 2012 guidelines. USCIS processed an average of more than 13,000 DACA requests (both initials and renewals) per week, and as directed in the Secretary of Homeland Security's 2014 memorandum, beginning on November 24, 2014, individuals who received DACA after a case-by-case review under the 2012 guidelines were accorded deferred action and, if eligible, work authorization for three-year periods rather than two-year periods.

On February 16, 2015, just two days before the agency was prepared to begin accepting DACA requests under the new guidelines, the United States District Court for the Southern District of Texas, Brownsville Division issued a preliminary injunction prohibiting USCIS from implementing the 2014 Secretary Johnson memorandum entitled, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are Parents of U.S. Citizens or Permanent Residents*.

USCIS Compliance with Preliminary Injunction Entered in *Texas v. United States*

When the District Court issued its preliminary injunction, USCIS immediately took steps to ensure that the agency ceased preparations to implement the new DACA eligibility guidelines and to implement DAPA. USCIS also took immediate steps intended to ensure that we ceased issuing three-year (rather than two-year) periods of deferred action and work authorization to DACA recipients processed under the 2012 memorandum (a change that had commenced, as directed by the memorandum, on November 24, 2014). Between November 24, 2014 and the date of the injunction, USCIS had granted approximately 108,000 three-year EADs to renewal and initial requestors who were granted deferred action under the 2012 DACA guidelines. The vast majority of these requests were filed prior to the issuance of the November 20, 2014 memoranda. The large number of requests and decisions during this period reflect the natural cycle of DACA renewals, as the initial two-year periods of deferred action and work authorization were expiring for those persons who were granted DACA during the initial months after its launch in 2012.

Under my direction, the agency's efforts to comply with the preliminary injunction began in the very early morning of February 17, 2015, just hours after the preliminary injunction ruling was issued, and have continued thereafter in an agency-wide effort to ensure that USCIS achieved, and remained in, full compliance with the District Court's injunction. Specifically, these actions included:

- Instructions from me to USCIS leadership the morning of February 17 directing that no further action be taken to implement the Secretary's deferred action memorandum on expanded DACA and DAPA.
- Orders from USCIS leadership on February 17 directing staff to immediately suspend approval of all deferred action or employment authorization, including temporarily under the existing DACA guidelines, and to cease issuance of notices of approval or Employment Authorization Documents (EADs), regardless of the authorized period of time. Note: reauthorization was given on February 18 to approve requests and to resume issuing approval notices and EADs under the 2012 DACA eligibility guidelines, but only for two-year periods, as provided by the 2012 DACA policy.

- Notification to the entire USCIS workforce on February 17 regarding the injunction and the need to suspend preparations for implementation of the Secretary's November 20, 2014 deferred action memorandum;
- Notification to communications staff to halt the planned posting of the new expanded DACA request form on February 17, 2015;
- Addition of a banner to the USCIS public website on February 17 stating that implementation of the expanded DACA guidelines and new DAPA guidelines had been enjoined;
- Removal of the new expanded DACA form instructions and related "Frequently Asked Questions" that had been posted on the USCIS public website on February 14, 2015;
- Reversion to the 2012 public guidance in place for DACA prior to November 20, 2014;
- Cessation of policy and operational discussions to develop guidelines, procedures and forms to implement DAPA; and
- Suspension of new hiring actions to bring staff on board to support DAPA.

The actions taken by USCIS reflect the agency's clear intent to comply fully with the court-ordered injunction. However, while USCIS initially stopped issuing three-year EADs that had been approved prior to the injunction, USCIS failed to prevent the release of approximately 2,000 three-year EADs for individuals eligible for 2012 DACA once the agency's initial February 17 freeze on all EADs was lifted, and thereafter erroneously issued a small number of three-year EADs due to manual errors. In addition, USCIS re-mailed some three-year EADs (approximately 500) that had initially been mailed before the injunction, were returned by the U.S. Postal Service as undeliverable, and were re-mailed by USCIS after the injunction.

As the Director of USCIS, I accept full responsibility for these mistakes. The Secretary of Homeland Security has asked the DHS Office of Inspector General (OIG) to investigate the circumstances of the issuance of the approximately 2000 three-year EADs after the issuance of the preliminary injunction order. USCIS fully supports this investigation, and like Secretary Johnson, I have notified agency leadership and relevant staff components directing full and expedited cooperation with the OIG.

USCIS has implemented corrective measures, including the conversion of all the validity periods of deferred action and employment authorization to two years, and USCIS is in the process of issuing new two-year EADs, for each of the 2,000 erroneously issued three-year EADs, as well as those approximately 500 returned as undeliverable as earlier described. In addition, USCIS is in the process of retrieving all erroneously-issued three-year EADs and has notified those individuals who received the now-invalid three-year EADs that their deferred action and employment authorization will be terminated on July 31, 2015, if those individuals do not comply with the requirements for returning the invalid EAD. Additionally, I have directed the agency to take additional precautions, including the modification of USCIS computer systems and additional quality control measures to further minimize the potential for manual error that could lead to unintended issuance of three-year EADs, instead of two years, in future DACA cases.

I am confident that USCIS has taken the actions necessary to correct the mistakes and prevent similar issues in the future. I am particularly grateful that our workforce proactively identified the problem and mobilized to address it.

Conclusion

USCIS is committed to ensuring the integrity, accuracy and efficiency of its processes. We are a large agency – with approximately 19,000 employees and contractors – and we process nearly 8 million applications, petitions, and requests each year. The talented and dedicated USCIS workforce consistently rises to this challenge, recognizing that our work represents individual circumstances, histories, and hopes that serve as the foundation for our nation.

The American people deserve an immigration system that lives up to our heritage as a nation of laws and a nation of immigrants. While DACA serves the dual purpose of the wise use of enforcement resources and fairness, it cannot substitute for comprehensive immigration reform. The Administration and DHS will continue to urge Congress to enact lasting, comprehensive reform. USCIS stands ready to support the implementation of these reforms once they are achieved.

Thank you for the opportunity to testify. I look forward to your questions.

Senate Judicial Committee Testimony  
Oversight of the Administration's Misdirected Immigration Enforcement  
Policies: Examining the Impact on Public Safety and Honoring the Victims  
7/21/2015

Delivered by Michael Ronnebeck for the Ronnebeck Family

Good morning Distinguished Committee members,

My name is Michael Ronnebeck.

I am here today on behalf of the Ronnebeck Family.

I'd like to tell you about my nephew, Grant Ronnebeck.

Grant was a 21 year old son, brother, nephew, and grandson. He was a bright young man, with an infectious smile and love of life. He had a positive outlook on life, and everyone he met knew it. Grant had no enemies; he was a friendly, outgoing lovable guy.

As a 21 year old American, he was just starting out in life; starting to realize his dreams, starting to follow his heart in matters of career choices, and just discovering his life's opportunities. His desire was to work his way up at the job he loved, working for the QuikTrip Corporation as he had for the previous 5 years, or possibly later to become a member of the law enforcement community.

He loved 4-wheeling in the desert around his home near Mesa, Arizona, spending time with friends and family, and watching the Broncos play during the football season. He was a pretty typical young American man, but to us he was a very special family and community member.

At 4:00 a.m. on January 22, 2015, just six months ago, while working the overnight shift at his Quiktrip store, Grant assisted a man buying cigarettes. The man dumped a jar of coins on the counter and demanded cigarettes. Grant tried explaining that he needed to count the coins before he could give the man the cigarettes. The man then pulled a gun, and stated "you're not gonna take my money", and "you're not gonna give me my cigarettes." Grant immediately offered up the cigarettes to the man, who shot him in the face point blank, killing him. Seemingly unaffected, the man coldly and callously stepped over Grant's dying body, grabbed a couple of packs of cigarettes, and then left the store.

After a 30 minute high speed pursuit through the streets of Mesa and Phoenix, Arizona, the man was taken into custody. Inside his car were the cigarettes, and two handguns, one believed to be the gun used to kill Grant.

Apolinar Altamirano, the alleged murderer, is an illegal alien. According to a news article detailing his 2012 arrest, he is a self-proclaimed member of the Mexican mafia, and says he has ties to the Sinaloa drug cartel.

The news article states that in August of 2012, he was arrested with two others after kidnapping, and sexually assaulting a woman and burglarizing her apartment. She was

allegedly held naked and against her will for a full week prior to escaping. He took a plea deal, and pled guilty to a charge of felony burglary for that incident. He was sentenced to two years of probation and turned over to the Immigration and Customs Enforcement Agency due to his undocumented status in the United States. He never served any time in custody related to that offense!

ICE, "The Immigration and Customs Enforcement agency" released the now convicted felon Altamirano on a \$10,000 bond pending a deportation hearing.

In the two years since then, while awaiting his deportation hearing, Altamirano has had two orders of protection filed against him, including one from a woman who claimed he threatened to kill her, and pointed a gun at her boyfriend.

ICE was reportedly notified of the protection orders by a Mesa Superior Court judge.

Altamirano was still allowed to remain free in our Country.

In addition to Altamirano, ICE reported that they released 66,564 other criminal aliens back onto the streets of our country in 2013 and 2014, and another 10,246 as of March 2015. This group included aliens convicted of violent and serious crimes, including homicide, sexual assault, kidnapping, and aggravated assault.

At least 123 American citizens have been murdered by one of those released criminal aliens including my nephew Grant Ronnebeck.

There are a number of immigration bills that have been introduced in the last several months, among those;

Grants Law, for my nephew, Kates Law, for Kate Steinle, The Davis-Oliver Act for Law Enforcement Officers Danny Oliver and Michael Davis, and Jamiel's law, for Jamiel Shaw... all Americans killed by illegal aliens. Each of these potential laws have a specific component that would help protect American lives.

I ask that each of you give consideration and priority to passing these important bills into laws.

It is my family's greatest desire that Grant Ronnebeck's legacy will be more than a fading obituary, a cemetery plot, or a fond memory. Instead, we want Grant's death to be a force for change and reform in the immigration policies of this great nation.

In closing, I am asking you, our elected scholars, lawyers, and community leaders, to make these changes; to rise above your political differences, to set aside your personal interests, and to use your resources to make sensible immigration reform a reality in the coming months, with the safety and security of American citizens first and foremost in mind.



# U.S. Immigration and Customs Enforcement

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STATEMENT

OF

SARAH R. SALDAÑA

DIRECTOR

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

U.S. SENATE  
COMMITTEE ON THE JUDICIARY

July 21, 2015

**INTRODUCTION**

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

The men and women of ICE, me included, have families and children of our own and cannot help but empathize with those 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, including those who are recent border crossers or threats to national security and public safety, and combatting the illegal movement of people and goods through the smart and 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. Day in and day out, ICE employees exercise prosecutorial discretion and focus our limited resources, to the greatest degree possible, to ensure 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. With offices in all 50 states, U.S. territories, and 46 foreign countries, ICE is dedicated to accomplishing our mission with integrity and professionalism, and I am very proud to lead this organization. Today, I am pleased to outline the role the dedicated men and women of ICE play in the apprehension, detention, and removal of individuals meeting the Department's enforcement priorities, the

critical work ICE investigators perform to disrupt and dismantle criminal organizations operating in and affecting our communities, and to highlight some of ICE's recent initiatives.

#### **EXECUTIVE ACTION AND PROSECUTORIAL DISCRETION**

On November 20, 2014, Secretary Johnson issued a memorandum entitled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* outlining clear enforcement priorities and guidance on the exercise of prosecutorial discretion. These priorities inform our decisions to arrest, detain, prosecute, and remove individuals 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. 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 and policy to accomplish our mission and make strategic use of our resources, and improve efficiency and reporting.

#### **ENFORCEMENT AND REMOVAL OPERATIONS**

Guided by DHS's enforcement priorities, the approximately 5,800 agents and 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 and consistent with the following priorities:

Priority 1 comprises those who pose a threat to national security, border security, and public safety. Priority 2 includes those who have committed 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 encompasses those individuals who have been issued a final order of removal on or after January 1, 2014.

ERO works closely with ICE's Office of the Principal Legal Advisor as it represents the government 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 countries to which they are being returned.

Between Fiscal Year (FY) 2013 and FY 2014, ICE experienced a key demographic shift in the total population it detained and removed. Most notably, consistent with changes in apprehension demographics at the border, removals to Mexico decreased from 66 percent to 56 percent while removals to Central America increased by 15 percent of total ICE removals. Removals of nationals from noncontiguous countries, such as those from Central American countries, require more ICE resources and take significantly more time than removals of Mexican nationals, who generally can be quickly returned after apprehension. ICE must take custody of Central Americans and other individuals from noncontiguous countries, detain them in certain circumstances, obtain travel documents to their country of origin, and transport them to that country.

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. The result of all these efforts has been a significant reduction in apprehensions of those attempting to unlawfully enter the U.S. along the southwest border, which is a strong indicator that there are fewer attempts to cross the border illegally.

#### *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 criminal convictions as a percentage of overall removals, up 67 percent in FY 2011 from 38 percent in FY 2008. This is no accident. The increasing number of convicted criminals removed from our country is the result of a change in ICE's strategic focus, consistent with the revised enforcement priorities and the focus on individuals who pose a threat to public safety.

Ninety-eight percent of ICE's FY 2014 removals and returns fell into one or more of the enforcement priorities in place at the time. These numbers illustrate the agency's continued commitment to focusing on identifying, arresting, and removing individuals who present the most significant public safety concerns and quickly removing individuals apprehended while attempting to unlawfully enter the United States.

**HOMELAND SECURITY INVESTIGATIONS**

While ERO enforces civil immigration laws, ICE's Office of Homeland Security Investigations (HSI), the investigative arm of ICE, is also a critical part of our interior enforcement activities. HSI principally conducts criminal investigations to protect U.S. communities and citizens against terrorism and other criminal activity that threatens public safety, and brings to justice those seeking to violate our customs and immigration laws. HSI is responsible for a wide range of domestic and international criminal investigations arising from the illegal movement of people and merchandise into, within, and out of the United States, often in coordination with other federal agencies. Notably, in FY 2014, HSI made more than 32,000 criminal arrests and seized more than 1.3 million pounds of narcotics, 35,000 weapons, and \$772 million in currency and monetary instruments.

HSI investigates customs and immigration crimes, including Transnational Criminal Organizations (TCOs) engaged in illicit activity related to export enforcement, human rights violations, narcotics, weapons and contraband smuggling, financial crimes, cybercrimes and child exploitation, human trafficking and smuggling, intellectual property theft and commercial fraud, transnational gangs, and immigration document and benefit fraud.

*Gang Enforcement Program*

To combat the growth and proliferation of transnational criminal street gangs, prison gangs, and outlaw motorcycle gangs operating in communities across the United States, and in cooperation with our federal, state, local, and foreign law enforcement partners, HSI established Operation Community Shield (OCS). HSI has established eleven OCS task forces, nine domestic and two international, which allow HSI special agents to work to enhance intelligence

gathering and information sharing, exploit modern law enforcement technology, and capitalize on HSI's international footprint to combat gangs' global criminal networks and mitigate the threats they pose to national security and public safety. In the last ten years, OCS has yielded the arrest of over 38,000 gang members and associates, including more than 24,000 criminal arrests, and the seizure of more than 7,000 firearms and more than \$85 million in real estate, currency, vehicles and other property. In FY 2015 year-to-date, OCS teams have executed 2,766 criminal arrests and seized more than 3,400 pounds of narcotics and \$7 million in property.

HSI's National Gang Unit led Project Wildfire, a six-week operation designed to mitigate the public safety threats posed by the most notorious street gangs in communities all across the United States. HSI worked with over 200 federal, state, and local law enforcement partners to apprehend 976 gang members and associates from 103 different gangs. Of the 976 gang members or associates arrested, 913 were charged with criminal offenses; 63 were arrested administratively for immigration violations; 650 had violent criminal histories, including 19 individuals wanted on active warrants for murder and 15 for rape or sexual assault; and 199 were foreign nationals.

#### *Transnational Criminal Organizations*

In keeping with a risk-informed strategy, HSI focuses on complex investigations that target the disruption and dismantlement of TCOs. HSI financial investigations focus on identifying the means and methods by which TCOs move, launder, and store their illicit proceeds through money laundering, bulk currency smuggling, and other financial and trade-related crimes. Through these complex financial investigations, numerous individuals and organizations operating within the interior of the United States are identified, apprehended, and prosecuted for

their involvement in narcotics trafficking and distribution, money laundering and contraband smuggling. Often times, these individuals and organizations pose a direct risk to the general public because they produce or store narcotics and proceeds in various suburban neighborhoods throughout the United States, subjecting these areas to various violent criminal activities.

Last fall, our investigations in the Los Angeles Garment District resulted in seizures of more than \$140 million in assets related to a black market peso exchange scheme to launder narcotics proceeds for international drug cartels. In addition, ICE's response to the surge of unaccompanied children along the southwest border included a financial component targeting funnel accounts used by Human Smuggling Organizations (HSOs) and the illicit proceeds they generated in order to disrupt the smuggling networks.

HSI stays ahead of developing trends such as interstate funnel accounts, which transnational criminal and human smuggling organizations use to move illicit proceeds within the interior of the United States; trade-based money laundering, which is becoming a preferred method of TCOs to move money for the purpose of disguising its origins and integrating it into the legitimate economy; and virtual currencies, which are used by TCOs to conduct illegal activities such as drug and weapons trafficking, illegal gambling, human trafficking, fraud, and the distribution of child sexual abuse images via the Internet.

#### *Human Smuggling and Trafficking*

Two additional priority investigative areas for HSI are human smuggling and human trafficking, for which ICE possesses a full range of investigative and border-related authorities. Human trafficking is a heinous crime where individuals profit from the exploitation of their victims. This form of modern day slavery affects victims of every nationality and walk of life.

Moreover, the smuggling of human beings is a gateway crime that paves the way for additional criminal offenses, including illegal immigration, identity theft, document and benefit fraud, gang activity, financial fraud, terrorism, and other national security threats. At times, human smuggling ventures lead to extremely dangerous circumstances that pose a threat to public safety and create humanitarian concerns.

HSI has developed a comprehensive, victim-centered approach to aggressively target human traffickers. By targeting trafficking organizations while simultaneously providing support to victims, HSI is working to dismantle the criminal infrastructure behind human trafficking. In FY 2014, HSI conducted or coordinated law enforcement and human trafficking awareness training for 22 international anti-human trafficking training events that reached 1,450 foreign law enforcement personnel in 10 countries. These training events focused on HSI's victim-centered investigative approach to combating human trafficking. Additionally, in FY 2014, HSI initiated 987 investigations with a nexus to human trafficking, recorded 1,770 arrests, obtained 1,028 indictments, and 828 convictions in federal, state and local courts, and identified more than 440 identified victims. In addition to law enforcement investigators, HSI has victim assistance personnel across the country who provide victims with a wide range of local resources from early in the investigative stage through prosecution. HSI also works closely with the DHS Blue Campaign, which is the Department's unified effort to combat human trafficking.

Momentum in ICE's anti-human smuggling efforts continues to build, particularly with the increased emphasis on activities along our border with Mexico. In response to last summer's surge in numbers of Central American unaccompanied children attempting to illegally cross the southwest border, HSI initiated Operation Coyote, designed to target and dismantle human smuggling organizations and interdict the flow of money to these organizations. During this

period, HSI deployed additional personnel to its southwest border field offices to enhance human smuggling investigations and enforcement actions. HSI also expanded the initiative across the country and worldwide.

Operation Coyote has resulted in 613 cases initiated, 1,289 criminal arrests and the seizure of over \$1.2 million in currency from funnel accounts utilized by human smuggling organizations to move illicit funds. ICE International Operations' efforts (Operation Coyote International) have resulted in the identification of 15 human smuggling organizations operating in Central America and Mexico. Of these 15 organizations, six have been prosecuted and dismantled, while the remaining nine organizations have been disrupted and the investigative and prosecutorial efforts against them continue.

On March 23, 2015, HSI commenced Operation Coyote 2.0 to enhance HSI's overall human smuggling strategy. Operation Coyote 2.0 focuses on mitigating the most significant risks posed by human smuggling by increased targeting of the financial vulnerabilities exploited by HSOs; increased targeting of fraudulent document vendors employed by smuggled individuals and the HSOs to obtain identity documents; exploitation of the communication methods used by the HSOs with analysis of communications data to enhance targeting efforts; leveraging of the newly created Human Smuggling Cell and the Joint Task Force-Investigations to coordinate and integrate human smuggling intelligence and operations; and finally, enhanced leveraging of our international offices, Transnational Criminal Investigative Units (TCIUs), U.S. Customs and Border Protection (CBP) and international partners, to disrupt the pathways of illegal migrations.

In December 2013, HSI and CBP established the National Targeting Center-Investigations Division (NTC-I) at the CBP National Targeting Center (NTC) to provide HSI

with an increased presence to work alongside CBP subject matter experts in support of the entire U.S. border security continuum, from CBP interdictions and HSI investigations, to the joint exploitation of intelligence and cross-cutting border enforcement efforts.

#### *Human Rights Violators*

Began as a pilot project in April 2008, HSI's Human Rights Violators and War Crimes Center (HRVWCC) brings together various DHS components and other departmental agencies to work collaboratively on human rights violators and war crimes investigations. The HRVWCC, comprised of HSI and Federal Bureau of Investigation (FBI) agents, analysts, attorneys and historians, as well as representatives from U. S. Citizenship and Immigration Services (USCIS) and the Department of State, works collectively to enforce the No Safe Haven Initiative and to ensure that the United States does not become a place of refuge for those who have engaged in human rights violations overseas. For example, in May 2014, an Ethiopian-born, naturalized United States citizen, Kefelegn Alemu Worku, was sentenced to 22 years in Colorado for fraudulent procurement of naturalization under 18 U.S.C. §1425, based on his role in torturing and murdering civilians in Ethiopia during the 1970s era known as the "Red Terror." The HSI investigation also revealed that he had committed aggravated identity theft, fraud and misuse of visas, permits and other documents, and fraudulent procurement of naturalization. Several witnesses who were tortured while in Ethiopia provided chilling testimony of their abuse, while their torturer sat with his back turned to them until ordered by the Court to turn around so that his victims could identify him.

**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 are designed to enhance public safety 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 the U.S. Supreme Court decision in *Zadvydas v. Davis*, 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. Thus far, the Law Enforcement Notification System has been deployed to 11 states and full implementation is expected by the end of this year.

*Priority Enforcement Program*

A critical part of our interior enforcement efforts is the Priority Enforcement Program (PEP), which replaces the Secure Communities program. Our objective with PEP is to implement a new interior enforcement approach in a way that supports community policing by focusing on convicted criminals and individuals who threaten public safety and 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—trust that is critical so victims and witnesses feel secure reporting crimes and thereby, make all communities safer.<sup>1</sup> PEP will continue to rely on biometric information sharing between the FBI and DHS (IDENT/IAFIS Interoperability) to identify individuals arrested by state and local law enforcement agencies (LEAs) 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 will focus on individuals who fall into specific enforcement priority categories, as these individuals pose the greatest threat to our nation’s safety.

State and local law enforcement cooperation is critical to making PEP a success, so we have been reaching out to state and local governments to gain their cooperation in ensuring that dangerous convicted criminals are transferred to ICE custody instead of released to the streets. In his testimony before the House Judiciary Committee on July 14, Secretary Johnson repeatedly stated that the most effective way to work with state and local jurisdictions is through cooperative efforts. State and local law enforcement officials believe this as well. PEP provides

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<sup>1</sup> 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.

the opportunity to enter into these cooperative efforts and removes the legal and political controversies generated by Secure Communities. During that hearing, Secretary Johnson also made clear that we should not mandate the conduct of state and local law enforcement through federal legislation as such legislation would be counterproductive and raise constitutional concerns. I hope this Committee and all of Congress will also support our efforts in this regard.

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, including myself, regularly engage with senior law enforcement officials from across the nation through the Law Enforcement Immigration Task Force. ICE and DHS will continue to engage local law enforcement agencies as we implement PEP.

The shooting death of Kathryn Steinle, a young San Francisco woman, allegedly at the hands of an undocumented immigrant with multiple criminal convictions earlier this month is heartbreaking. This is a tragedy. We at ICE are highly focused on the apprehension and removal of convicted criminals who pose a threat to public safety and national security. The ICE workforce has been fully trained on PEP priorities, procedures, and new forms, the necessary management tools are in place, key LEA stakeholders and unions have been engaged, and PEP is being implemented across the nation. Cooperating with us on implementing PEP will help ensure dangerous convicted criminals, gang members, and national security threats are transferred into ICE custody for deportation before they are 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.

I remain firmly committed to enforcing our immigration laws effectively and sensibly, in line with our Nation's values, and in a way that makes national security and public safety our top priorities.

#### *Operation Crosscheck*

Earlier this year, ICE conducted a five-day nationwide operation targeting convicted criminals subject to removal from the United States, which yielded the arrest of 2,106 individuals. The operation, "Cross Check VI," began Sunday, March 1, and ended Thursday, March 5, 2015. Hundreds of ERO officers participated in the operation that focused on the arrests of public safety threats. Those arrested are from 94 countries and had a wide array of criminal convictions. The 2,059 individuals with prior criminal convictions who were arrested included more than 1,000 individuals who had multiple criminal convictions. More than 1,000 of those arrested had felony convictions, including convictions for voluntary manslaughter, child pornography, robbery, kidnapping and rape. Of the total 2,059 convicted criminals arrested, 58 were known gang members or affiliates, and 89 were convicted sex offenders. Also, 476 were illegal re-entrants who had been previously removed from the country. Because of their serious criminal histories and prior immigration arrest records, 163 of those arrested during the enforcement action were presented to U.S. Attorneys for prosecution on a variety of criminal charges.

#### *Reorienting Family Residential Centers*

Following last summer's unprecedented spike in illegal migration of unaccompanied minors and adults with children in the Rio Grande Valley, 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. The Secretary and I understand the sensitive and unique nature of detaining families and are committed to continually evaluating it. Last month, we concluded it is not an efficient use of our resources to detain families who have established their eligibility to apply for asylum or other forms of relief under our laws. We are therefore making substantial changes in our detention practices with respect to families with children.

As the Director of ICE, I am committed to enforcing the laws within ICE's jurisdiction not only safely and efficiently, but as humanely as possible. The care and well-being of any person – man, woman, or child – in our custody is an exceptionally important responsibility that we bear. We are committed to continually evaluating the facilities to ensure we are meeting the needs of this population in a safe and humane manner. However, we also should not and cannot have an immigration system that encourages criminals to take advantage of people – to abuse women and children – while they attempt to smuggle them into the United States.

ICE is working 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 while they are in these facilities. We are in the process of creating a new Advisory Committee comprised of experts in key fields. This Committee will provide advice and recommendations to the Secretary and me on matters concerning ICE's family residential centers as they relate to primary education, immigration law, physical and mental health, trauma-informed services, family and youth services, detention management, and detention reform.

In addition, we have also started a series of engagements with stakeholders to listen and discuss ways to make additional improvements, and to look for additional ways to better ensure access to counsel and address language access issues for speakers of indigenous languages. 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.

In June, the Secretary announced a number of additional improvements to our family detention practices. While FRCs will continue to allow for the prompt removal of individuals who have not been determined to be eligible for relief under our laws, those who can establish a credible fear or a reasonable fear of persecution or torture in their home countries will be released with a reasonable bond or other conditions taking into account flight risk and public safety. ICE has been rapidly ramping up its use of Alternatives to Detention (ATD), expanding program capacity from approximately 29,000 individuals in 2014 to a planned 53,000 in 2016. ICE has enrolled thousands of family members apprehended since last year's surge in the ATD program, and plans to expand the use of ATD to facilitate release of eligible individuals from FRCs.

Secretary Johnson has also directed USCIS to conduct credible fear and reasonable fear interviews within a reasonable timeframe, so the length of detention in most cases will be shortened. During that time, we will work together to confirm accurate address and sponsor information so that ICE can effectively monitor and ensure compliance with legal obligations.

**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. 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.

**Testimony of Reverend Gabriel Salguero**  
**United States Senate Committee on the Judiciary**  
**July 21, 2015**

My name is Gabriel Salguero. With my wife, Jeanette, I am the pastor of the Lamb's Church of the Nazarene in New York City and I am the founder of the National Latino Evangelical Coalition (NaLEC) which represents some of the more than 8 million Latino evangelicals in the United States. I offer my sincere thanks to Chairman Grassley, Ranking Member Leahy, Ranking Member Feinstein and the other members of the committee; I am honored to be here today.

Let me begin by saying that I am heartbroken to hear about the senseless violence and tragedy these witnesses and their families have experienced. I ask God to bless these families and provide grace and comfort to each family member here today. I imagine that every family member, friend, and community member continues to reel from shock, loss and grief at the remembrance of these lost loved ones. My prayers and most sincere condolences go to you and your families. Nothing we can do here today will heal that grief but the families here today remain in my prayers. I pray for an end to violent acts such as these and I pray that those who would commit such acts face just consequences.

I'm here to speak about my conviction that our nation possesses the wisdom and leadership to provide a way forward on immigration policy that works to prevent these tragedies from occurring in the future while avoiding harming entire communities in the process. We, as a

nation, can and must find real solutions that deter violence while wisely integrating the vast majority of hard working immigrants. For years, faith communities have played a critical role in both comforting victims of violence while simultaneously promoting community trust and providing safe haven to refugees fleeing violence, and other immigrants facing the daunting challenges of seeking opportunity in the United States. I do not believe that the policies needed to address the tragedies discussed here today need to be at odds with policies that seek to promote trust and cooperation with immigrant communities. The values of the sanctuary movement in the United States are deeply rooted in safety, family unity and trust. Those values are not adversarial to the promotion of healthy, vibrant and nonviolent communities. And they are the foundation for hundreds of communities across the country who have chosen to embrace local law enforcement policies that foster and protect trust. These policies are designed to prevent dangerous crimes, not encourage them.

In the midst of our grief, policies should avoid criminalizing or casting collective blame on an entire community for the actions committed by one or a small number of individuals. In order to uphold our criminal justice system and ensure that our communities are protected from crime, we must also ensure that victims and other community members feel safe enough to come forward and interact with law enforcement. Cities across the United States have sought to work circumspectly with federal immigration authorities and on the use of immigration detainees in an effort to ensure that survivors of domestic violence, human trafficking, and other serious crimes will cooperate with law enforcement and come forward. To be clear, as a pastor I know firsthand that no one in the immigrant community wants an increase in violent crime. Still we know, that if we fail to create policies that promote trust, victims and witnesses will remain silent due to

their fear that they or the loved ones could face deportation for having sought protection from the police. This silence creates fear and exposes all of our community members to greater risks.

The original Sanctuary Movement of the early 1980s sought to provide safe haven to many refugees fleeing dangerous civil unrest in their home countries who did not meet the eligibility requirements of our asylum laws and who were often placed in detention centers and risked being sent home despite the serious danger they faced upon their return. It was a collective response from places of worship to offer shelter and safety to those who desperately needed it and a moral concomitant to our faith imperative to love all people. Over the last years as deportations have resulted in families being ripped apart and U.S. citizen children have been placed in foster care because their parents were deported, faith communities, including the U.S. Conference of Catholic Bishops and my own evangelical tradition, have advocated for common-sense policies that are wise and just.

Policies that limit cooperation between local law enforcement and federal immigration authorities do not insulate or shield immigrants from any risk of deportation. Our federal immigration laws still apply in every city and in every state in the nation. What these local policies do is help local and state police do their job, which is to keep their communities safe and to enforce the laws of their municipalities and states—not immigration law. They are a reaction to collaboration with immigration authorities that tore families apart and punished victims and witnesses of crimes with the threat of deportation simply for seeking help from the police. The members of this committee alone represent states in which over over a hundred counties and cities have adopted these types of policies that promote community trust.

There is a crisis in this country – our rates of incarceration have grown at exponential rates over the last three decades. Many individuals in our prisons struggle with serious mental illnesses, limited opportunities and little or no community support system. They often languish for years or decades in our prison system without any meaningful rehabilitative or reentry support, and are released onto our streets, where guns flow, with no support, no job, and no family. To stop recidivism, we need better mental health services, additional support for those released into society and treatment for addiction. Members of the faith community should also do our share to ensure better care, stronger support, and accountability for those released back into society.

I believe we can and must focus on solutions that will foster integration and safety—they are not mutually exclusive. I believe that legislation targeting immigrant communities may lead to increased crime as it will silence many of the more than 11 million immigrants who will fear cooperation with local law enforcement. I pray that we, as a nation, resist politicizing these tragedies with sweeping and unproductive measures and instead work with local communities to ensure real solutions for community safety. I continue to pray for *Solomonic* wisdom that focuses on deterring violent criminal activity while fostering partnerships with local communities and law enforcement.

Creating policies that further target immigrants will not advance public safety – and will instead serve to further marginalize and isolate immigrant communities. Good policies are made by working together towards justice and safety for all people. The actions of one person should never be used to justify policies that criminalize entire communities. Deportation-centric

policies that criminalize immigrants have been completely unsuccessful in lowering crime rates – with studies showing there is no empirical evidence that cracking down on deportations reduces crime rates. Instead, those policies have served to tear apart families and communities.

Let's work together to reform our nation's immigration laws in smart ways. The faith community will continue to work to comfort the grieving and advocate real solutions to our broken immigration system. Yes, our immigration system is broken and needs reform. But we should not move forward with reactionary legislation that does not address the real issues at hand. The real solution to our immigration challenges is broad, just, and humane immigration reform which would strengthen community and law enforcement relationships, and place undocumented immigrants on an earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country.

Let's work together to promote community safety. We can and should look at state and local policies carefully. I encourage communities to carefully tailor their policies. I encourage the federal government to carefully review its own policies and work with these localities across the country to ensure that our systems appropriately meet the goals of violence prevention against all of our community members by encouraging trust and cooperation. But I do not encourage us to force states and localities to pursue one-size-fits-all policies.

As we continue to mourn and pray, let's work together to find real and workable solutions that promote peace and security, not hostility or fear. I pray for an end to senseless acts of violence. I pray for all the policymakers to make wise and deliberate decisions. I pray for reform that

promotes thoughtful community safety policies, immigrant integration, and common-sense immigration reform. I pray for God to comfort the pain and grief of each of the families here today.

Thank you for inviting me here today. The National Latino Evangelical Coalition (NaLEC) looks forward to working with policymakers on both sides of the aisle to achieve commonsense immigration reform.

First of all, I would like to thank the members of this committee for the honor to speak to you about our daughter, Kate.

All children are special in their own way. Kate was special in the way she connected with people. We call it the Kate Effect.

Kate was beautiful, kind, happy, caring, loving and deep in faith. Kate had a special soul, a kind and giving heart, the most contagious laugh, and a smile that would light up a room. Kate loved to travel, spend time with her friends, and most of all spend time with her family. In fact, the day she was killed, we were walking arm in arm on Pier 14 In San Francisco, enjoying a wonderful day together. Suddenly a shot rang out, Kate fell, and looked at me and said "Help me, Dad." Those are the last words I will ever hear from my daughter.

The day Kate died, she changed her Facebook cover photo to a saying that said, whatever's good for your soul....do that. This quote truly describes her spirit. After graduating from Cal Poly San Luis Obispo, she went to work for a title company and saved her money so she could see the world. She traveled to Spain, Thailand, Amsterdam, Dubai, and South Africa, just to mention a few. She even made her way to the slums of Mumbai, India to reach out to her friend's mother's nanny. She spent time there with the woman's family and came home a changed person. She went to South Africa on safari with her friend and witnessed the aftermath of the slaughter of elephants. After that, she became passionate about PAWS, an organization that helps save and create sanctuaries for these remarkable animals. Everywhere Kate went throughout the world, she shined the light of a good citizen from the United States of America. Unfortunately, due to unjoined laws and basic incompetence of the government, the US has suffered a self-inflicted wound in the murder of our daughter by the hand of a person that should have never been on the streets in this country. I say this because the alleged murderer is an undocumented immigrant who has been convicted of 7

felonies in the US and already deported 5 times. Yet, in March of this year, he was released from jail and allowed to stay here freely because of legal loopholes.

It is unbelievable to see that so many innocent Americans have been killed by undocumented immigrant felons in recent years. In fact, we recently came across a statistic that says between 2010 and 2014, 121 unique criminal aliens who had an active deportation case at the time of release were subsequently charged with homicide related offenses. Think about that, 121 times over the past 4 years the administration has released an illegal immigrant with prior criminal convictions that later went on to be charged with a murder when they should have been deported. That's 1 every 12 days.

Our family realizes the complexities of immigration laws, however, we feel strongly that some legislation should be discussed, enacted and/or changed to take these undocumented immigrant felons off our streets for good. We would be proud to see Kate's name associated with some of this new legislation. We feel that if Kate's Law saves 1 daughter, 1 son, a mother or a father, Kate's death won't be in vain.

July 21, 2015

United States Senate  
Committee on the Judiciary  
Washington, DC 20510

Senator Charles Grassley

"Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact in Public Safety and honoring the victims."

Good Morning. My name is Laura Wilkerson and I am here to tell you the impact of illegal alien crime that has affected our family. Thank you for allowing me this opportunity.

My husband George and I live just outside of Houston, TX. We raised 3 children. We are a typical Texan/American blue collar, hardworking family. George worked endless hours so that I could stay home with our children. We wanted to provide them with our beliefs and our values. We wanted them to know Jesus. We provided for their needs, built them up to be honest, compassionate and caring human beings. We accomplished that.

Our youngest was Joshua Aaron Wilkerson, I will tell you a little about him.

Josh was a compassionate, caring child.

He was 18 years old, in his senior year at high school.

He listened a lot more than he spoke. When he did speak, others listened.

Josh had never been in trouble before at school or with the Law, not even a traffic ticket.

He loved his family deeply.

He had a very strong spiritual bond with Jesus.

That fateful day of Tuesday, November 16, 2010. His dad was at work already. His Brother was away in The United States Air force. His Sister was in College. Josh came down and said Mom, I am leaving to school. I put down what I was doing, and said hey, no way your leaving without a hug. He smiled, rolled his eyes a bit. We hugged. We both said I love you, and I watched him get in his truck and head to school. Josh never came home from school that day.

The killer. Here is what I know about him. His name is Hermilo V. Moralez. He is 19 years old. His parents whom were in this country illegally, brought him here illegally when he was 10 years old. He has a sister. His parents had recently kicked him out of their home. He was charged with harassment. He was in front of a Judge 10 days before he murdered Joshua. He relied on a friend's mother for shelter and food. He had no driver's license, no money for lunch and no transportation. He was an acquaintance of Josh's through school. He had given him a ride home 3-5 times. He asked Josh that day for a ride home. He brutally murdered Joshua.

The trial. We waited 2 long years for the trial, only to see such images of Josh that were horrific. We watched as a shock belt was put around his waist because no one was certain of his

behavior. We watched as he showed no remorse whatsoever. We listened to 15 hours of audio tape, in which his only concern was how much time would he get, was there a bed in jail, when would he leave, could he have a hamburger, etc. All of these audio tapes are from before he finally told detectives the truth about where Josh's body was. The killer was a black belt in mixed martial arts. He bragged from the stand about how his "killing skills" just took over. We watched as he got off of the stand and stood over the District Attorney so he could show the jury how he strangled Josh. He said that he first hit Josh in the face, so that he would not be able to fight back. He then kned him in his stomach. We listened to him say that he was frustrated that Josh still had bloody bubbles coming out of his nose. He picked up a closet rod and beat Josh so severely on the head that the rod broke into 4 pieces. He strangled him over and over. He waited, Joshua died. Per the Medical Examiner he tortured him. He tied Joshua up like an animal. He cleaned up the scene, put Josh in our truck and went to the store to buy gasoline. He put Josh in a field. He put his school ID next to Josh's body, doused him with the gas and set him on fire. After that the killer went to a friend's house, took a shower, and went to see a movie. He laughed, He had popcorn and a coke.

He will be up for Parole when he is 49 years old. Until then, Taxpayers provide his shelter and his food. He lives, he breathes.

Instead of getting our child home that day, we got an autopsy report that reads in part. This body is received in a grey body bag. A white male with a toe tag that reads Joshua Wilkerson. He is 100 pounds. He has been tied up with braided rope multiple times. 13 rounds of rope from his neck, through the belt loop on the back of his pants, to his hands and feet behind his back. His body is charred from fire. There is significant skin slippage on his buttocks, his abdomen, and on his face. His hands are completely charred. He has many fractures in his face. His throat is crushed. In his pocket he has 1 piece of gum and a tardy slip. Trust me this is the short version.

Cause of death. Blunt head, neck and abdomen trauma and strangulation. Manner, Homicide.

Our family is left with a Birth certificate, an autopsy report and a death certificate. By the grace Of God we are also left with hearts that are badly broken, but still maintain the memories of such a beautiful relationship with Josh.

I know you will sympathize with our story, but I want more than that. I want you to be angry that America's borders are wide open. America does not know who is in this country. It is time to put American's first. Close the Borders, figure out who is really here. Keep statistics. Realize that we are at war right here in this country.

I urge you not to wait until it's your child or grandchild. You never want them to live through what our family and many, many others families have survived.

Thank you to the Remembrance Project for honoring our victims, long before anyone else has.

Thank you to Senator Charles Grassley and Thank you for the opportunity to share our tragedy with you.

Laura Wilkerson, forever Joshua's Mom.

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**Response by Grace Huang to  
 Questions for the Record from Chairman Grassley  
 Senate Committee on the Judiciary Hearing:  
 Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining  
 the Impact on Public Safety and Honoring the Victims (July 21, 2015)  
 August 18, 2015**

**Questions for Ms. Huang:**

*1. The day before the July 21 hearing, you and other advocates were on a call for the media to talk about the committee's hearing and why sanctuary policies are a benefit to certain people in the country illegally. One of the participants on that call said the hearing was something like a "circus." Do you think hearing from the victims of illegal immigration is a joke, and what would you say to that person who called it a circus?*

Victims' experiences are not a joke, and we have much to learn from those experiences to increase safety and justice for all. The advocacy that I do on behalf of all victims of domestic violence, including immigrant victims of abuse, is rooted in the stories that victims - and advocates at victim advocacy programs - share with me and my colleagues.

I have spent over two decades working with individual victims who have experienced horrific crimes committed against them, as they work to overcome their trauma, and work with our programs and my organization to try to improve systemic responses to domestic violence. Their voices are critical in informing how systems can improve in preventing and intervening in domestic and sexual violence. In my policy work, I work to identify gaps in our current responses to domestic violence, in terms of holding abusers accountable, providing safe options for victims, and preventing future abuse.

In this role, I listen to victims' stories of their experiences, review systemic responses to their situations, listen to experts who have implemented promising practices, study policy proposals, and study research on effective domestic violence interventions as well as lessons learned relating to domestic violence fatalities. In collaboration with colleagues, I consider proposed policy improvements, *always* considering the impact it will have on victims in the future, and what the likely unintended consequences are of any proposals, including victims who have the greatest barriers to accessing safety.

2. *At the hearing, you mentioned the concern for undocumented immigrants who may hesitate to report a crime for fear of being discovered and deported due to their undocumented status.*

a. *How does a policy of honoring an ICE detainee on a criminal alien cause undocumented immigrants to be afraid of reporting crimes?*

In my personal experience, and in the experience of many of my colleagues, often immigrants, both those here with authorization and without, are unfamiliar with how law enforcement agencies interact with ICE. Community members (immigrants and U.S. Citizens alike) are unaware of the intricacies of relating to information sharing between the police and ICE, and are unlikely to distinguish between honoring ICE detainees for those with criminal legal system involvement, and other information sharing about immigrants by local law enforcement. As noted in my written testimony submitted to the committee, recent research demonstrates that victims are less likely to contact the police to report they have been victimized if they fear it will lead to inquiries about immigration status.

b. *Is there ever an appropriate situation for detainees to be honored?*

Yes. When they are comply with the 4<sup>th</sup> Amendment to the U.S. Constitution, i.e., when they are supported by a probable cause finding by a judicial officer, giving local jurisdictions the authority to hold someone in custody.

I believe that our Constitution is there to protect all of us. As a victim advocate, there have been times when I wish it were easier, for example, for law enforcement to remove firearms from domestic abusers, or better prevent them from being able to harass a victim on the stand on cross examination. But if we surrender those constitutional protections, when a victim has been arrested because her abuser has made up false allegations, she also loses her ability to respond to the charges against her. At this time, none of the legislative proposals I have reviewed resolve these constitutional problems.

In conclusion, the proposals that have been brought forward to mandate that localities hold individuals at ICE's request would sow fear in the community and undermine public safety. That is not good public policy and Congress should decline adopting those proposals.

**Questions for the Record from Chairman Grassley**

**Senate Committee on the Judiciary Hearing:**

**Oversight of the Administration's Misdirected Immigration Enforcement Policies:  
Examining the Impact on Public Safety and Honoring the Victims**

**July 21, 2015**

**Questions for Chief of Police Manger:**

1. The day before the July 21 hearing, you and other advocates were on a call for the media to talk about the committee's hearing and why sanctuary policies are a benefit to certain people in the country illegally. One of the participants on that call said the hearing was something like a "circus." Do you think hearing from the victims of illegal immigration is a joke, and what would you say to that person who called it a circus? **I am an advocate for public safety, not an advocate for sanctuary cities. I was deeply moved by the testimony at the hearing, especially by that of Mr. Steinle. I am offended by any such disrespectful description of the hearing.**
2. Since the beginning of 2014, how many detainers placed on individuals by Immigration and Customs Enforcement has Montgomery County ignored? **None to my knowledge. Montgomery County, Md. works cooperatively with ICE. Our Dept. of Corrections responds to inquiries from ICE regarding release dates of individuals they are interested in. We continue to work with ICE to ensure that we have the information required to lawfully transfer someone in our custody. This has always been our policy and practice.**
3. Has Montgomery County ever not honored a detainer for a person who was subsequently arrested for another crime? Please provide statistics and explain the cases. **No. I am aware of no such instances.**
4. Does Montgomery County honor warrants from other jurisdictions or other federal entities? **Yes, all of them.**
5. How many requests in the last five years has Montgomery County received for U visa certifications? How many of those did the County sign/approve? **Since 2012 (the last 4 years,) we have received 115 requests for U Visas. 53 were approved, 60 were denied, and 2 have been deferred for action by the prosecutor's office. I do not have any info regarding the numbers of requests prior to 2012.**
6. Secretary Jeh Johnson told a House committee that there are five jurisdictions that continue to not cooperate with ICE, even after announcing its new Priority Enforcement Program, known as PEP. According to the Department of Homeland Security, Montgomery County – your jurisdiction – is one of those five. Will your county participate in PEP? **I am advised by the Office of the Secretary that no such statement was made. This allegation is baseless.**

The Montgomery Police Department as well as the Dept. of Corrections support the PEP and make notifications to ICE.

7. Is there ever an appropriate situation for detainees to be honored? **Yes. When they are supported by a probable cause finding that gives the authority to hold someone in custody.**
8. Given what you know about the case surrounding Kate Steinle's death, would you have also ignored ICE's detainer on Francisco Sanchez? **Montgomery County, Maryland and those jurisdictions that follow the policy of the Major Cities Chiefs Association, provide notifications to ICE, so that persons like this alleged assailant are not released into the community. In other words, we do exactly what you seek to accomplish.**

Law enforcement executives are always ready to engage both DHS and Congress to implement measures to safeguard the public from all violent predators.

<b>Question#:</b>	9
<b>Topic:</b>	DACA status
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** At the hearing, you said that it was “unacceptable” for the gang member charged with murdering four people in North Carolina to be granted DACA status. According to officials who briefed committee staff, one adjudicator in the Background Check Unit (BCU) made the error in not reporting the case to headquarters for review and instead granted the benefit despite the derogatory information on file. Why was no employee of the BCU fired or disciplined for the failure to flag Rangel-Hernandez, the known gang member and DACA recipient who allegedly murdered four people while receiving the benefit? What class of benefits is that adjudicator working now?

**Response:** USCIS determined this error was a performance issue and has addressed it through training, increased supervisory oversight and reassignment of duties. The adjudicator is no longer involved in DACA resolutions, criminality reviews, NTA work, training junior officers or quality review work.

<b>Question#:</b>	10
<b>Topic:</b>	DACA recipients
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You spoke at the hearing of the steps USCIS has taken to scrub the list of DACA recipients to weed out any criminal gang members.

What, if any, mechanism does your agency have in place to learn about or receive notification of a DACA recipient's post-DACA criminal convictions in order to immediately terminate that person's DACA status?

**Response:** Whenever any relevant derogatory information is brought to the attention of the U.S. Citizenship and Immigration Services (USCIS) from law enforcement agencies (U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or other federal, state or local law enforcement authorities) or if such information is otherwise discovered, USCIS will review the newly discovered derogatory information and make a determination on a case by case basis as to how to exercise prosecutorial discretion as it relates to the DACA recipient. Additionally, USCIS performs background and security checks on each DACA requestor during the initial and renewal request processes. As DHS partners develop vetting capacity, including in the area of recurrent vetting, DHS will continue to work with them to leverage those capabilities. Appropriate action to terminate DACA may be taken based on any relevant derogatory information provided by CBP, ICE, or other federal, state or local law enforcement authorities or if such information is otherwise discovered.

**Question:** Does your agency run any sort of database or fingerprint check on a DACA recipient, other than when it's being renewed, in order to check for criminal activity? Please explain.

**Response:** USCIS performs background and security checks on each DACA requestor during the initial and renewal request processes. Individuals are vetted upon their initial application and re-vetted when they requested to renew their deferred action after two years or when USCIS received potentially relevant derogatory information from law enforcement partners on a specific DACA recipient prior to his or her renewal request. ICE also continues to apprise USCIS of ongoing criminal investigations of individuals with pending requests for deferred action.

On October 11, 2015, USCIS developed a time sensitive electronic system generated notice (SGN) reporting process. The SGN reporting process provides real time criminal history wrap back information, resulting in a "recurrent vetting" of all DACA requestors.

<b>Question#:</b>	11
<b>Topic:</b>	DACA interviews
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Please clarify for the record whether USCIS requires an interview of every DACA applicant who has a criminal record. If USCIS does not require an interview for such DACA applicants, why not?

**Response:** If USCIS can determine whether or not a requestor meets the DACA guidelines and warrants a favorable exercise of prosecutorial discretion based on the documentation submitted, and background and security checks, an interview is not necessary. Some DACA requestors are scheduled to appear at their local USCIS office for an interview. The cases that are referred to the field offices for interview depend on the presence of derogatory information that cannot be resolved without an interview, including some issues of criminality, national security, public safety or fraud. Some examples of cases that may require an interview include those requestors where offenses were committed as a juvenile and the records were sealed, those requestors with unresolved gang affiliations or associations, or those whose identity cannot be firmly established solely through documentary evidence. Requestors are given the opportunity to overcome the derogatory information at the interview through their testimony or submission of additional documentation.

<b>Question#:</b>	12
<b>Topic:</b>	DACA rules
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Under the DACA rules, an alien who has been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, or who “poses a threat to national security or public safety” is ineligible for DACA. I am afraid, though, that the DACA rules still leave open the possibility that serious criminals could get protection from deportation under DACA. Please provide a simple yes or no answer to the following:

Can you commit to me that no one convicted of any gang-related crime has or will ever be knowingly approved for DACA benefits?

**Response:** USCIS is unable to provide a yes/no response as USCIS considers the totality of the circumstances when determining whether a DACA requestor poses a threat to national security or public safety. All past criminal activity and/or affiliations are evaluated in order to make a final determination. USCIS and DACA guidelines were established in order to preclude the granting of deferred action under the DACA process for individuals who pose a threat to national security or public safety, including those who are known or suspected gang members.

USCIS is taking the following proactive steps and measures to ensure background check results are properly considered in the adjudication of DACA requests:

- USCIS has provided refresher training in the following areas:
  - All Immigration Service Officers (ISOs) who adjudicate DACA requests received refresher training in interpreting and applying TECS records.
  - Officers received DACA refresher training regarding the handling of public safety and criminality concerns, including but not limited to gang membership, significant misdemeanors, and three or more misdemeanor criminal offenses.
  - Additional refresher training was given to all officers who handle DACA requests on proper protocol and elevation of cases requiring USCIS HQSCOPS’s review and concurrence prior to a final decision.
  - BCU Officers received refresher training in reviewing, applying and resolving TECS hits. USCIS will ensure that the BCU Officer who processes the resolution memo of the TECS hit obtains concurrence from a subject matter expert or supervisor prior to adjudicating a DACA request

<b>Question#:</b>	12
<b>Topic:</b>	DACA rules
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

involving specified public safety or criminality issues such as criminal history or gang membership.

- The refresher training was provided by USCIS Headquarters personnel who are subject matter experts in TECS and the DACA adjudication process. This training was mandatory for all ISOs who adjudicate DACA requests, all ISOs who process resolutions related to TECS hits, and all supervisors and managers who oversee these processes. All listed training was provided between March 30 and April 10, 2015.

**Question:** Can you commit to me that no registered sex offender or person convicted of any sort of sexual crime has or will ever be knowingly approved for DACA benefits?

**Response:** See previous response.

**Question:** Can you commit to me that no one convicted of assault has or will ever be knowingly approved for DACA benefits?

**Response:** See previous response.

<b>Question#:</b>	13
<b>Topic:</b>	Advance parole
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Is the Department considering changing the criteria that are considered in applications for advance parole or otherwise considering expanding the availability of advance parole to DACA recipients or any other class of alien eligible to receive advance parole?

**Response:** No, USCIS is not currently considering any changes to the criteria for DACA recipients who are seeking advance parole.

<b>Question#:</b>	14
<b>Topic:</b>	Parole program for Syrians
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Has DHS at any time considered, or is it currently considering, a parole program for Syrians with approved immigrant petitions similar to the Haitian Family Reunification Parole Program?

**Response:** At the request of more than 70 members of Congress in 2013, USCIS considered whether to establish a parole program for Syrians in Syria but decided against establishing such a program at that time.

<b>Question#:</b>	15
<b>Topic:</b>	Contacted families
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Prior to the hearing, have you or anyone else in the administration personally contacted the Steinle, Oliver, McCann, Ronnebeck, or Wilkerson families? If so, when?

**Response:** Officials from the U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) San Francisco Field Office contacted a member of the Steinle family during the week of July 6, 2015. ICE Director Sarah Saldaña personally contacted Mr. Brad Steinle on July 20, 2015.

Officials from the ERO Chicago Field Office contacted a member of the McCann family in September 2011 and April 2012.

<b>Question#:</b>	24
<b>Topic:</b>	Record of Deportable/Inadmissible Alien
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** If an illegal alien applying for deferred action under the Deferred Action for Childhood Arrivals (DACA) program has been identified on an ICE Form I-213, "Record of Deportable/Inadmissible Alien" as having a possible gang affiliation based on that alien's statements or tattoos, will USCIS deny the DACA application?

**Response:** USCIS considers the totality of the circumstances when determining whether a DACA requestor poses a threat to national security or public safety. All past criminal activity and/or affiliations are evaluated in order to make a final determination. All DACA requests are queried against law-enforcement databases to determine if a requestor has a known or suspected gang affiliation. These cases are fully vetted by trained USCIS officers. If necessary, the vetting process will include an in-person interview. If, after the vetting process is complete, a requestor is still considered a known or suspected gang member, the request for DACA will be denied on the grounds that the requestor is a threat to public safety and therefore does not warrant favorable discretion. However, if an officer believes, based on the totality of the circumstances present, that a request should be approved as a matter of discretion, such a request requires review and approval at the USCIS Headquarters level.

<b>Question#:</b>	25
<b>Topic:</b>	Central American Minors Refugee/Parole Program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** To date, how many applications have you received for the Central American Minors Refugee/Parole Program?

**Response:** Applications for the Central American Minors (CAM) Refugee/Parole Program are initially filed with the Department of State. The Department of State reports that as of September 21, 2015, it has accepted CAM Affidavits of Relationship for 4,000 cases and 4,403 individuals.

**Question:** How many individuals have been granted refugee status pursuant to the program? For each individual granted refugee status pursuant to the program, please describe the precise reasons for granting refugee status, including identifying the protected ground upon which the individual claimed to be persecuted, the definition of the "particular social group" for each application granted on account of that protected ground.

**Response:** In July 2015 the U.S. Department of Homeland Security completed its first round of interviews in Central America and 11 cases, which comprise 16 individuals, have been conditionally approved for refugee status under the CAM program. Applicants conditionally approved as refugees were found to meet the definition of refugee at section 101 (a)(42) of the Immigration and Nationality Act (INA), are not inadmissible, and are not firmly resettled. Applicants must clear all required security checks prior to final approval. The USCIS Refugee Affairs Division does not systematically track which protected ground is the basis of the refugee claim. However, in this instance, given the small number of cases, USCIS can report that all these cases were approved because the applicants suffered or feared persecution on account of membership in a particular social group (PSG).

In assessing whether an applicant is a member of a PSG, USCIS adjudicators first examine whether the applicant and certain other members of his or her society share a common immutable trait, one that is either unchangeable or so fundamental to their identity or conscience that they should not be required to change it. Adjudicators then resolve whether that trait is socially distinct by assessing whether the society in question meaningfully distinguishes individuals who possess it from those who do not. The adjudicator then determines whether the group of people has discrete boundaries and is defined with sufficient particularity to ascertain with certainty who is in the group and who is not. If all these requirements are met, the adjudicator will generally conclude that

<b>Question#:</b>	25
<b>Topic:</b>	Central American Minors Refugee/Parole Program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

the applicant is a member of a PSG. The adjudicator is guided by precedent decisions recognizing particular social groups that share characteristics with the groups recognized in these cases.

See, e.g., *Ornelas-Chavez v. Gonzalez*, 458 F.3d 1052 (9th Cir. 2006) (restating the well-settled principle that “persecution may be inflicted ... by persons the government is unable or unwilling to control”); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950 (4th Cir. 2015) (examining family as a particular social group and concluding that applicant’s relationship to her son is why she, and not another person, was threatened with death if she did not allow him to join Mara 18); *Cordova v. Holder*, 759 F.3d 332, 339 (4th Cir. 2014) (finding nexus to particular social group established where applicant was targeted on account of his kinship ties to his cousin and uncle); *Ming Li Hui v. Holder*, 769 F.3d 984 (8th Cir. 2014) (acknowledging “Chinese daughters [who are] viewed as property by virtue of their position within a domestic relationship” as a particular social group but denying asylum on other grounds); *Matter of A-R-C-G-*, 26 I&N Dec. 388, 390 (BIA 2014) (finding that status within a domestic relationship which the applicant is unable to leave may define a particular social group);

Establishing membership in a particular social group is not, however, the end of the adjudicator’s inquiry. The adjudicator must also determine whether the applicant has met all the other requirements of refugee law, including showing that he was or has a well-founded fear of being targeted on account of that membership in the group, that the harm involved is serious enough to be persecution, and that the state is unable and unwilling to protect from that harm.

**Question:** How many individuals have been granted parole pursuant to the program? For each individual granted parole, please explain precisely why parole was granted, and the precise reason under section 212(d)(5)(A) of the INA for which the alien was granted parole.

**Response:** As of August 7, 2015, 74 cases which comprise 74 individuals have been conditionally approved for parole under the CAM program.

Section 212(d)(5)(A) of the INA authorizes the Secretary of Homeland Security to “in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States ....” The CAM program was established as part of an integrated and comprehensive approach to address

<b>Question#:</b>	25
<b>Topic:</b>	Central American Minors Refugee/Parole Program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

the underlying economic and security challenges facing Central American countries and the increase in unlawful migration of unaccompanied minors across the U.S. border.

Last year, the U.S. experienced an unprecedented increase in the migration of unaccompanied children from El Salvador, Guatemala and Honduras using criminal networks, as outlined in the February 2015 GAO report.<sup>5</sup> In response, DHS and the Department of State have adopted a multi-faceted strategy to deter large numbers of children from using criminal cartels and smugglers to take the dangerous journey to the United States and to avoid the humanitarian challenges of any large scale irregular migration, particularly of families and unaccompanied children. The CAM program is one facet of that strategy, and the consideration of these policy goals as part of a case-by-case determination whether to exercise the parole authority as a matter of discretion is fully consistent with section 212(d)(5)(A).

To date, parole has been considered on a case-by-case basis for children who qualified for access to the CAM program (i.e., those with a parent lawfully present in the United States and whose claimed genetic, step, or legally adopted relationship had been confirmed by DHS) but who did not establish eligibility for refugee status. Parole generally has been conditionally approved in cases in which the USCIS officer has determined that such children demonstrated a well-founded fear of harm (usually from gang-related or other violence) and no serious adverse factors were present warranting a negative exercise of discretion. As of August 7, 2015, 74 cases which comprise 74 individuals have been conditionally approved for parole under the CAM program.

Prior to final parole approval, applicants must clear all required security checks, pay for a medical exam, and pay for travel to United States on an International Organization for Migration (IOM) arranged flight.

<sup>5</sup> Available at <http://www.gao.gov/assets/670/668749.pdf>.

<b>Question#:</b>	26
<b>Topic:</b>	Visa Waiver Program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** How many immigrant and nonimmigrant visa applications were received, in total, in FY2014, including under the Visa Waiver Program?

**Response:** The Visa Waiver Program (VWP) allows travelers to apply for admission to the U.S. at a U.S. port of entry as a nonimmigrant visitor without first obtaining a nonimmigrant visa, provided they are otherwise eligible for admission. The Electronic System for Travel Authorization (ESTA) was created in 2008 to require intending VWP travelers to ask for and receive authorization to travel prior to boarding a conveyance destined to the United States. The ESTA applications are not visa applications.

In Fiscal Year (FY) 2014, CBP received 13,392,062 requests for travel authorizations.

**Question:** How many of the aforementioned applications were denied pursuant to section 212(a)(4) of the Immigration and Nationality Act?

**Response:** CBP does not have specific numbers related to public charge-based denials of VWP travel authorization. CBP did deny over 50,000 applications for travel authorization in FY 2014.

<b>Question#:</b>	27
<b>Topic:</b>	means-tested benefit
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** How many aliens in the United States are currently receiving some form of means-tested benefit? Of that number, please specify how many are currently receiving such benefits for themselves, and how many are currently receiving such benefits for members of their household, including for dependent children.

**Response:** The Department of Homeland Security (DHS) does not have jurisdiction over means-tested benefits.

**Question:** How many foreign-born persons in the United States are currently receiving some form of means-tested benefit?

**Response:** DHS does not have jurisdiction over means-tested benefits.

<b>Question#:</b>	1
<b>Topic:</b>	Criminal aliens
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the past two fiscal years, the Department has released more than 66,500 criminal aliens back into our communities. While I know the courts play a small role in some of those releases, the vast majority of these criminal aliens – approximately 60 percent – have been released pursuant to your own discretion, NOT a court order. Some of these aliens have gone on to commit additional crimes, including assault, battery, rape, and homicide. You and your predecessors as well as the Secretary of Homeland Security have repeatedly said that lack of resources force ICE to carry out such releases of criminals.

Why hasn't ICE ever requested a substantial increase in its budget for detention operations?

ICE is budgeted for 34,000 detention beds, yet Secretary Johnson confirmed at a hearing before the House Judiciary Committee on July 14 that you are currently only using 31,000 detention beds. Why are you not using all the resources Congress has given you?

Do you expect to recommend an increase in funding for detention and removal operations in the next fiscal year?

**Response:** Pursuant to the legal authorities that govern U.S. Immigration and Customs Enforcement's (ICE) activities, each year, ICE's immigration enforcement is impacted by operational factors, including the size of the removable population found in the interior and encountered at the border, resources, and fluctuating migration patterns. ICE ensures the most cost-effective use of our appropriated funding by focusing costly detention capabilities on high-risk priority and mandatory detainees, while placing lower-risk, non-mandatory individuals in lower cost alternatives to detention programs. Since fiscal year (FY) 2014, ICE has utilized fewer detention beds due to a reduction in U.S. Customs and Border Protection apprehensions and an increase in jurisdictions refusing to honor ICE detainers. Because of the restrictions imposed by some jurisdictions, ICE has had to expend more resources on at-large operations which are less efficient and more costly than detention operations.

In FY 2015, Congress appropriated \$5.93 billion for ICE's Salaries and Expenses appropriation, of which \$3.4 billion was for Enforcement and Removal Operations (ERO). This was a \$621 million increase over the FY 2014 enacted level for ERO, primarily due to the funding of family residential centers and a rate increase for adult detention beds.

<b>Question#:</b>	1
<b>Topic:</b>	Criminal aliens
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

The FY 2016 President's Budget requests \$5.88 billion for the Salaries and Expenses appropriation, of which \$3.3 billion is for ERO. The FY 2016 President's Budget fully funds 34,040 detention beds, the alternatives to detention program, and the associated costs of transportation to repatriate those aliens ordered removed.

<b>Question#:</b>	2
<b>Topic:</b>	ICE detainees
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Will you consider withholding or recommend that the Department withhold any homeland security grant funds from entities that don't honor ICE detainees?

**Response:** Cutting valuable and necessary homeland security grant funding, including grants for first responders, would be counterproductive. These valuable grants enhance our nation's collective preparedness against acts of terrorism and other threats to homeland security. Threatening to take away grant funding that protects the nation is not a productive way for gaining the cooperation of state and local authorities. Measures that reduce the nation's security and level of preparedness should not be used to incentivize other action, as the question proposes.

The most effective way to work with state and local jurisdictions is through cooperative efforts. U.S. Immigration and Customs Enforcement (ICE) is implementing the Priority Enforcement Program (PEP), which replaced the Secure Communities program, as a critical piece of interior enforcement efforts. PEP implements a new interior enforcement approach in a way that supports community policing by focusing on convicted criminals and individuals who threaten public safety and working with state and local law enforcement to take custody of dangerous individuals and convicted criminals before they are released into the community. ICE is committed to working with all jurisdictions that are interested in partnering with us. PEP is tailored to bring back on board state and local jurisdictions that had concerns with, or legal obstacles to, assisting us in implementing Secure Communities and has experienced recent successes in significant locations such as those in Los Angeles and others in California. Most local law enforcement agencies, including many uncooperative jurisdictions, are now cooperating via PEP.

<b>Question#:</b>	3
<b>Topic:</b>	Section 287(g)
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Section 287(g) of the Immigration and Nationality Act allows the Secretary of Homeland Security to enter into agreements that delegate immigration powers to local police, but only through negotiated agreements, documented in Memoranda of Agreement (MOAs). Under the 287(g) program, local law enforcement is trained by ICE to screen inmates at jails for immigration status, helping ICE identify alien inmates who should be the subjects of detainers or requests for notification of release. This is exactly the sort of federal-local partnership that should be encouraged. At the hearing you said:

“We welcome any 287(g) partners. ... There has been [diminution of the 287(g) program], sir, but it's not because of our not wanting that partnership. It's because jurisdictions have either withdrawn or are not coming to the table anymore.”

How many 287(g) jail enforcement model applications are currently pending with your agency? How long have they each been pending? Please identify the jurisdictions that have 287(g) jail enforcement model applications pending with ICE.

Why have these applications not been acted on?

When will ICE make a decision on these applications?

**Response:** Please find below a list of jurisdictions that currently have pending applications with U.S. Immigration and Customs Enforcement (ICE) for 287(g) Jail Enforcement Model partnerships. ICE is currently evaluating existing applications to determine whether they would be operationally viable and are weighing a number of factors as we consider these applications including ICE assets already in place in the jurisdiction's area, the cost of ICE training and oversight of local jurisdictions, and the potential priority population in the area. Consideration is given to the size of the requesting agency's arrest volume, number of foreign-born encounters, the number of Immigration Automated Queries (IAQ) generated through interoperability, and the ability of the affected ERO field office to support.

<b>Question#:</b>	3
<b>Topic:</b>	Section 287(g)
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

State	Law Enforcement Agency Name	Date of Application	Office/Sub-Office/Area of Responsibility
AZ	Apache Junction PD	8/24/2010	Phoenix
GA	Rockdale County Sheriff's Office	7/12/2010	Atlanta
GA	Cherokee County Sheriff's Office	9/24/2008	Atlanta
MA	Essex County Sheriff's Office	9/27/2011	Boston
MA	Plymouth County Sheriff's Office	4/24/2012	Boston
NC	Forsyth County Sheriff's Office	6/21/2010	Charlotte
NC	New Hanover County Sheriff's Office	4/1/2011	Charlotte
OK	Oklahoma County Sheriff's Office	7/1/2011	Oklahoma City
TN	Rutherford County Sheriff's Office	9/6/2011	Nashville
VA	Rappahannock Regional Jail	6/6/2012	Washington D.C.

<b>Question#:</b>	4
<b>Topic:</b>	Priority Enforcement Program (PEP) 1
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Your agency's new Priority Enforcement Program, known as PEP, is being sold as a solution for sanctuary cities. Yet, this program is a watered down initiative that does very little to get lawbreaking and criminal aliens off the streets. Under PEP, your agency will not issue a detainer or a request for a local law enforcement jurisdiction to hold an individual unless that person has been convicted of certain criminal offenses. Given that few jurisdictions are buying into your PEP program and that sanctuary cities continue to thumb their nose at the federal government, it's time the administration re-thinks its enforcement strategy. Will you, as the head of ICE, push for changes to the PEP program to ensure that ICE will issue detainers for all criminal aliens defined by Congress, and all other dangerous aliens?

**Response:** The cooperation U.S. Immigration and Customs Enforcement (ICE) receives from other law enforcement agencies is critical to assisting ICE in identifying and detaining individuals who meet its enforcement and removal priorities. By tailoring the Priority Enforcement Program to fit the law enforcement needs of each jurisdiction, the Department of Homeland Security (DHS) seeks to ensure agencies are able to maintain community trust while also targeting those convicted criminals and dangerous individuals who threaten the peace and stability of our communities. At this time, ICE continues to believe that fostering cooperation between individual jurisdictions and DHS remains the most effective way to implement detainers and meet enforcement and removal priorities. Accordingly, our agency continues to engage state and local law enforcement beyond the initial rollout of this program to explain and further promote this enforcement effort. PEP is designed to bring back on board state and local jurisdictions that had concerns with, or legal obstacles to, assisting us in implementing Secure Communities and has experienced recent successes in significant locations such as those in Los Angeles and others in California. Most local law enforcement agencies, including many uncooperative jurisdictions, are now cooperating via PEP.

<b>Question#:</b>	5
<b>Topic:</b>	Priority Enforcement Program (PEP) 2
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** How many of the estimated 11 million illegal aliens in the country are priorities for removal under PEP?

**Response:** U.S. Immigration and Customs Enforcement (ICE) is unable to conclusively report how many individuals are enforcement priorities under the Priority Enforcement Program (PEP).

**Question:** Has ICE ever made or attempted to make its own estimate of the number of undocumented immigrants in this country who would not be a priority for removal under PEP? If so, what is ICE's estimate? If not, why hasn't ICE made such an estimate?

**Response:** While ICE is aware of publicly available data sets estimating the number of aliens allegedly present in the United States, any initial attempts to make similar deliberative projections did not yield estimates of the number of aliens in the United States who would not be a priority for removal under PEP.

**Question:** If ICE has not made such an estimate because it does not believe such an estimate is possible, then what is ICE's opinion of MPI's methodology and conclusions? Does ICE believe that the MPI estimate is accurate?

**Response:** ICE is unable to validate external methodology and conclusions. Further, ICE does not possess enough information on the estimated 11 to 12 million undocumented individuals present in the country to produce an effective estimate of how many would constitute priorities for removal.

<b>Question#:</b>	6
<b>Topic:</b>	Communication
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I am interested in knowing more about the communication between ICE and USCIS related to DACA cases.

How many times has ICE been provided information by USCIS about DACA terminations?

How does ICE receive such information from USCIS?

How many Notices to Appear has ICE issued for DACA applicants or “requestors” whose grant has been denied or terminated?

How many aliens whose DACA application or “request” was denied or terminated have not received an NTA?

How many cases with a DACA nexus have been referred to ICE for investigation? What is the current disposition of each of those cases (e.g. still under investigation, NTA issued, referred to U.S. Attorney for prosecution)?

**Response:** At this time, U.S. Citizenship and Immigration Services (USCIS) does not routinely or systematically communicate grants, denials, or revocations of deferred action to U.S. Immigration and Customs Enforcement (ICE). Upon request, USCIS will provide to ICE data about individuals whose Deferred Action for Childhood Arrivals (DACA) request has been terminated.

Please note that deferred action is an exercise of prosecutorial discretion. Therefore, deferred action may be denied or terminated at any time. Factors making deferred action inappropriate would include, but not be limited to, threats to public safety or national security.

According to ICE records, as of July 28, 2015, 2,179 unique individuals whose DACA requests have been terminated or denied have received a Notice to Appear (NTA). Please note that ICE issues NTA’s in accordance with its stated enforcement priorities. Further, while terminations are commonly based on criminal activity, terminations may also be triggered by the DACA recipient acquiring legal status or traveling without advance parole, and denials may also result from a requestor’s inability to meet the DACA guidelines (age, length of time in country, etc.), and these aliens may not constitute priorities for removal. ICE also notes that cases with no NTA may include active

<b>Question#:</b>	6
<b>Topic:</b>	Communication
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

detainers (meaning the individual is currently in the custody of another law enforcement agency) or another type of charging document.

Individuals who have DACA cases that are terminated by USCIS due to disqualifying criminal activities which pose continued serious threats to public safety, including those determined to be known or suspected gang members, and who are not already in removal proceedings or otherwise known to ICE, may be referred to ICE for issuance of an NTA. Per USCIS policy, if ICE or U.S. Customs and Border Protection (CBP) issues an NTA after a request for DACA has been approved, deferred action under DACA terminates automatically as of the date the NTA was issued. In other words, even for individuals not referred by USCIS, DACA would be automatically terminated upon issuance of a notice to appear by ICE or CBP.

Regarding cases with a DACA nexus referred to ICE for investigation:<sup>1</sup>

USCIS referred 281 aliens to ICE, by Alien number, whose DACA had been terminated due to criminal or gang activity. Of these aliens, 78 were removed after termination of their deferred action. An additional 11 individuals were removed prior to their DACA termination date. Of the remaining 192 DACA cases that have been terminated but not yet been removed, ICE records indicate the following:

- 10 are currently in ICE detention;
- 77 were booked into ICE custody following termination of their deferred action, but have since been released<sup>2</sup>
  - 4 of these cases have subsequently been closed without a removal (i.e., proceedings terminated);
- 83 are considered active cases but the individuals have not been booked into ICE custody since the termination of their deferred action<sup>3</sup>;
- 6 were never detained following termination of their deferred action and have since had their cases closed;
- 16 do not currently have a case with ICE.<sup>4</sup>

<sup>1</sup> DACA termination data is provided by USCIS and is updated through July 28, 2015. ICE data is updated through August 10, 2015.

<sup>2</sup> Release reasons include bond, orders of supervision, orders of recognizance. ICE detainee releases are made pursuant to controlling law, regulation, and precedent legal decisions.

<sup>3</sup> Includes one individual currently in Department of Health and Human Services Office of Refugee Resettlement custody.

<sup>4</sup> Represents cases with no NTA. May include active detainers and voluntary returns without ICE NTA being issued.

<b>Question#:</b>	7
<b>Topic:</b>	Arizona
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Shortly after bringing legal action against Arizona in 2010 for immigration-enforcement-related laws passed in that state, a U.S. Department of Justice spokesperson explained why the Administration was taking action against Arizona but was doing nothing against sanctuary cities:

“There is a big difference between a state or locality saying that they are not going to use their resources to enforce federal law, as so-called sanctuary cities have done, and a state passing its own immigration policy that actively interferes with federal law.”

Do you agree with that statement?

**Response:** U.S. Immigration and Customs Enforcement (ICE) recognizes that some of its state and local partners have concerns with regard to cooperating with Department of Homeland Security (DHS) in its enforcement of the immigration laws. This is, however, different than circumstances in which a jurisdiction enacts a law that is preempted by federal law. The most effective way to address these concerns is through cooperative efforts, including the Priority Enforcement Program (PEP). The objective of PEP is to implement a new interior enforcement approach that supports community policing by working with state and local law enforcement to take custody of convicted criminals and individuals who threaten public safety before they are released into the community. ICE is committed to working with all jurisdictions to ensure that this objective is met by tailoring the program to meet the needs of each jurisdiction. PEP is tailored to bring back on board the state and local jurisdictions that had concerns with, or legal obstacles to, assisting us in implementing Secure Communities and has experienced recent successes in significant locations such as those in Los Angeles and others in California. Most local law enforcement agencies, including many uncooperative jurisdictions, are now cooperating via PEP.

<b>Question#:</b>	8
<b>Topic:</b>	Reprogramming of funds
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Are any funds appropriated to ICE for immigration enforcement being reprogrammed to other DHS components? If so, how much is being reprogrammed out of ICE? From which accounts are funds being reprogrammed and which accounts at which DHS components are benefiting? Do you support that reprogramming of funds?

**Response:** The reprogramming request, transmitted to the House Appropriations Committee Subcommittee on Homeland Security (HAC-HS) and the Senate Appropriations Committee Subcommittee on Homeland Security (SAC-HS) by the Department of Homeland Security (DHS) on June 29, 2015, includes \$113 million in funds that will be reprogrammed from U.S. Immigration and Customs Enforcement (ICE) to other DHS components. Reprogramming funds from ICE will not negatively impact our current immigration enforcement efforts, and will help fund operational needs at other components that cannot be deferred until fiscal year (FY) 2016. The reprogramming request was approved by the SAC-HS on July 29, 2015, and by the HAC-HS on July 30, 2015.

The table below summarizes the ICE accounts being reprogrammed and the benefiting DHS components and accounts.

Account	ICE Funds Being Reprogrammed	Benefiting DHS Components
<b>FY 2015 Salaries and Expenses - ICE</b>	<b>(\$113,000,000)</b>	
<i>Custody Operations</i>	<i>(\$98,000,000)</i>	
<i>Transportation &amp; Removal Program</i>	<i>(\$15,000,000)</i>	
<b>FY 2015 Salaries and Expenses – U.S. Secret Service</b>		<b>\$87,258,000</b>
<i>Protection of Persons and Facilities</i>		<i>\$59,645,000</i>
<i>Protective Intelligence Activities</i>		<i>\$635,000</i>
<i>Domestic Field Operations</i>		<i>\$3,808,000</i>
<i>International Field Office Administration &amp; Operations</i>		<i>\$140,000</i>
<i>Headquarters, Management and Administration</i>		<i>\$15,558,000</i>
<i>James J. Rowley Training Center</i>		<i>\$7,472,000</i>
<b>FY 2015/2019 Acquisitions, Construction, Improvements, &amp; Related Expenses – U.S.</b>		<b>\$4,981,500</b>

<b>Question#:</b>	8
<b>Topic:</b>	Reprogramming of funds
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

<b>Secret Service</b>		
<i>James J. Rowley Training Center</i>		<i>\$4,981,500</i>
<b>FY 2015 IPIS - NPPD</b>		<b>\$20,000,000</b>
<i>Federal Network Security</i>		<i>\$20,000,000</i>
<b>FY 2015 Salaries and Expenses - FEMA</b>		<b>\$760,500</b>
<i>Mission Support</i>		<i>\$760,500</i>

<b>Question#:</b>	15
<b>Topic:</b>	Contacted families
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Prior to the hearing, have you or anyone else in the administration personally contacted the Steinle, Oliver, McCann, Ronnebeck, or Wilkerson families? If so, when?

**Response:** Officials from the U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) San Francisco Field Office contacted a member of the Steinle family during the week of July 6, 2015. ICE Director Sarah Saldaña personally contacted Mr. Brad Steinle on July 20, 2015.

Officials from the ERO Chicago Field Office contacted a member of the McCann family in September 2011 and April 2012.

<b>Question#:</b>	16
<b>Topic:</b>	Prosecutorial discretion
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Since January 20, 2009, has ICE ever granted “prosecutorial discretion” in any manner - including, but not limited to, administratively closing a case, terminating a case, or refusing to file a Notice to Appear - to an alien charged with or convicted of a crime?

If so, please provide a list broken down by fiscal year that describes each case, describing the crime(s) of conviction, specifying the manner in which prosecutorial discretion was exercised, explaining why it was exercised, the current disposition for the case, and the current location for the alien, if known.

Please also provide a separate list that sets forth aggregate totals for each category of criminal offense.

Please also provide a separate list that describes, in detail, any case in which ICE exercised “prosecutorial discretion” in any manner, but in which ICE subsequently took any additional action to attempt to remove the alien from the United States.

**Response:** U.S. Immigration and Customs Enforcement (ICE) officers, attorneys and agents exercise prosecutorial discretion on a case-by-case basis, after considering the totality of the circumstances known at the time, with the goal of conforming to the enforcement priorities outlined in the November 20, 2014 memorandum entitled, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*. Prosecutorial discretion may be exercised at any time as additional facts are discovered throughout the course of an investigation or as raised to the attention of ICE. No one factor is determinative, and in most cases the decision whether to exercise prosecutorial discretion is most appropriately made at the field office level.

Prosecutorial discretion can be exercised in a variety of ways. For example, ICE Enforcement and Removal Operations (ERO) can decide not to effectuate at-large arrests of subjects encountered collaterally or ICE ERO can grant a temporary stay of removal which may still lead to an enforcement outcome – such as allowing a non-detained alien to get his or her affairs in order prior to self-removal. As such, ICE is unable to report the requested level of detail regarding the granting of prosecutorial discretion, as this information is not maintained in a systematically reportable manner. ICE conducts case management on an individualized basis documenting and considering the facts of the case in a format conducive to both ICE deportation officers and attorneys in the field allowing appropriate law enforcement resolution.

<b>Question#:</b>	17
<b>Topic:</b>	Final order of removal
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** According to data provided to my staff, as of July 4, 2015, there were 925,193 aliens in the United States with a final order of removal. How many of these individuals have ever been charged with, or convicted of, a criminal offense? Please also provide a separate list that provides totals for each of the above-mentioned categories, by country, with the number of aliens with final removal orders.

**Response:** As of July 4, 2015, U.S. Immigration and Customs Enforcement (ICE) managed 925,193 individuals with a final order of removal on its national docket.

Please find a breakdown of these 925,193 individuals with a final order of removal, by criminal and detention status below. When reporting on criminality, ICE defines a criminal as an individual with one or more criminal convictions.

**Post Final Order Docket (as of July 4, 2015)**

	Convicted Criminal	Non-Criminal	Total
Detained	6,905	4,467	11,372
Non-Detained	172,135	741,686	913,821
<b>Total</b>	<b>179,040</b>	<b>746,153</b>	<b>925,193</b>

Please find a breakdown of the same 925,193 individuals with a final order of removal, by criminal and detention status, and country of citizenship, below:

**Post Final Order, by Country (as of July 4, 2015)**

Citizenship Country	Detained Final Order TOTAL	Detained Final Order Convicted CRIMINAL	Detained Final Order NON-CRIMINAL	Non-Detained Final Order TOTAL	Non-Detained Final Order Convicted CRIMINAL	Non-Detained Final Order NON-CRIMINAL	TOTAL by Country of Citizenship
<b>Grand Totals:</b>	<b>11,372</b>	<b>6,905</b>	<b>4,467</b>	<b>913,821</b>	<b>172,135</b>	<b>741,686</b>	<b>925,193</b>

<b>Question#:</b>	17
<b>Topic:</b>	Final order of removal
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

AFGHANISTAN	5	4	1	915	180	735	920
ALBANIA	14	6	8	2,298	134	2,164	2,312
ALGERIA	6	5	1	332	91	241	338
ANDORRA	-	-	-	-	-	-	0
ANGOLA	3	-	3	189	37	152	192
ANGUILLA	-	-	-	-	-	-	0
ANTIGUA-BARBUDA	6	6	-	135	89	46	141
ARGENTINA	13	11	2	1,303	127	1,176	1,316
ARMENIA	9	8	1	3,117	394	2,723	3,126
ARUBA	-	-	-	-	-	-	0
AUSTRALIA	4	3	1	289	20	269	293
AUSTRIA	-	-	-	73	15	58	73
AZERBAIJAN	3	3	-	731	72	659	734
BAHAMAS	19	19	-	505	273	232	524
BAHRAIN	-	-	-	16	-	16	16
BANGLADESH	84	10	74	5,067	162	4,905	5,151
BARBADOS	9	9	-	171	91	80	180
BELARUS	2	2	-	297	57	240	299
BELGIUM	1	1	-	50	10	40	51

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BELIZE	28	24	4	592	174	418	620
BENIN	-	-	-	72	9	63	72
BERMUDA	1	1	-	8	3	5	9
BHUTAN	1	1	-	23	8	15	24
BOLIVIA	16	9	7	1,016	118	898	1,032
BOSNIA- HERZEGOVIN A	12	12	-	177	87	90	189
BOTSWANA	1	1	-	11	4	7	12
BRAZIL	97	40	57	25,606	703	24,903	25,703
BRITISH VIRGIN ISLANDS	1	1	-	9	6	3	10
BRUNEI	-	-	-	3	2	1	3
BULGARIA	3	2	1	813	53	760	816
BURKINA FASO	1	1	-	199	28	171	200
BURMA	13	12	1	527	96	431	540
BURUNDI	4	4	-	486	35	451	490
CAMBODIA	51	51	-	1,942	1,413	529	1,993
CAMEROON	12	7	5	1,212	113	1,099	1,224
CANADA	17	16	1	1,322	474	848	1,339
CAPE VERDE	15	15	-	418	216	202	433

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CAYMAN ISLANDS	-	-	-	4	3	1	4
CENTRAL AFRICAN REPUBLIC	1	1	-	91	18	73	92
CHAD	2	1	1	91	8	83	93
CHILE	5	4	1	660	86	574	665
CHINA, PEOPLES REPUBLIC OF	210	124	86	38,568	1,640	36,928	38,778
CHRISTMAS ISLAND	-	-	-	-	-	-	0
COLOMBIA	87	69	18	14,694	1,683	13,011	14,781
COMOROS	-	-	-	3	1	2	3
CONGO	6	5	1	767	78	689	773
COSTA RICA	19	12	7	2,045	159	1,886	2,064
CROATIA	2	2	-	127	23	104	129
CUBA	164	158	6	34,992	27,845	7,147	35,156
CYPRUS	-	-	-	12	2	10	12
CZECH REPUBLIC	1	1	-	93	12	81	94
CZECHOSLOVAKIA	-	-	-	276	26	250	276
DEM REP OF THE CONGO	4	1	3	643	98	545	647
DENMARK	-	-	-	49	6	43	49
DJIBOUTI	-	-	-	24	1	23	24

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DOMINICA	4	3	1	161	43	118	165
DOMINICAN REPUBLIC	232	209	23	10,929	3,105	7,824	11,161
EAST TIMOR	-	-	-	-	-	-	0
ECUADOR	199	50	149	13,758	1,085	12,673	13,957
EGYPT	7	5	2	1,472	165	1,307	1,479
EL SALVADOR	2,493	882	1,611	157,016	10,701	146,315	159,509
EQUATORIAL GUINEA	2	2	-	11	3	8	13
ERITREA	10	2	8	488	107	381	498
ESTONIA	2	2	-	108	24	84	110
ETHIOPIA	31	9	22	1,840	331	1,509	1,871
FIJI	5	5	-	404	57	347	409
FINLAND	-	-	-	21	1	20	21
FRANCE	4	3	1	433	81	352	437
FRENCH GUIANA	-	-	-	-	-	-	0
FRENCH POLYNESIA	-	-	-	1	-	1	1
GABON	-	-	-	48	9	39	48
GAMBIA	7	6	1	1,253	296	957	1,260
GEORGIA	3	1	2	624	75	549	627
GERMANY	7	7	-	617	153	464	624

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GHANA	58	21	37	3,231	423	2,808	<b>3,289</b>
GREECE	1	1	-	234	45	189	<b>235</b>
GRENADA	10	10	-	152	40	112	<b>162</b>
GUADELOUPE	1	1	-	3	3	-	<b>4</b>
GUATEMALA	1,669	819	850	97,532	8,171	89,361	<b>99,201</b>
GUINEA	4	3	1	2,116	374	1,742	<b>2,120</b>
GUINEA-BISSAU	-	-	-	37	10	27	<b>37</b>
GUYANA	20	20	-	1,472	365	1,107	<b>1,492</b>
HAITI	73	61	12	30,731	2,103	28,628	<b>30,804</b>
HONDURAS	1,370	669	701	118,748	9,144	109,604	<b>120,118</b>
HONG KONG	3	3	-	123	49	74	<b>126</b>
HUNGARY	1	1	-	315	47	268	<b>316</b>
ICELAND	-	-	-	6	2	4	<b>6</b>
INDIA	135	41	94	16,912	893	16,019	<b>17,047</b>
INDONESIA	2	1	1	4,835	126	4,709	<b>4,837</b>
IRAN	12	10	2	2,706	891	1,815	<b>2,718</b>
IRAQ	15	14	1	1,327	832	495	<b>1,342</b>
IRELAND	-	-	-	122	28	94	<b>122</b>
ISRAEL	3	1	2	1,148	239	909	<b>1,151</b>

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ITALY	6	6	-	355	104	251	<b>361</b>
IVORY COAST	5	4	1	1,377	226	1,151	<b>1,382</b>
JAMAICA	184	180	4	5,249	2,650	2,599	<b>5,433</b>
JAPAN	0	-	-	315	17	298	<b>315</b>
JORDAN	22	21	1	1,631	453	1,178	<b>1,653</b>
KAZAKHSTAN	1	1	-	212	51	161	<b>213</b>
KENYA	31	25	6	1,294	240	1,054	<b>1,325</b>
KIRIBATI	0	-	-	4	1	3	<b>4</b>
KOREA	5	4	1	1,407	205	1,202	<b>1,412</b>
KOSOVO	0	-	-	68	12	56	<b>68</b>
KUWAIT	0	-	-	133	44	89	<b>133</b>
KYRGYZSTAN	0	-	-	141	11	130	<b>141</b>
LAOS	20	20	-	4,403	3,735	668	<b>4,423</b>
LATVIA	0	-	-	133	20	113	<b>133</b>
LEBANON	12	9	3	1,108	209	899	<b>1,120</b>
LESOTHO	0	-	-	9	2	7	<b>9</b>
LIBERIA	36	35	1	2,158	791	1,367	<b>2,194</b>
LIBYA	0	-	-	68	19	49	<b>68</b>
LIECHTENSTEIN	0	-	-	1	-	1	<b>1</b>

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LITHUANIA	2	-	2	299	35	264	301
LUXEMBOURG	0	-	-	-	-	-	0
MACAU	0	-	-	1	-	1	1
MACEDONIA	1	-	1	384	24	360	385
MADAGASCAR	0	-	-	6	3	3	6
MALAWI	2	2	-	48	8	40	50
MALAYSIA	1	1	-	459	43	416	460
MALDIVES	0	-	-	2	-	2	2
MALI	4	4	-	1,059	198	861	1,063
MALTA	0	-	-	6	-	6	6
MARSHALL ISLANDS	8	8	-	13	10	3	21
MARTINIQUE	0	-	-	-	-	-	0
MAURITANIA	0	-	-	4,032	184	3,848	4,032
MAURITIUS	0	-	-	65	3	62	65
MEXICO	2722	2,453	269	184,662	67,792	116,870	187,384
MICRONESIA, FEDERATED STATES OF	15	15	-	33	30	3	48
MOLDOVA	3	1	2	230	39	191	233
MONACO	0	-	-	1	-	1	1
MONGOLIA	0	-	-	-	-	-	424

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		-	-	424	38	386	
MONTENEGRO	5	5	-	41	26	15	46
MONTENEGRO - RAPS	0	-	-	-	-	-	0
MONTSERRAT	1	1	-	8	5	3	9
MOROCCO	12	10	2	523	131	392	535
MOZAMBIQUE	-	-	-	9	1	8	9
NAMIBIA	-	-	-	14	4	10	14
NAURU	-	-	-	3	-	3	3
NEPAL	39	1	38	878	34	844	917
NETHERLANDS	6	4	2	183	47	136	189
NETHERLANDS ANTILLES	-	-	-	6	3	3	6
NEW CALEDONIA	-	-	-	-	-	-	0
NEW ZEALAND	2	2	-	181	13	168	183
NICARAGUA	160	75	85	15,686	997	14,689	15,846
NIGER	2	2	-	721	105	616	723
NIGERIA	62	49	13	3,329	736	2,593	3,391
NORTH KOREA	-	-	-	2	-	2	2
NORWAY	-	-	-	46	6	40	46
OMAN	-	-	-	10	-	10	10
PAKISTAN							8,713

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	45	18	27	8,668	627	8,041	
PALAU	1	1	-	9	5	4	10
PALESTINE	-	-	-	-	-	-	0
PANAMA	11	8	3	649	206	443	660
PAPUA NEW GUINEA	-	-	-	2	1	1	2
PARAGUAY	-	-	-	150	11	139	150
PERU	74	44	30	5,930	588	5,342	6,004
PHILIPPINES	31	29	2	4,014	291	3,723	4,045
PITCAIRN ISLANDS	-	-	-	-	-	-	0
POLAND	13	10	3	2,530	253	2,277	2,543
PORTUGAL	4	4	-	363	79	284	367
QATAR	-	-	-	15	3	12	15
REUNION	-	-	-	-	-	-	0
ROMANIA	15	11	4	1,784	163	1,621	1,799
RUSSIA	31	27	4	2,690	498	2,192	2,721
RWANDA	6	2	4	324	21	303	330
SAMOA	2	2	-	94	44	50	96
SAN MARINO	-	-	-	3	1	2	3
SAO TOME AND PRINCIPE	-	-	-	1	1	-	1
SAUDI							211

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ARABIA	7	4	3	204	48	156	
SENEGAL	13	9	4	1,126	242	884	1,139
SERBIA	-	-	-	20	5	15	20
SERBIA - RAPS	-	-	-	-	-	-	0
SERBIA AND MONTENEGRO	1	-	1	83	10	73	84
SEYCHELLES	-	-	-	4	2	2	4
SIERRA LEONE	21	21	-	1,835	334	1,501	1,856
SINGAPORE	-	-	-	130	14	116	130
SLOVAKIA	3	1	2	139	8	131	142
SLOVENIA	-	-	-	19	3	16	19
SOLOMON ISLANDS	-	-	-	3	1	2	3
SOMALIA	120	18	102	4,571	760	3,811	4,691
SOUTH AFRICA	7	5	2	374	60	314	381
SOUTH KOREA	6	4	2	785	89	696	791
SOUTH SUDAN	2	2	-	73	68	5	75
SPAIN	10	2	8	272	56	216	282
SRI LANKA	6	3	3	2,749	58	2,691	2,755
ST. HELENA	-	-	-	-	-	-	0
ST. KITTS- NEVIS	8	8	-	85	48	37	93

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ST. LUCIA	8	8	-	229	107	122	237
ST. PIERRE AND MIQUELON	-	-	-	-	-	-	0
ST. VINCENT- GRENADINES	4	4	-	127	45	82	131
STATELESS	-	-	-	-	-	-	0
SUDAN	14	14	-	969	432	537	983
SURINAME	2	2	-	190	22	168	192
SWAZILAND	-	-	-	4	1	3	4
SWEDEN	-	-	-	128	15	113	128
SWITZERLAN D	1	-	1	64	4	60	65
SYRIA	3	1	2	559	97	462	562
TAIWAN	2	2	-	405	30	375	407
TAJKISTAN	2	1	1	80	18	62	82
TANZANIA	2	1	1	293	64	229	295
THAILAND	13	12	1	963	394	569	976
TOGO	-	-	-	449	39	410	449
TONGA	2	2	-	153	41	112	155
TRINIDAD AND TOBAGO	27	27	-	1,382	387	995	1,409
TUNISIA	1	1	-	146	24	122	147
TURKEY							731

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	5	2	3	726	69	657	
TURKMENISTAN	1	1	-	48	5	43	<b>49</b>
TURKS AND CAICOS ISLANDS	-	-	-	16	11	5	<b>16</b>
TUVALU	-	-	-	1	-	1	<b>1</b>
UGANDA	5	4	1	350	56	294	<b>355</b>
UKRAINE	11	11	-	1,761	394	1,367	<b>1,772</b>
UNITED ARAB EMIRATES	-	-	-	24	9	15	<b>24</b>
UNITED KINGDOM	29	26	3	1,197	313	884	<b>1,226</b>
UNKNOWN	3	3	-	1,624	147	1,477	<b>1,627</b>
URUGUAY	3	3	-	404	40	364	<b>407</b>
USSR	-	-	-	346	181	165	<b>346</b>
UZBEKISTAN	-	-	-	605	117	488	<b>605</b>
VANUATU	-	-	-	2	-	2	<b>2</b>
VENEZUELA	28	23	5	2,788	275	2,513	<b>2,816</b>
VIETNAM	46	45	1	8,391	7,515	876	<b>8,437</b>
YEMEN	6	5	1	570	92	478	<b>576</b>
YUGOSLAVIA	2	2	-	963	153	810	<b>965</b>
ZAMBIA	6	5	1	158	29	129	<b>164</b>
ZIMBABWE	5	5	-	581	102	479	<b>586</b>

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<b>Committee:</b>	JUDICIARY (SENATE)

<b>Question#:</b>	18
<b>Topic:</b>	Immigration and Nationality Act (INA)
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Subject to certain procedures, section 274D of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324d, allows ICE to fine aliens subject to a final order of removal “not more than \$500” for each day that the alien is present in the United States.

Since January 20, 2009, how many aliens have been fined under the provisions of section 274D? Please provide the total of all fines levied by ICE in all such cases, received by ICE, and the average fine per alien.

If none, please describe in detail ICE's efforts to use this authority since January 20, 2009.

**Response:** U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations does not have records of levying fines against aliens subject to a final order of removal for each day they remained in the United States past the date of the order. Although the authority under section 274D to fine individuals who are subject to a final order of removal and who willfully fail or refuse to depart from the United States is an available tool, it has limitations, including the alien’s inability to pay and the legal processes required to effectuate such a fine.

<b>Question#:</b>	19
<b>Topic:</b>	Mandatory custody
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Since January 20, 2009, how many aliens who were subject to mandatory custody under section 236(c) of the INA has ICE released from its custody (other than by removal from the United States)? Please break down the total by fiscal year.

**Response:** The mandatory detention provision at section 236(c) of the Immigration and Nationality Act (INA) applies only during the pendency of removal proceedings. U.S. Immigration and Customs Enforcement (ICE) does not currently release individuals who are subject to mandatory detention. However, a number of precedential decisions issued by certain circuit courts of appeals have limited the applicability of mandatory detention under INA section 236(c), including individuals detained for more than 180 days. *See, e.g., Rodriguez v. Robbins*, – F.3d –, 2015 WL 6500862 (9th Cir. Oct. 28, 2015), *Lora v. Shanahan*, – F.3d –, 2015 WL 6499951 (2d Cir. Oct. 28, 2015). ICE does not statistically track the relevant statutory detention provision (e.g., INA §§ 235, 236, 241) for individual cases and cannot statistically report on the number of individuals released who were subject to detention under certain specific provisions of INA.

<b>Question#:</b>	20
<b>Topic:</b>	The Boston Globe
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Boston Globe reported on illegal alien sex offenders being released into our communities by ICE, not subsequently registering with local officials, and committing additional crimes. Specifically, using data from 2008 to 2012 that had the names of more than 6,800 criminals, the Boston Globe identified 424 released criminal aliens who had previously been convicted of sex-related crimes, including 209 who appeared in the national public sex offender registry. Of the 209, 53 failed to re-register after ICE released them.

How many sex offenders has ICE released from its custody since 2009?

Of those, how many have failed to register as sex offenders after their release from ICE custody?

**Response:** Between fiscal year (FY) 2009 and FY 2015 YTD,<sup>5</sup> 6,151 aliens with sexual offense<sup>6</sup> convictions have been released from U.S. Immigration and Customs Enforcement (ICE) custody. ICE makes custody determinations on a case-by-case basis, and in accordance the Immigration and Nationality Act, controlling regulations, and precedential decisions such as *Zadvydus v. Davis* and *Rodriguez v. Robbins*. ICE currently notifies individuals of their requirement to register upon release, and notifies the LEA of a release of an individual required to register.

Regarding the question about how many individuals failed to register as sex offenders, ICE does not maintain the national sex offender registry, and is therefore unable to answer questions related to registration.

ICE Enforcement and Removal Operations (ERO) has completed deployment and training on the use of the Sex Offender Registration and Notification Act Exchange Portal, which is maintained by DOJ, and has been able to make notifications to state sex offender registries since May 1, 2015. ICE ERO also uses the new ICE Form 71-046, Sex Offender Notification for the National Sex Offender Registry (NSOR), upon the release of a convicted sex offender to notify local law enforcement authorities when an alien with an NSOR alert who is scheduled for release will be residing in their jurisdiction and is required to register as a sex offender.

<sup>5</sup> FY2015 YTD data through August 8, 2015.

<sup>6</sup> Sex Offenses include aliens convicted of charges under categories of Sexual Assault, Sex Offenses (Not Involving Assault or Commercialized Sex), and Commercialized Sexual Offenses.

<b>Question#:</b>	20
<b>Topic:</b>	The Boston Globe
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

Additionally, ICE has updated form I-220A, Order of Release on Recognizance, and form I-220B, Order of Supervision, to specifically state that sex offenders with a current requirement to register, as identified through a National Crime Information Center NSOR alert, must register with the appropriate local regulatory authority upon release as a condition of their release from ICE custody.

<b>Question#:</b>	21
<b>Topic:</b>	287(g) program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** At the hearing, you spoke favorably about the 287(g) program. Accordingly, please provide answers to the following questions:

Since January 20, 2009, please provide the total number of active 287(g) agreements by fiscal year.

**Response:** Please see the chart below, which highlights the total number of active 287(g) agreements by fiscal year:

<b>Fiscal Year</b>	<b>Active Memorandums of Agreement (MOA)</b>
2009	67
2010	71
2011	63
2012 <sup>7</sup>	60
2013	37
2014	34
2015	32(YTD)

**Question:** Since January 20, 2009, please provide the total budget requested by ICE for administering the 287(g) program, by fiscal year.

**Response:** Please see the chart below which provides the budget for the 287(g) program by fiscal year.

<b>Fiscal Year</b>	<b>Requested Budget</b>
FY 2009	\$92,453,000
FY 2010	\$68,047,000
FY 2011	\$68,321,000

<sup>7</sup> The number of jurisdictions participating in 287(g) has fluctuated since the program's inception due to a variety of factors. A notable decrease in program participation occurred in December 2012, when ICE announced it would not renew the 287(g) task force model agreements, as that model had proven to be a less efficient means, compared to the jail enforcement model, of identifying aliens subject to removal.

<b>Question#:</b>	21
<b>Topic:</b>	287(g) program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

FY 2012	\$68,321,000
FY 2013	\$51,321,000
FY 2014	\$24,321,000
FY 2015	\$24,321,000
FY 2016	\$24,321,000

**Question:** For any 287(g) agreements that have been terminated, please identify the jurisdiction involved, provide an explanation why the agreement was terminated.

**Response:** The following MOAs were not renewed when it was determined that the Task Force Models would no longer be utilized:

State	MOA Jurisdiction
AL	Department of Public Safety
AR	City of Springdale Police Department
AR	Rogers Police Department
CO	Department of Public Safety
CT	City of Danbury Police Department
FL	Bay County Sheriff's Office
FL	Department of Law Enforcement
GA	Department of Public Safety
MN	Department of Public Safety
MO	State Highway Patrol
NC	Durham Police Department
NH	Hudson City Police Department
SC	Beaufort County Sheriff's Office
TN	Department of Safety
TX	Farmers Branch Police Dept.
VA	City of Manassas Police Department
VA	Herndon Police Department
VA	Loudoun County Sheriff's Office
VA	Manassas Park Police Department
VA	Prince William County Police Department
VA	Prince William County Sheriff's Office

The following MOAs were terminated/not renewed by jurisdiction request:

<b>Question#:</b>	21
<b>Topic:</b>	287(g) program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

State	MOA Jurisdiction
CA	Los Angeles County Sheriff's Department
CA	San Bernardino County Sheriff's Office
CO	El Paso County Sheriff's Office
NM	Department of Corrections
TN	Davidson County Sheriff's Office
UT	Weber County Sheriff's Office
VA	Rockingham County Sheriff's Office
VA	Shenandoah County Sheriff's Office

The following MOAs had Joint Task Force and Jail Enforcement Models. The Jail Enforcement Models of these MOAs were inactive at the time the Task Force Models were terminated, and as such were also terminated:

State	MOA Jurisdiction
AZ	Department of Public Safety
AZ	City of Phoenix Police Department
AZ	Florence Police Department
AZ	Pima County Sheriff's Office

The following MOAs were terminated due to civil rights/civil liberties issues:

State	MOA Jurisdiction
AZ	Maricopa County Sheriff's Office
NC	Alamance County Sheriff's Office

The following MOA was terminated for inactivity:

State	MOA Jurisdiction
MA	Barnstable County Sheriff's Office

The following MOA expired and the law enforcement agency did not request renewal:

State	MOA Jurisdiction
CA	Riverside County Sheriff's Office

The following MOA was allowed to expire for inactivity:

<b>Question#:</b>	21
<b>Topic:</b>	287(g) program
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

State	MOA Jurisdiction
UT	Washington County Sheriff's Office

The following MOA expired due to law enforcement agency union issues:

State	MOA Jurisdiction
DE	DE Department of Corrections

**Question:** Describe any subsequent efforts to renew the agreement.

**Response:** U.S. Immigration and Customs Enforcement (ICE) has not pursued renewal of the above-mentioned law enforcement agencies 287(g) agreements.

**Question:** Does ICE have any pending applications from any jurisdictions to enter into the 287(g) program? If so, please list the specific jurisdictions, how long each application has been pending?

**Response:** ICE currently has 10 pending requests for Jail Force Model Agreements. They are as follows:

State	MOA Jurisdiction	Pending Since	Office/ Sub-Office Handling Now
AZ	Apache Junction PD	8/24/2010	Phoenix
GA	Rockdale County Sheriff's Office	7/12/2010	Atlanta
GA	Cherokee County Sheriff's Office	9/24/2008	Atlanta
MA	Essex County Sheriff's Office	9/27/2011	Boston
MA	Plymouth County Sheriff's Office	4/24/2012	Boston
NC	Forsyth County Sheriff's Office	6/21/2010	Charlotte
NC	New Hanover County Sheriff's Office	4/1/2011	Charlotte
OK	Oklahoma County Sheriff's Office	7/1/2011	Oklahoma City
TN	Rutherford County Sheriff's Office	9/6/2011	Nashville

<b>Question#:</b>	21
<b>Topic:</b>	287(g) program
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<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

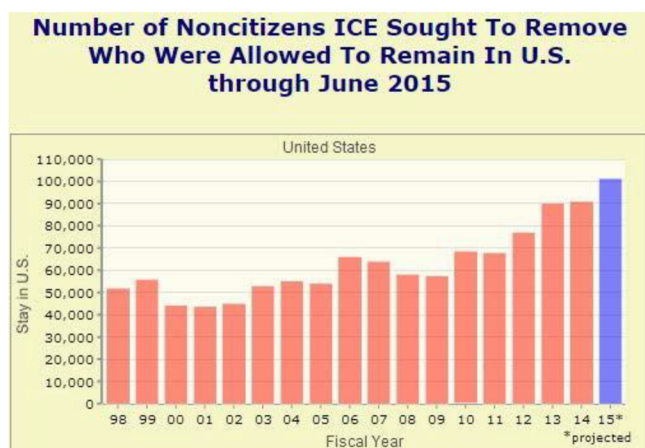
VA	Rappahannock Regional Jail	6/6/2012	Washington D.C.
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**Question:** The timeframe for any anticipated agreement with ICE?

**Response:** ICE is currently evaluating existing applications to determine whether they would be operationally viable and are weighing a number of factors as we consider these applications including ICE assets already in place in the jurisdiction's area, the cost of ICE training and oversight of local jurisdictions, and the potential priority population in the area. Consideration is given to the size of the requesting agency's arrest volume, number of foreign-born encounters, the number of Immigration Automated Queries (IAQ) generated through interoperability, and the ability of the corresponding ICE Enforcement and Removal Operations field office to support participation.

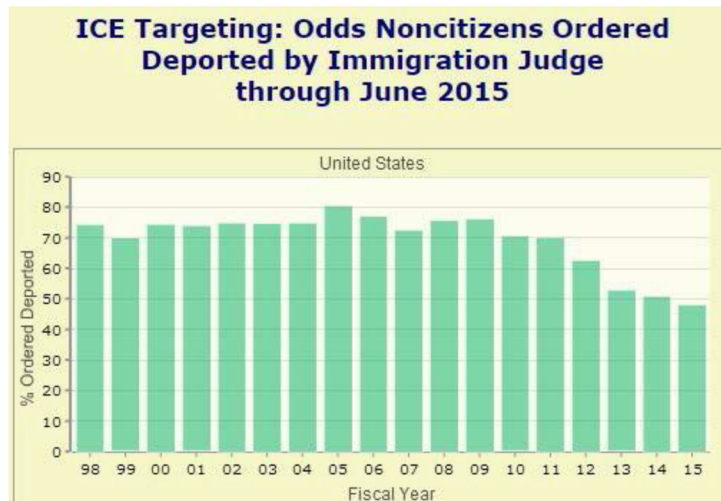
<b>Question#:</b>	22
<b>Topic:</b>	Executive Office of Immigration Review
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The following chart from the Syracuse University Transactional Records Access Clearinghouse (TRAC), which is based on data obtained from the Executive Office of Immigration Review, shows the number of aliens ICE sought to remove who were allowed to remain in the United States through June of 2015:



The underlying data shows that for FY2015, a projected 100,000 aliens that ICE sought to remove from the United States will, instead, be allowed to stay. Similarly, the below chart from TRAC shows the odds of an alien receiving a removal order after being placed into removal proceedings by ICE.

<b>Question#:</b>	22
<b>Topic:</b>	Executive Office of Immigration Review
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)



As demonstrated above, as recently as 2009, the odds of an alien receiving a removal order after being placed into removal proceedings by ICE was over 70%. Today, that number is less than 50%. During this same period, ICE claims to have been focusing its limited resources on criminal and dangerous aliens. Given that ICE fails to obtain a removal order in more than half of the cases it actually pursues, one might expect to see an ever-growing appellate caseload for the ICE Office of the Principal Legal Advisor (OPLA). However, according to information obtained by my office from ICE OPLA, between May 26, 2014, and May 26, 2015, ICE OPLA filed Notices of Appeal in only 262 cases. Accordingly, please provide the following information.

Since January 20, 2009, please provide the total number of cases, by fiscal year, in which ICE has filed a Notice of Appeal.

Please also provide the number of cases identified in (a), by fiscal year, in which ICE obtained a favorable outcome on appeal.

**Response:** U.S. Immigration and Customs Enforcement (ICE) began centrally tracking appeals in fiscal year (FY) 2011 to ensure headquarters review of briefs submitted in

<b>Question#:</b>	22
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<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

support of appeals filed by ICE. Because ICE did not centrally track appeals prior to FY 2011, data for FY 2009 and FY 2010 is not available.

Information obtained from this review process offers the best measure available of the number of ICE appeals per fiscal year based on the date the brief was filed:

FY 2011 – 720  
FY 2012 – 567  
FY 2013 – 387  
FY 2014 – 177  
FY 2015 – 304 (through 8/31/15).

These numbers may be somewhat inexact, as some briefs result from IJ certification, *see* 8 C.F.R. § 1003.7, cross-appeals or remands from U.S. Circuit Courts of Appeals. We note that the number of ICE appeals has recently increased as the agency focuses on the removal of criminal aliens. Over the past six months, ICE has filed an average of 33 appeals per month, which would yield just under 400 per annum. The Department of Justice Executive Office for Immigration Review would have the complete, official data set of immigration judge appeals taken, broken down by appealing party.

With respect to outcomes of ICE appeals, based on headquarters tracking of briefs reviewed, through July 30, 2015<sup>8</sup>:

FY 2011 – Of 670 decisions on the merits, 443 (66%) were considered favorable.  
FY 2012 – Of 528 decisions on the merits, 318 (60%) were considered favorable.  
FY 2013 – Of 357 decisions on the merits, 241 (68%) were considered favorable.

In some cases, it is not always clear what constitutes a “favorable outcome,” as many outcomes are mixed. For instance, an immigration judge’s decision granting relief may be reversed, but the proceedings may be remanded for further proceedings before the immigration judge. Other appeals, especially bond appeals, may become moot while pending at the Board of Immigration Appeals.

<sup>8</sup> Given the timeframe for appellate adjudication by the Executive Office for Immigration Review, data is provided below for only FY 2011 – FY 2013, as these are the years on record for which the large majority of ICE-filed appeals have actually been adjudicated. As time passes and additional appeals are adjudicated, meaningful data can be provided for FY 2014 and FY 2015, as well.

<b>Question#:</b>	23
<b>Topic:</b>	Liz Cedillo-Pereira
<b>Hearing:</b>	Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** It was recently announced that you hired as a top advisor, Liz Cedillo-Pereira, a private immigration attorney who has previously been a vocal critic of ICE and its enforcement efforts. Please provide a description of Ms. Cedillo-Pereira's duties and any previous law enforcement experience.

**Response:** Ms. Elizabeth ("Liz") Cedillo-Pereira is board certified in immigration and nationality law by the Texas Board of Legal Specialization. She is a well-respected member of the private bar and has served on national, state, and local organizations for immigration law and community advocacy, including the American Bar Association Commission on Immigration. Ms. Cedillo-Pereira has also served as a faculty member with the University of Texas at Austin, Immigration and Nationality Law Conference, and for the State Bar of Texas Advanced Immigration Law Course, helping to prepare and train other attorneys. She has been a member of the American Immigration Lawyers Association – Dallas Working Group, alongside U.S. Immigration and Customs Enforcement's (ICE) Dallas Field Office Director and Chief Counsel, which was responsible for working on immigration issues of mutual concern for ICE and its stakeholders. Throughout her career, Ms. Cedillo-Pereira has worked in a collegial and productive manner with ICE while also serving as an effective advocate for the people and organizations she was representing. While at ICE, her responsibilities will include promoting ICE's critical missions at the community, state, and national levels.



July 13, 2015

United States Senate  
Washington, DC 20510

**Re: NHLA Opposition to Vitter and Cotton Amendments to S. 1177, Elementary and Secondary Education Act Reauthorization**

Dear Senator:

We write on behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of 39 leading national Latino nonpartisan civil rights and advocacy organizations, to strongly urge you to vote against any proposals to prohibit federal funding to any municipalities based on their limited cooperation with federal immigration enforcement.

Senators David Vitter and Tom Cotton introduced amendments to S. 1177, the Elementary and Secondary Education Act reauthorization bill, that would withhold federal law enforcement funding for local jurisdictions, characterized as “sanctuary cities,” that limit interaction between federal immigration agencies and local law enforcement agencies in order to promote local public safety goals. Such amendments are substantively misguided and procedurally misplaced during consideration of education legislation. **NHLA recommends a “no” vote on the Vitter and Cotton amendments and will closely monitor any votes on them for inclusion in future NHLA scorecards evaluating Member support for the Latino community. NHLA similarly opposes these amendments should they be proposed to other legislation or brought before the Senate as stand-alone bills.**

Such amendments are a misguided response to the tragic murder of an innocent woman in San Francisco and are based on sweeping generalizations about all immigrants based on the actions of one individual. It is unacceptable when a presidential contender such as Donald Trump makes such generalizations in campaigning and equally unacceptable when U.S. Senators do so in legislating. No responsible public official should use this tragedy as a pretext for harsh and unproductive policies that only serve to satisfy the anti-immigrant impulses of certain politicians while doing nothing to improve public safety. The facts speak for themselves: study after study have shown that immigrants are less likely to be incarcerated than native-born Americans, less likely to commit crimes, and less likely to be repeat offenders.

Though the case in San Francisco is tragic, no single occurrence should warrant such a wholesale change in policy, particularly with insufficient time to obtain all the facts and relevant policy considerations in relation to the case. Legislating based on scoring political points and ignoring the underlying problems of our immigration and criminal justice systems are not the solution. The federal government has tried harsh immigration removal policies in the recent past, including unconstitutional detainer requests, and failed to promote public

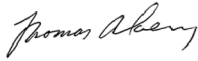
**MEMBER ORGANIZATIONS**

American G.I. Forum  
ASPIRA Association  
Avance Inc.  
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Cuban American National Council  
Farmworker Justice  
Hispanic Association of Colleges & Universities  
Hispanic Federation  
Hispanic National Bar Association  
Inter-University Program for Latino Research  
Labor Council for Latin American Advancement  
LatinoJustice PRLDEF  
League of United Latin American Citizens  
MANA, A National Latina Organization  
Mexican American Legal Defense and Educational Fund  
National Alliance of Latin American and Caribbean Communities  
National Association of Hispanic Federal Executives  
National Association of Hispanic Publications  
NALEO Educational Fund  
National Association of Latino Independent Producers  
National Conference of Puerto Rican Women, Inc.  
National Council of La Raza  
National Hispanic Caucus of State Legislators  
National Hispana Leadership Institute  
National Hispanic Council on Aging  
National Hispanic Environmental Council  
National Hispanic Foundation for the Arts  
National Hispanic Medical Association  
National Hispanic Media Coalition  
National Institute for Latino Policy  
National Latina Institute for Reproductive Health  
National Puerto Rican Coalition  
Presente.org  
SER Jobs for Progress – National  
Southwest Voter Registration Education Project  
United States Hispanic Chamber of Commerce  
United States Hispanic Leadership Institute  
United States-Mexico Chamber of Commerce  
U.S.- Mexico Foundation

safety, instead tearing families apart by deporting individuals for minor nonviolent offenses and creating fear of authorities that undermined the cooperation that local law enforcement needs in order to protect the public. In order to effectively address problems with our broken immigration system, Congress should resume the effort started in the 113th Congress to enact immigration reform legislation.

We appreciate your attention to our concerns. Please contact NHLA through Andrea Senteno, of MALDEF, at [asenteno@maldef.org](mailto:asenteno@maldef.org) or 202-572-0467 with any questions regarding this letter. Thank you for your time and consideration.

Sincerely,



Thomas A. Saenz  
MALDEF, President and General Counsel  
NHLA Immigration Committee Co-Chair



Jose Calderón  
Hispanic Federation, President  
NHLA Immigration Committee Co-Chair

WASHINGTON  
LEGISLATIVE OFFICE



July 21, 2015

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

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LIBERTIES UNION  
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The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

MICHAEL W. MACLEOD-BALL  
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ROBERT REMAR  
TREASURER

**RE: Senate Judiciary Committee Hearing on “Oversight of the Administration’s  
Misdirected Immigration Enforcement Policies: Examining the Impact on Public  
Safety and Honoring the Victims**

Dear Chairman Grassley and Ranking Member Leahy:

The American Civil Liberties Union (“ACLU”) submits this statement to the U.S. Senate Committee on the Judiciary for the hearing: “Oversight of the Administration’s Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims.” We also submit as attachments at the end of this statement two documents explaining recent federal litigation on immigration detainees and the Fourth Amendment.<sup>1</sup> This hearing raises constitutional questions about the legality of immigration detainees as well as critical policy issues concerning community policing and public safety. The ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The fatal shooting of Kathryn Steinle on July 1, 2015 in San Francisco has focused national attention on the role of local law enforcement in the detention and deportation of immigrants. Details surrounding the shooting are still unfolding, and there are still many unanswered questions about the actions and responsibilities of the federal government and San Francisco laws and policies. One thing is clear: rushing to penalize local law enforcement agencies (“LEAs”) for longstanding policies that limit

<sup>1</sup> See, ACLU Backgrounder, “ICE Detainers and the Fourth Amendment: What Do Recent Federal Court Decisions Mean?” (Nov. 13, 2014), <https://www.aclu.org/backgrounder-ice-detainers-and-fourth-amendment-what-do-recent-federal-court-decisions-mean>; and, ACLU Backgrounder, “Recent court decisions relating to ICE detainer” (Jul. 27, 2015), <https://www.aclu.org/recent-ice-detainer-cases>.

local officials' entanglement in federal immigration enforcement would have disastrous effects on community policing efforts across the country.

The ACLU urges members of the Committee to refrain from imposing knee-jerk immigration policy changes potentially affecting over 300 localities. The San Francisco shooting is not representative of the general practices that inform immigration policies adopted by 320 localities across the country—policies designed to protect public safety and promote crime reduction.

**I. Immigration detainers present serious Fourth Amendment problems by causing the extended detention of tens of thousands of people annually without probable cause, without judicial approval, and without due process protections.**

The most predominant policy among localities dubbed as “sanctuary” policies sets limits on when a LEA will hold people beyond their ordinary release, on immigration detainers. Most localities with limited detainer policies do not self-identify as “sanctuary localities” and have adopted these policies to avoid violations of individual constitutional rights. Immigration detainers present a multitude of constitutional and policy problems.

For years the Department of Homeland Security (“DHS”) has routinely used immigration detainers to request extended detention by state and local LEAs of individuals in custody based on mere suspicion of unlawful immigration status, disregarding the Fourth Amendment’s requirement of probable cause. In recent years, multiple federal courts, through litigation brought by the ACLU and others, have found that immigration detainers raise serious constitutional problems and that state or local LEAs and/or officials may be held liable for their role in causing extended detentions in violation of the Fourth Amendment.<sup>2</sup> In 2014, in response to a series of court decisions holding DHS and local LEAs liable for detaining people beyond their release times, hundreds of LEAs across the country limited the circumstances under which they will detain an individual beyond their ordinary release, for immigration enforcement purposes.<sup>3</sup> Many of these localities adopted policies permitting compliance with an immigration detainer request only if it is accompanied by a judicial warrant

In November 2014, DHS Secretary Jeh Johnson acknowledged “the increasing number of federal court decisions that hold that [detention based on DHS requests to] state and local law enforcement agencies violates the Fourth Amendment,”<sup>4</sup> and promised to end the failed Secure Communities (“S-Comm”) program which had drawn sustained criticism from local law enforcement leaders, caused countless unlawful detentions (including of U.S. citizens),<sup>5</sup> invited racial profiling,<sup>6</sup>

<sup>2</sup> See, e.g., *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *affirmed*, *Morales v. Chadbourne*, -- F.3d ---, 2015 WL 4385945 (1st Cir. July 17, 2015); *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), *rev'd on other grounds*, *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Mendoza v. Osterberg*, No. 13-65, 2014 WL 3784141 (D. Neb. July 31, 2014); *Villars v. Kubiatowski*, 45 F.Supp.3d 791 (N.D. Ill. 2014); *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ---, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968 (D. Ut. Feb. 21, 2013); *Vohra v. United States*, No. 04-0972, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. Feb. 4, 2010), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010). For further reference, see, ACLU Backgrounder, “ICE Detainers and the Fourth Amendment: What Do Recent Federal Court Decisions Mean?” (Nov. 13, 2014), <https://www.aclu.org/backgrounder/ice-detainers-and-fourth-amendment-what-do-recent-federal-court-decisions-mean>.

<sup>3</sup> Jurisdictions that have adopted policies to limit their entanglement with immigration detainers include jurisdictions in California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Minnesota, New York, Nevada, Ohio, Oregon, Rhode Island, and Wisconsin.

<sup>4</sup> Jeh Charles Johnson, Secretary of Department of Homeland Security, “Secure Communities” (Nov. 20, 2014), *available at* [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

<sup>5</sup> Julia Preston, “Immigration Crackdown Also Snares Americans,” *New York Times* (Dec. 13, 2011), [http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?\\_r=1](http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?_r=1).

<sup>6</sup> Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, “Secure Communities by the Numbers: An Analysis of Demographics and Due Process” (Oct. 2011), *available at* [https://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

separated hundreds of thousands of families,<sup>7</sup> and deterred immigrants from calling the police even if they had witnessed or been victimized by crime.<sup>8</sup> While the Administration now offers the new Priority Enforcement Program (“PEP”) as a replacement for S-Comm, PEP does not resolve the Fourth Amendment’s problems with immigration detainees that resulted in liability for DHS and local LEAs. Going forward, if LEAs respond to immigration detainees, they will continue to incur liability for illegal arrests, extended detentions, and transfers of custody that do not meet the Fourth Amendment’s requirements.<sup>9</sup> In recognition of the constitutional problems associated with immigration detainees, localities that limit their compliance with detainees should not be penalized for their actions.

**II. Congress should exercise extreme care not to impose sweeping new requirements that would disrupt long-established, effective community policing policies.**

In the aftermath of the death of Ms. Steinle, several Senators have introduced legislation aimed at punishing so-called “sanctuary” cities.<sup>10</sup> Far from being “sanctuary” zones, these localities recognize that immigrant victims and witnesses will not report crimes if they fear that local police are acting as immigration agents—and thus, in order to solve crimes, local officials need to win the trust of the community. Recognizing this reality, these localities have enacted carefully crafted policies aimed at promoting public safety and have prioritized their police resources to focus on community needs. These policies differ from jurisdiction to jurisdiction, reflecting the careful balancing of interests by local law enforcement leaders who understand the public safety needs in their communities.<sup>11</sup> Importantly, none of these policies shields anyone who is arrested and booked from DHS’s knowledge; through the automatic receipt of fingerprints, DHS is already notified of all individuals booked into jail across the country.

Local police understand that their core mission is to protect public safety, and understandably oppose any federally imposed requirements that would divert them from this goal and force them to comply with immigration detainees—particularly given the constitutional concerns that federal courts have raised with that practice. Law enforcement leaders from the Major Cities Chiefs Association<sup>12</sup> to the President’s Task Force on 21<sup>st</sup> Century Policing<sup>13</sup> have acknowledged that promoting trust between

<sup>7</sup> Ginger Thompson and Sarah Cohen, “More Deportations Follow Minor Crimes, Records Show,” *New York Times* (Apr. 6, 2014), [http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?gwh=334656DC850FE9BC311DADF1D154084E&gwt=pav&assetType=nyt\\_now](http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?gwh=334656DC850FE9BC311DADF1D154084E&gwt=pav&assetType=nyt_now).

<sup>8</sup> Nik Theodore, Department of Urban Planning and Policy at the University of Illinois at Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

<sup>9</sup> Probable cause has always been the required legal standard for extended detention, but DHS’s new 2015 detainer form does not address all the Fourth Amendment problems associated with immigration detainer practices. First, several courts have held that the Fourth Amendment requires probable cause to believe a *crime* has been committed; probable cause of removability (a civil matter) is insufficient. Second, the Fourth Amendment requires a *judicial* determination of probable cause for the arrest, either before or promptly afterward (no later than 48 hours).

<sup>10</sup> *See, e.g.*, “A bill to enhance communication between Federal, State, tribal, and local jurisdictions and to ensure the rapid and effective deportation of certain criminal aliens,” (S. 1843) (Flake, introduced 7/22/15); Bill number and information are forthcoming. (Feinstein, not yet introduced); “Improving Cooperation with States and Local Governments and Preventing the Catch and Release of Criminal Aliens Act of 2015” (S. 1812) (Grassley, introduced 7/21/15); “A bill to ensure State and local compliance with all Federal immigration detainers on aliens in custody and for other purposes,” (S. 1842) (Sessions, introduced 7/22/15); “Protecting American Lives Act” (Bill number forthcoming) (Sessions, introduced 7/23/2015); “Protecting American Citizens Together Act (“PACT Act”),” (S. 1764) (Paul, introduced 7/14/15).

<sup>11</sup> These include local policies that limit arrests by local police for federal immigration violations, limit local police inquiries into immigration status, treat as confidential and limit the type of information that may be shared with other agencies, including federal immigration authorities, or decline to hold individuals beyond their ordinary release on the mere basis of an immigration detainer.

<sup>12</sup> Major Cities Chiefs Association, “Immigration Policy” (2013), available at [https://www.majorcitieschiefs.com/pdf/news/2013\\_immigration\\_policy.pdf](https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf) (recognizing that “trust and cooperation with immigrant communities . . . are essential elements of community oriented policing.”).

<sup>13</sup> President’s Task Force on 21<sup>st</sup> Century Policing Final Report at 18 (May 2015), available at [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf) (recognizing that “build[ing] relationships based on trust with immigrant communities . . . is central to overall public safety.”).

local law enforcement officials and the communities they serve builds cooperation and is central to their core mission of protecting public safety. According to a recent op-ed from Dayton (OH) Police Chief Richard Biehl, adopting a policy that maintains a clear separation between local police and federal immigration enforcement has “produced concrete results, coinciding with significant reductions in crime in Dayton.”<sup>14</sup> When immigrant victims and witnesses can feel confident that their interactions with the police will not lead to their deportation, they are much more likely to report crime.<sup>15</sup>

### III. Conclusion

The ACLU urges the members of the Committee to refrain from punishing hundreds of localities based on the alleged actions of a single individual. Doing so would divert state and local law enforcement officers from their core mission of promoting public safety and crime reduction. In particular, the Committee should not attempt to coerce localities into complying with immigration detainers. The solution to the constitutional problems with DHS’s use of detainers is to fix those problems or end their use. For more information, please contact Legislative Counsel Joanne Lin (202/675-2317; [jlin@aclu.org](mailto:jlin@aclu.org)).

Sincerely,



Michael W. Macleod-Ball  
Acting Director



Joanne Lin  
Legislative Counsel

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<sup>14</sup> Richard S. Biehl, “Here’s How Not to Jump-Start Immigration Reform in the House,” *Roll Call* (Jan. 24, 2014), [http://www.rollcall.com/news/heres\\_how\\_not\\_to\\_jump\\_start\\_immigration\\_reform\\_in\\_house\\_commentary-230343-1.html?zkPrintable=true](http://www.rollcall.com/news/heres_how_not_to_jump_start_immigration_reform_in_house_commentary-230343-1.html?zkPrintable=true).

<sup>15</sup> *Supra* note 8 at 17.



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### **ICE DETAINERS AND THE FOURTH AMENDMENT: WHAT DO RECENT FEDERAL COURT DECISIONS MEAN?**

ICE detainers raise serious constitutional problems. They cause the extended detention of tens of thousands of people each year without probable cause, without judicial approval, and without basic due process protections. In recent years, numerous federal courts have agreed, focusing in particular on certain key Fourth Amendment problems. This backgrounder provides an overview of how these recent court decisions have applied longstanding Fourth Amendment law to impose limits on ICE's detainer issuance practices.<sup>1</sup>

#### **1. Does the Fourth Amendment apply to ICE detainers?**

Yes. By its terms, an ICE detainer asks a federal, state, or local law enforcement agency (LEA) to "[m]aintain custody" of a person for an additional 48 hours, plus weekends and holidays, "beyond the time when the subject would have otherwise been released" from the LEA's custody. DHS Form I-247 (rev. Dec. 2012); *see also* 8 C.F.R. §287.7(d). This new period of detention—which begins when the person's criminal custody has ended, and which may last up to five days over a holiday weekend—is

<sup>1</sup> In addition to the Fourth Amendment problems outlined here, ICE detainers raise serious due process problems. *See, e.g., Ortega v. ICE*, 737 F.3d 435, 439 (6th Cir. 2013) (dismissing plaintiff's due process claims against individual officers based on qualified immunity, but clarifying for future cases that "transfer[ing] [a prisoner] from home confinement to prison confinement" based on an ICE detainer "amounts to a sufficiently severe change in conditions to implicate due process"), *cert. denied*, 135 S. Ct. 48 (2014); *Uroza v. Salt Lake Cnty.*, No. 11-713, 2014 WL 4457300, at \*4 (D. Utah Sept. 10, 2014) ("conclud[ing] that Uroza has stated a . . . procedural due process claim" against federal defendants where he was held on an ICE detainer "without receiving any process"); *Villars v. Kubiowski*, No. 12-4586, -- F. Supp. 2d ---, 2014 WL 1795631, at \*6 (N.D. Ill. May 5, 2014) (slip op.) (holding that plaintiff stated "procedural and substantive due process" claims where he alleged that he was held on an ICE detainer after posting bond); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014) (holding that state defendant could be liable for due process violations because state "detained Ms. Morales and . . . offered her no opportunity to contest the ICE detainer").

In addition, there are multiple pending lawsuits arguing that ICE detainers contravene federal statutory limitations on immigration arrest authority, state-law limitations on arrest authority, or both. *See, e.g., Jimenez Moreno v. Napolitano*, No. 11-5452, 2014 WL 4911938 (N.D. Ill. Sept. 30, 2014) (unpub.) (certifying class action raising various claims for injunctive relief, including the claim that ICE's detainer issuance practices are ultra vires to the federal statute, 8 U.S.C. § 1357); Third Amended Complaint, Dkt. #44, *Gonzalez v. ICE*, No. 13-04416 (C.D. Cal. filed Aug. 18, 2014) (proposed class action alleging, among other things, that ICE's detainer issuance practices are ultra vires to the federal statute, 8 U.S.C. § 1357); *Uroza v. Salt Lake Cnty.*, No. 11-713, 2014 WL 4457300, at \*5 (D. Ut. Sept. 10, 2014) (denying federal defendants' motions to dismiss where complaint alleged, among other things, that "ICE . . . issues an I-247 detainer . . . without first determining . . . flight risk"); *see also Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (noting that the federal detainer statute authorizes only "a request for notice of a prisoner's release, not a command (or even a request) to LEAs to detain suspects on behalf of the federal government.") (emphasis added) (citing *Arizona v. United States*, 132 S. Ct. 2492, 2507 (2012)). This backgrounder, however, covers only the core Fourth Amendment issues that have been the focus of recent court decisions.



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effectively a new arrest for Fourth Amendment purposes. In fact, ICE's predecessor, the INS, acknowledged as much in an agency manual over twenty years ago. See INS, *The Law of Arrest, Search, and Seizure for Immigration Officers*, at VII-2 (1993) ("A detainee placed under . . . [what is now 8 C.F.R. § 287.7] is an arrest which must be supported by probable cause.")<sup>2</sup>

This conclusion is supported by decades of Fourth Amendment case law. The Supreme Court has long made clear that being held in jail, "regardless of its label"—whether it is "termed 'arrest[]' or 'investigatory detention[]'"—is a seizure that triggers the Fourth Amendment's full protections. *Dunaway v. New York*, 442 U.S. 200, 215-16 (1979) (internal quotation marks and citations omitted); see also *Brown v. Illinois*, 422 U.S. 590, 605 (1975).<sup>3</sup> Further, courts have long recognized that when a person is kept in custody for a new purpose after he or she should otherwise be released, that is a new seizure that requires its own Fourth Amendment justification, separate from the original reason for custody. See *Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005) (once the initial reason for a seizure is resolved, officers may not prolong the detention without a new, constitutionally adequate justification); see also *Anaya v. Crossroads Managed Care Sys., Inc.*, 195 F.3d 584, 592 (10th Cir. 1999) ("A legitimate-though-unrelated criminal arrest does not itself give probable cause to detain the arrestee [for a separate civil purpose]"); *Barnes v. Dist. of Columbia*, 242 F.R.D. 113, 118 (D.D.C. 2007) ("Plaintiffs allege that, despite being entitled to release, they were taken back into custody . . . [T]hey allege that they essentially were re-arrested or re-seized. These allegations of Fourth Amendment violations are sufficient to survive a motion to dismiss").

Moreover, it is well settled that civil immigration arrests, just like criminal arrests, must comply with the Fourth Amendment. See *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012) (noting that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns," and citing Fourth Amendment cases); see also *Cotzoy v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013) ("[I]t is uncontroversial that the Fourth Amendment applies to aliens and citizens alike."); *Oliva-Ramos v. Attorney Gen. of U.S.*, 694 F.3d 259, 284-85 (3d Cir. 2012) (reaffirming that a civil immigration

<sup>2</sup> In recent litigation, however, ICE has taken the surprising and unjustifiable position that ICE detainees may not be governed by the Fourth Amendment at all. See, e.g., [ICE's Motion to Dismiss](#) at 22, 23 n.9, Dkt. #31, *Gonzalez v. ICE*, No. 13-04416 (C.D. Cal. filed Mar. 10, 2014) (arguing that "none of the functions of an immigration detainee constitute an arrest or are the basis of any deprivation of liberty," and suggesting that "even if an immigration detainee implicated the Fourth Amendment in some way—which it does not— . . . 'a lesser standard than probable cause'" might apply) (in parenthetical; internal citations omitted).

<sup>3</sup> Certain brief, limited seizures—*Terry* stops—can be supported by the lower evidentiary standard of reasonable suspicion. See *Terry v. Ohio*, 392 U.S. 1 (1968). Being held in jail for up to 48 hours plus weekends and holidays, however, is far more intrusive than a limited *Terry* stop. See generally *United States v. Place*, 462 U.S. 696, 709-10 (1983) ("declin[ing] to adopt any outside time limitation for a permissible *Terry* stop," but noting that "we have never approved a seizure of the person for the prolonged 90-minute period involved here"); see also *United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975) (holding that while immigration agents may make "brief" *Terry*-style vehicle stops for questioning based on reasonable suspicion, "any further detention . . . must be based on . . . probable cause.").



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enforcement actions must be “consistent with the limitations imposed by the Fourth Amendment”); *Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (applying Fourth Amendment to immigration arrests); *Au Yi Lau v. INS*, 445 F.2d 217, 222 (D.C. Cir. 1971) (“We agree with the Government that the [INA’s] arrest provision must be read in light of constitutional standards,” such that arrests must be supported by “probable cause”). As the Supreme Court has explained, “[t]he Fourth Amendment applies to all seizures of the person.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 881-82 (1975).

Applying these settled constitutional principles to ICE’s contemporary detainer practices, numerous federal courts have recognized that ICE detainers must comply with Fourth Amendment requirements:

- *Mendoza v. Osterberg*, No. 13-65, 2014 WL 3784141, at \*6 (D. Neb. July 31, 2014) (unpub.) (recognizing that “[t]he Fourth Amendment applies to all seizures of the person,” and thus, “[i]n order to issue a detainer[,] there must be probable cause”) (internal quotation marks, ellipses, and citations omitted)
- *Villars v. Kubiatowski*, -- F.Supp.2d ----, No. 12-4586, 2014 WL 1795631, at \*10 (N.D. Ill. May 5, 2014) (slip op.) (holding that plaintiff stated a Fourth Amendment claim where he was held on an ICE detainer that “lacked probable cause”)
- *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ----, No. 12-02317, 2014 WL 1414305, at \*10 (D. Or. Apr. 11, 2014) (slip op.) (holding that plaintiff’s detention on an ICE detainer after she would otherwise have been released “constituted a new arrest, and must be analyzed under the Fourth Amendment”)
- *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29, 32-34 (D. R.I. 2014) (holding that plaintiff stated a Fourth Amendment claim where she was held for 24 hours on an ICE detainer issued without probable cause), *partial appeal docketed* (1st Cir. No. 14-1425)
- *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968, at \*5-6 (D. Ut. Feb. 21, 2013) (unpub.) (holding that plaintiff stated a Fourth Amendment claim where ICE issued his detainer without probable cause; finding it clearly established that “immigration enforcement agents need probable cause to arrest . . . [and] detainees who post bail should be set free in the absence of probable cause to detain them again”)
- *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020, at \*10, \*13 (E.D. Pa. Mar. 30, 2012) (unpub.) (holding that where plaintiff was held for 3 days after posting bail based on an ICE detainer, he stated a Fourth Amendment claim against both federal and local defendants; it was clearly established that the “detainer caused a



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seizure” that must be supported by “probable cause”), *rev’d on other grounds*, 745 F.3d 634 (3d Cir. 2014) (holding that the County operating the jail, too, may be liable for violating the Fourth Amendment)

- *Vohra v. United States*, No. 04-0972, 2010 U.S. Dist. LEXIS 34363, \*25 (C.D. Cal. Feb. 4, 2010) (magistrate’s report and recommendation) (“Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest” to which the “‘probable cause’ standard . . . applies”), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010) (unpub.)<sup>4</sup>

## 2. What does the Fourth Amendment require?

### a. Probable cause

The Fourth Amendment’s most basic requirement is that all arrests must be supported by probable cause. *See Dunaway*, 442 U.S. at 213. Probable cause requires that “the facts and circumstances within . . . the officers’ knowledge and of which they ha[ve] reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (internal quotation marks, brackets, and citation omitted). Probable cause must be based on specific, individualized facts, not generalized suspicion. *See, e.g., Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

The recent decisions cited above agree that ICE detainers must be supported by probable cause. At a minimum, this means probable cause to believe that the subject is *both* a non-citizen *and* subject to removal from the United States. *See, e.g., Mendoza*, 2014 WL 3784141, at \*6 (ICE detainer must be supported by “probable cause to believe that the subject . . . is (1) an alien who (2) . . . is not lawfully present in the United States”) (internal quotation marks and citation omitted); *Galarza*, 2012 WL 1080020, at \*13 (same). So uncontroversial is this view that even ICE’s predecessor, the INS, stipulated to it in a class action settlement in 1985. *See Cervantez v. Whitfield*, 776 F.2d 556, 560 (5th Cir. 1985) (“An immigration hold [i.e., a detainer] is an arrest without warrant [and thus] . . . may only be authorized by an officer of the INS . . . when the officer has determined that there is probable cause to believe that the person to be held (a) is an alien, (b) is in the United States in violation of the immigration laws, and (c) is

<sup>4</sup> The Sixth Circuit recently considered a different Fourth Amendment question: whether “moving a convict from home confinement to prison confinement” based on an ICE detainer “resulted in a new seizure within the meaning of the Fourth Amendment.” *Ortega*, 737 F.3d at 441. The Sixth Circuit did not decide that question, concluding instead that the law was not clearly established in 2011, so the individual defendants were entitled to qualified immunity. *Id.* Importantly, the Sixth Circuit’s decision hewed closely to the unusual facts of the case: the plaintiff alleged only that he was moved from home confinement to jail while serving his criminal sentence; he did not allege that the ICE detainer extended his time in custody at all. The Sixth Circuit’s decision took care not to suggest that ICE detainers provide authority for *additional* detention after one’s criminal custody ends.



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likely to escape before a warrant can be obtained for his arrest.”) (internal quotation marks omitted).

Thus, it is not enough for ICE to have probable cause to believe an individual is a non-citizen; ICE must also have probable cause to believe he or she is a non-citizen who is *subject to removal*. In the case of a Lawful Permanent Resident, for example, that generally means that he or she must have been *convicted*, not just *charged*, with a removable criminal offense. Moreover, a person’s race, ethnicity, or national origin is not sufficient to establish probable cause to believe he or she is a non-citizen, let alone a removable one. See, e.g., *Morales*, 996 F. Supp. 2d at 35 (“Using Ms. Morales’[s] nation of birth as a sole permissible basis for her loss of liberty does not pass constitutional muster.”); *Douglas v. United States*, 796 F. Supp. 2d 1354, 1366-67 (M.D. Fla. 2011) (holding that ICE lacked probable cause to detain plaintiff once he told agents he was a derivative U.S. citizen, and rejecting the government’s “argument[] that . . . foreign birth creates a presumption of alienage” for purposes of establishing probable cause); *Galarza*, 2012 WL 1080020, at \*14 (“The fact that Mr. Galarza is Hispanic and was working at a construction site with three other Hispanic men—two of whom are citizens of foreign countries and another who claimed to have been born in Puerto Rico but is a citizen of the Dominican Republic—does not amount to probable cause to believe that Mr. Galarza is an alien not lawfully present in the United States.”).

Some recent court decisions go a step further. The traditional definition of probable cause is probable cause to believe a *crime* has been committed, and as the Supreme Court recently reaffirmed, “it is not a crime for a removable alien to remain present in the United States.” *Arizona*, 132 S. Ct. at 2505. Removability is a civil matter, not a criminal one. Therefore, the Supreme Court explained, “[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.” *Id.* Drawing on this principle, several courts have concluded that the Fourth Amendment does not permit state or local officers (who generally lack civil immigration enforcement authority) to imprison people based on ICE detainers alone. See, e.g., *Villars*, 2014 WL 1795631, at \*10 (holding that plaintiff stated a Fourth Amendment claim where defendants “lacked probable cause” to believe that he had “violated federal *criminal* law”) (emphasis added); *People ex rel Swanson v. Ponte*, No. 14652, --- N.Y.S.2d ---, 2014 WL 5285250, at \*3 (N.Y. Sup. 2014) (slip op.) (granting habeas petition because “there is . . . no authority for a local correction commissioner to detain someone based upon a civil determination” of removability); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 918 (S.D. Ind. 2011) (preliminarily enjoining section of state law that “authorize[d] state and local law enforcement officers to effect warrantless arrests” based on ICE detainers, because permitting arrests “for matters that are not crimes” would contravene the Fourth Amendment), *permanent injunction granted*, 2013 WL 1332158, at\*8, \*10 (S.D. Ind. Mar. 28, 2013) (unpub.) (concluding that an ICE detainer, “without more, does not provide the usual predicate for an arrest,” and that “authoriz[ing] state and local law enforcement officers to effect warrantless arrests for matters that are not crimes . . . runs afoul of the Fourth Amendment”). In other



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words, even if there is probable cause (in the sense of a sufficient quantum of evidence) to believe that a person is a non-citizen who is subject to removal, detaining that person on an ICE detainer may still be an “unreasonable” seizure in violation of the Fourth Amendment, U.S. Const. amend. IV, because state and local LEAs lack the authority to make warrantless civil immigration arrests.

#### **b. Judicial approval**

Not only does the Fourth Amendment require probable cause; it also requires that at some point, the probable cause “determination must be made by a *judicial* officer” who can make a neutral and detached assessment. *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975) (emphasis added). This judicial determination must occur “either before” the seizure in the form of a judicially issued warrant, or “promptly after” the seizure in the form of a probable cause hearing. *Id.* While *Gerstein* did not assign a specific time limit to “prompt[ness],” the Supreme Court subsequently clarified that, absent extraordinary circumstances, this determination must be made within 48 hours of the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 58-59 (1991) (setting 48 hours as the outer presumptive limit, and holding that County’s policy of conducting probable cause hearings within “two days, exclusive of Saturdays, Sundays, or holidays[,]” was not reasonable).

Although *Gerstein* arose in the criminal context, the Supreme Court framed its ruling broadly as a Fourth Amendment rule that applies to “*any* significant pretrial restraint of liberty.” *Gerstein*, 420 U.S. at 125 (emphasis added). And, as discussed above, it is well settled that immigration arrests must comply with the Fourth Amendment. In fact, the INS itself recognized twenty years ago that it was “clearly bound by . . . [judicial] interpretations [regarding arrest and post-arrest procedures], including those set forth in *Gerstein v. Pugh*.” Enhancing the Enforcement Authority of Immigration Officers, 59 Fed. Reg. 42406-01, 42411 (1994).

ICE’s current detainer practices do not comply with *Gerstein*. Unlike warrants, which are issued by judges and are based on evidence “supported by oath or affirmation,” U.S. Const., amend. IV, ICE detainers are unsworn documents that “[a]ny authorized immigration officer” may issue “at any time” on their own initiative. 8 C.F.R. § 287.7(a). Under *Gerstein*, then, a seizure based on an ICE detainer must be analyzed as a warrantless seizure. See *Morales*, 996 F. Supp. 2d at 39 (“Warrants are very different from detainers”); *Buquer*, 797 F. Supp. 2d at 911 (“A detainer is not a criminal warrant”); *Vohra*, 2010 U.S. Dist. LEXIS 34363, \*25 (plaintiff “was subjected to the functional equivalent of a warrantless arrest”). Such detention would be constitutional only if ICE provided detainees with probable cause determinations by a neutral judicial official within 48 hours after detention begins.

ICE does not meet this constitutional requirement. Not only do ICE detainers purport to authorize exactly the period of detention that *Riverside* held was presumptively



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unlawful—48 hours, *excluding* weekends and holidays, *see* 8 C.F.R. § 287.7(d)—but they also do not guarantee a judicial probable cause determination at the conclusion of that period, or indeed at *any* time.

As *Gerstein* emphasized, it necessary but not sufficient for an arresting officer to have probable cause before making a warrantless arrest. The Fourth Amendment also requires that the officer’s assessment of probable cause be reviewed and approved by a neutral judicial official. This is because “the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.” *Gerstein*, 420 U.S. at 114. Nor does it matter that some people may be held on ICE detainers for fewer than 48 hours. In *Riverside*, the Supreme Court cautioned that even delays shorter than 48 hours will violate the Fourth Amendment if they are “unreasonable,” such as “delays for the purpose of gathering additional evidence to justify the arrest” and “delay for delay’s sake.” *Riverside*, 500 U.S. at 56. ICE routinely uses detainers for precisely these impermissible purposes. *See, e.g., Brief of Federal Defendants* at 27, *Morales v. Chadbourne*, No. 14-1425 (1st Cir. filed Aug. 15, 2014) (arguing that ICE detainers are used to give ICE “time to investigate the status of the person in the State’s custody, including arranging for an interview of that person during which important information may be gathered”); *Brief of Federal Defendants* at 11, *Ortega v. ICE*, No. 12-6608 (6th Cir. filed Apr. 10, 2013) (arguing that “the *purpose* of issuing the detainer was to allow [ICE] time to conduct an investigation that could have discovered whether Plaintiff-Appellant was removable or was, in fact, a U.S. citizen.”) (emphasis in original).

Several recent federal court decisions have recognized that detention on an ICE detainer must be analyzed as a warrantless arrest, *see supra*, and some have specifically noted the applicability of *Gerstein* and *Riverside*. *See Miranda-Olivares*, 2014 WL 1414305, at \*9 (analyzing detention based on the ICE detainer as a new period of “warrantless, post-arrest, pre-arraignment custody”) (internal quotation marks omitted); *Villars*, 2014 WL 1795631, at \*5 (“Contrary to . . . Defendants’ argument, *County of Riverside* did not grant law enforcement officials carte blanche to detain criminal suspects for forty-eight hours after their arrest. Rather, *County of Riverside* explicitly said that ‘unreasonable delays, even within the forty-eight hour period, may be constitutionally troublesome.’”); *Buquer*, 797 F. Supp. 2d at 918-19 (preliminarily enjoining state statute that authorized arrests based on ICE detainers in part because the statute made “no mention of any requirement that the arrested person be brought forthwith before a judge for consideration of detention or release”). And, while none of these decisions had occasion to decide affirmatively what ICE must do going forward to bring its detainer practices into compliance with the Fourth Amendment, *Gerstein* and *Riverside* make clear what the Fourth Amendment requires: that every individual held on an ICE detainer be provided with a prompt judicial probable cause determination—i.e., a hearing before an immigration judge, not an enforcement official—within 48 hours after the detention begins. There are at least two currently pending lawsuits seeking such injunctive relief against ICE. *See* Amended Complaint, Dkt. #78, [Jimenez Moreno v.](#)



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*Napolitano*, No. 11-5452 (N.D. Ill. filed May 1, 2013); Third Amended Complaint, Dkt. #44, *Gonzalez v. ICE*, No. 13-04416 (C.D. Cal. filed Aug. 18, 2014).

### 3. Who is liable?

When a seizure violates the Fourth Amendment, courts next consider who is liable for the violation. In the context of ICE detainers, liability may attach to both ICE (for requesting and purporting to authorize an unlawful detention) and the LEA (for carrying out the unlawful detention). See *Malley v. Briggs*, 475 U.S. 335, 344 n.7 (1986) (explaining that in the Fourth Amendment context, as in tort law generally, each actor is “responsible for the natural consequences of his actions”) (internal quotation marks and citation omitted); *Berg v. Cnty. of Allegheny*, 219 F.3d 261, 272 (3d Cir. 2000) (“a government official’s liability for causing an arrest is the same as for carrying it out”).

The following recent decisions have concluded that ICE and/or ICE agents may be held liable for their role in causing detentions in violation of the Fourth Amendment:

- *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014) (where plaintiff alleged that ICE caused his extended detention by issuing an ICE detainer that precluded him from posting bail, his injury was traceable to ICE for purposes of establishing standing to sue for damages)
- Order, Dkt. #42, *Gonzalez v. ICE*, No. 13-04416, at \*8 (C.D. Cal. July 28, 2014) (unpub.) (because “immigration detainers are intended to—and actually do— induce law enforcement agencies to incarcerate individuals beyond the time they would otherwise be released,” the detention is “directly traceable to ICE” for purposes of establishing standing to sue for injunctive relief)
- *Uroza*, 2014 WL 4457300, at \*6, \*9 (holding that plaintiff who was held on an ICE detainer for 43 days had standing to sue ICE for injunctive relief, and denying ICE defendants’ motion for summary judgment on damages claims)
- *Jimenez Moreno v. Napolitano*, No. 11-5452, 2012 WL 5995820, at \*5 (N.D. Ill. Nov. 30, 2012) (unpub.) (where plaintiffs faced a threat of unlawful detention based on ICE detainers, they had standing to sue ICE for injunctive relief)
- *Morales*, 996 F. Supp. 2d at 33, 36-37 (plaintiff who was held on an ICE detainer for 24 hours stated claims for damages and injunctive relief against ICE defendants and the United States; denying qualified immunity to defendants)
- *Galarza*, 2012 WL 1080020, at \*10, \*15 (plaintiff who was held for 3 days on an ICE detainer stated claims for damages against ICE agent; denying qualified immunity to defendant)

For more information please contact Kate Desormeau (415-343-0778; [kdesormeau@aclu.org](mailto:kdesormeau@aclu.org)) or Chris Rickerd (202-675-2339; [crickerd@aclu.org](mailto:crickerd@aclu.org)).



Nov. 13, 2014

- *Vohra*, 2010 U.S. Dist. LEXIS 34363, at \*28-29 (denying ICE agent’s summary judgment motion where questions of fact remained about the legality of plaintiff’s detention; denying qualified immunity to defendant)

The following recent decisions have concluded that state or local law enforcement agencies and/or officials may be held liable for their role in causing detentions in violation of the Fourth Amendment:

- *Villars*, 2014 WL 1795631, at \*6, \*9 (plaintiff stated claims for damages against local defendants, explaining that “Defendants were not obligated to detain Villars pursuant to the ICE detainer” and that they cannot rely on the federal detainer regulation to “authorize the detention of an alien for 48 hours after local custody over the detainee would otherwise end”)
- *Miranda-Olivares*, 2014 WL 1414305, at \*11 (granting summary judgment to the plaintiff because “[t]here is no genuine dispute of material fact that the County maintains a custom or practice in violation of the Fourth Amendment to detain individuals over whom the County no longer has legal authority based only on an ICE detainer which provides no probable cause for detention”)
- *Morales*, 996 F. Supp. 2d at 39 (director of the state Department of Corrections could be held liable for Fourth Amendment and other violations where his policies caused plaintiff to be held on an ICE detainer for 24 hours after her criminal custody ended)
- *Galarza*, 2012 WL 1080020, \*10-11, \*15 (plaintiff who was held for 3 days on an ICE detainer stated claims for damages against local police detective; denying qualified immunity to defendant), *rev’d on other grounds*, 745 F.3d at 636 (County, too, could be liable for its policy of detaining people in its jail based on ICE detainers, because “immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens”)

**Recent court decisions relating to ICE detainees**

*Morales v. Chadbourne*, 996 F. Supp. 2d 19 (District of Rhode Island, 2014), *affirmed on appeal*, --- F.3d ----, 2015 WL 4385945 (1st Circuit, July 17, 2015)

- [District court](#): The district court held that the plaintiff, a U.S. citizen, stated a viable Fourth Amendment claim against both ICE and Rhode Island officials where she was held for 24 hours on an ICE detainer.
- [First Circuit Court of Appeals](#): The ICE defendants appealed, arguing that they were entitled to qualified immunity because it was not clear whether the Fourth Amendment applied. The First Circuit rejected the ICE defendants' argument, affirmed the district court, and held that it was clearly established in 2009 that ICE detainees cause seizures that must comply with the Fourth Amendment. The case is now proceeding to summary judgment.

*Galarza v. Szalczyk*, 2012 WL 1080020 (Eastern District of Pennsylvania, 2012), *reversed in part on appeal*, 745 F.3d 634 (3rd Circuit, 2014)

- [District court](#): The district court held that the plaintiff, a U.S. citizen, stated a viable Fourth Amendment claim against both ICE and local law enforcement officials where he was held for 3 days after posting bail based on an ICE detainer. After the district court's decision, most of the defendants [settled](#): the federal defendants paid the plaintiff \$25,000, and the City of Allentown also paid the plaintiff \$25,000. However, the district court dismissed the plaintiff's claims against Lehigh County, reasoning that ICE detainees were mandatory orders from the federal government and that Lehigh County could not be held liable for enforcing them. The plaintiff appealed that portion of the district court's decision.
- [Third Circuit Court of Appeals](#): On appeal, the Third Circuit reversed the district court's decision as to Lehigh County, holding that ICE detainees are merely non-binding requests, not orders, and that Lehigh County could be held liable for its policy of detaining people on that basis. After the Third Circuit's decision, Lehigh County [settled](#) the case for \$95,000 in damages and attorneys' fees, and agreed to adopt a policy of no longer honoring ICE detainees without a court order.

*Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (District of Oregon, 2014)

- The [district court](#) held that the plaintiff, who was held on an ICE detainer after she would otherwise have been released on bond, was entitled to summary judgment against Clackamas County for a violation of her Fourth Amendment rights. The court explained that summary judgment was appropriate because "[t]here is no genuine dispute of material fact that the County maintains a custom or practice in violation of the Fourth Amendment to detain individuals over whom the County no longer has legal authority based only on an ICE detainer which provides no probable cause for detention." Rather than proceeding to trial on the amount of damages owed, the County [settled](#) with the plaintiff for \$30,100.

***Mendoza v. Osterberg***, 2014 WL 3784141 (District of Nebraska, 2014)

- The district court held that the plaintiff, a U.S. citizen, stated a viable Fourth Amendment claim against ICE officials where he was held on an ICE detainer for four days after posting bond. (The plaintiff also sued County officials, who moved to dismiss only on statute of limitations grounds. The court denied their motion in a separate order. *See Mendoza v. Osterberg*, 2014 WL 3784122 (D. Neb. July 31, 2014).) The case is now proceeding to summary judgment.

***Villars v. Kubiowski***, 45 F.Supp.3d 791 (Northern District of Illinois, 2014)

- The district court held that the plaintiff stated a viable Fourth Amendment claim against both ICE and local officials where he was held on an ICE detainer. Subsequently, on September 2014, the plaintiff settled his claims against the local defendants for an undisclosed amount. The case is proceeding against the ICE defendants.

***Uroza v. Salt Lake County***, 2013 WL 653968 (District of Utah, 2013)

- The district court held that the plaintiff stated a viable Fourth Amendment claim against ICE officials where he was held on an ICE detainer after he posted bail. The court also denied the ICE defendants' second motion to dismiss. *See Uroza v. Salt Lake County*, 2014 WL 4457300 (D. Ut. Sept. 10, 2014). The plaintiff also sued County officials for Fourth Amendment violations, but they did not move to dismiss. In August 2014, the plaintiff [settled](#) his claims against Salt Lake County for \$75,000 in damages and attorney's fees, along with policy changes. In November 2014, the plaintiff also settled his claims against the federal defendants.

**Other notable detainer cases that ended in settlement*****Del Agua v. Jones***, No. 15-0185 (Eastern District of California, settled in 2015)

- The plaintiff, who was held in Sacramento County jail for three days on an ICE detainer, sued the Sheriff of Sacramento County for Fourth Amendment and state-law violations. The County [settled](#) with the plaintiff for \$25,000 on in March 2015.

***Valdez-Sandoval v. Walcher*** (District of Colorado, settled before lawsuit filed)

- The plaintiff, who was held in Arapahoe County jail for three days on an ICE detainer, notified the County of her intent to sue for violations of her Fourth Amendment rights. In June 2014, the Sheriff's Office agreed to an out-of-court [settlement](#) of \$30,000 and announced that the County will no longer hold people on the basis of ICE detainees.

***Quezada v. Mink***, No. 10-0879 (District of Colorado, settled in 2011)

- The plaintiff, who was held in Jefferson County jail for several weeks on an ICE detainer, sued both ICE and local officials for Fourth Amendment violations. The case [settled](#) in May 2011 for \$40,000 from the local defendants, and \$50,000 from the United States.

***Harvey v. City of New York***, No. 07-0343 (Eastern District of New York, settled in 2009)

- The plaintiff, who was held in New York City's custody twice on ICE detainees, sued the City for Fourth Amendment violations. The case [settled](#) in June 2009 for \$145,000.



THE ARCHDIOCESE OF SAN FRANCISCO  
OFFICE OF THE ARCHBISHOP

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**Statement of Archbishop Salvatore J. Cordileone  
Archbishop of San Francisco  
Senate Judiciary Committee  
July 21, 2015**

The recent senseless killing of Kathryn Steinle was a tragedy beyond description not only for her loved ones, but for all San Franciscans and, indeed, all Americans. I offer my deepest condolences to Kathryn's family and friends, and invite everyone in our community to join me in offering prayers for them at this difficult time, and to pray as well for Francisco Sanchez, who has been charged with her death.

This horrible tragedy has ignited a national conversation about our nation's immigration enforcement policies. While it is important that we learn from this incident and work to prevent it from happening again, it is also important that we recognize that the vast majority of immigrants—both those with and without papers—are not a violent threat to society and so should not be subject to guilt by association. In fact, statistics show that immigrant communities are by and large safe and that a cooperative relationship between law enforcement and those communities enhances public safety and reduces crime.

In this regard, I ask our local, state, and federal elected officials to work together in a bipartisan manner to ensure that all persons—U.S. citizens and newcomers alike—are protected from individuals who pose a threat to national security or public safety. However, they should avoid the implementation of policies that punish all immigrants for the transgressions of a small minority. I also ask that our elected officials and others refrain from using this tragedy for political expediency or political gain. This is a disservice to Kathryn's memory and to any effort to find a just solution that prevents a recurrence of this type of event.

I applaud the commitment to public safety of the City of San Francisco and other local jurisdictions and support their right to exercise reasonable and appropriate discretion in the handling of immigrant detainees, consistent with their need to maintain public safety. At the same time, greater cooperation is needed between local and federal authorities in identifying those who represent a violent threat to our communities. A just and humanitarian policy should not be abandoned because of flaws in the system. Rather, proper authorities should make prudent adjustments in the application of the law in order to protect the public safety of *all* those living in our country.

Over the long-term, and in conjunction with my fellow bishops, I call upon Congress and the Administration to work together to comprehensively repair our nation's flawed immigration system, a system that divides families and undermines human dignity. Such reform, long overdue, should preserve family unity, ensure the due process of law, protect those fleeing persecution, and ensure the integrity of our nation's borders.



**Statement of the American Immigration Lawyers Association**

**Submitted to the Committee on the Judiciary of the U.S. Senate  
Hearing on "Oversight of the Administration's Misdirected Immigration Enforcement  
Policies: Examining the Impact on Public Safety and Honoring the Victims"**

**July 21, 2015**

Contact:

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The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA has 14,000 attorney and law professor members.

In the aftermath of the recent tragic shooting of Kathryn Steinle in San Francisco, many are asking what additional steps federal and local law enforcement authorities should take to protect our communities. The unauthorized immigration status of the alleged perpetrator, Juan Francisco Lopez-Sanchez, has also inflamed discussions about immigration enforcement. AILA agrees that law enforcement authorities must take reasonable and lawful steps to protect the public from anyone—regardless of immigration status—who poses a threat to our safety. However, the facts and circumstances of this particular situation remain unclear. AILA cautions both local and national elected leaders from making immediate changes to law or policy based on this incident before an investigation is completed. A reactionary response in the absence of full information may undermine community safety.

AILA also hopes that this incident will not be used to scapegoat immigrants. As law enforcement officials have clearly stated the mission of law enforcement is to protect the safety of all our communities. But already, some have gone too far by labeling immigrants as criminals. This claim could not be further from the truth. The American Immigration Council and the Cato Institute recently released separate reports presenting overwhelming data that immigrants are no more likely than anyone else to commit crimes. In fact, the data demonstrate the opposite—that the rate of criminality is lower in the immigrant population, including undocumented immigrants, than in those born in the U.S.

No less faulty are the claims that the federal government is not enforcing immigration law. By nearly every objective measure, recent immigration enforcement levels have been at all-time highs. The federal government has committed unprecedented resources to enforcement efforts at

the border and in the interior. Annually, federal immigration enforcement spending is \$18.5 billion and exceeds that of all other federal criminal law enforcement combined. As a result of the federal government's increased enforcement efforts, apprehensions at the border have decreased and are at a nearly 40-year low. At the same time removals have reached an all-time high with this Administration—it has been removing about 400,000 individuals every year, more than any other president. While the Department of Homeland Security (DHS) still targets people who have convictions for non-violent offenses and should not be priorities for enforcement, DHS has increased its focus on those with more serious offenses who pose threats to public safety.

#### **Ensuring Public Safety and Maintaining Trust of the Community**

While the federal government is charged with enforcing immigration laws, the primary function of state and local law enforcement is to ensure the safety of their communities. AILA recommends that greater examination and oversight be done of federal programs that engage local authorities in immigration enforcement to make sure the mission of protecting the public is not compromised. Many of these programs have been fraught with policy and legal problems.

Notably, the controversial Secure Communities program severely undermined community trust by making immigrants fearful of contact with local law enforcement agencies. Effective policing efforts require the building of trust between law enforcement and the communities they serve. The University of Illinois-Chicago conducted a comprehensive survey in 2013 finding that 44 percent of Latinos surveyed reported they are less likely to contact police if they have been a crime victim because they fear that police officers will inquire into their immigration status. For this reason, domestic violence organizations, such as the National Task Force to End Sexual Assault and Domestic Violence and the California Partnership to End Domestic Violence, oppose programs that intertwine local law enforcement authorities with the activity of immigration enforcement.

Many local law enforcement authorities have voiced concerns that federal immigration detainers undermine local policing efforts, strain their resources, and leave them open to liability for constitutional violations. In fact, several federal courts issued decisions last year holding that local law enforcement agencies are liable for holding people beyond their release times solely on the basis of the detainers. In November 2014, Secretary Johnson announced that these courts had found “detainer-based detention by state and local law enforcement agencies violates the 4th Amendment.” As a result of these concerns, nationwide over 320 law enforcement jurisdictions have adopted policies limiting or ending the practice of honoring immigration detainers issued by Immigration and Customs Enforcement (ICE).

#### **Priority Enforcement Program (PEP)**

In an effort to address the flaws in Secure Communities, the Secretary announced the establishment of the new Priority Enforcement Program (PEP), which is currently being introduced across the country. As of yet, DHS has not disclosed many details about how PEP

will function, making it difficult for law enforcement and other government officials to evaluate whether they should participate.

Before government officials endorse PEP, they should examine whether PEP makes meaningful changes to the Secure Communities program and detainers. Importantly, the Secretary's November 2014 memorandum states that PEP will still be used to lodge detainers. Detainers will be used to detain in more limited circumstances, but DHS has yet to define those circumstances. In the past, such detainers have not been obtained based on probable cause that is promptly reviewed by a judge or with the backing of a judge-issued warrant. As yet DHS has given no indication that PEP will correct this problem, meaning local authorities may still be liable for unconstitutional detention practices. In recent comments about PEP, Chief Thomas Manger of Montgomery County, who is also president of the Major Cities Chiefs Association, explained: "We can't hold them. Basically, you're falsely imprisoning an individual without legal foundation to hold them."

Another problem with PEP—which was a major criticism of Secure Communities—is that it will still result in enforcement against individuals with misdemeanors and non-violent offenses or offenses that are very old from which the individual has long since been rehabilitated. By its name, PEP should prioritize enforcement against those who actually pose a threat to our communities. But PEP will likely also capture first-time border crossers and non-violent misdemeanor offenders. AILA's immigration lawyer members have identified several individuals who committed an offense five or ten years ago and since then have been living without incident in the community with a family and a job. None of these individuals should be a priority for immigration enforcement let alone local law enforcement involvement.

Local officials should have flexibility to determine how to engage DHS in a way that both protects public safety and adequately responds to their community's concerns. Still, that flexibility must have a baseline. There is a vast difference between the approaches of Sheriff Joe Arpaio, who appears determined to arrest every unauthorized person no matter the consequences, and the efforts of other law enforcement officials who acknowledge that they cannot protect the public without the community's trust. A baseline for PEP practices must be established to restrain the practices of law enforcement officials who are not only willing but may be motivated to alienate the immigrant community and violate the Constitution. Before Congress or local officials endorse PEP, they should insist that DHS be more transparent about how it will implement the program to guard against these pitfalls.

#### **Recent Congressional Proposals**

AILA urges lawmakers to reject legislation that would withhold federal funding from or otherwise punish so-called "sanctuary cities," such as the proposals by Senators Vitter and Cotton. The term "sanctuary city" is used to describe localities that have passed laws and policies that limit the role that law enforcement officers should play when enforcing federal immigration law. These policies are designed to promote community safety and are premised on the community policing model. They are not designed to harbor dangerous or violent criminals.

#### **AILA National Office**

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Many local law enforcement agencies have refrained from asking about the immigration status of a victim or witness precisely to ensure public cooperation and trust. As Dayton Police Chief Richard Biehl recently wrote: inquiring about immigration status “detracts from the investigation” and “is detrimental to relations with members of our community. We must balance investigative approaches that will encourage (and not discourage) public cooperation with investigations.”

AILA also recommends that Congress refrain from mandating local participation or cooperation with federal immigration programs, not only for the policy reasons articulated by Chief Biehl and other law enforcement leaders but also to avoid 10<sup>th</sup> Amendment “commandeering” concerns that will demand local resources and commitment. In fact many localities have resisted participation in DHS programs in order to ensure their limited resources are dedicated to their primary mission of protecting the public rather than taking on the federal responsibility of immigration enforcement. State and local police know their communities best, and they should not be compelled to enforce federal immigration laws at the expense of the safety and security of their communities.

#### **America Needs Immigration Reform**

What America needs is for Congress to pass reforms to the legal immigration system and legalization, which taken together will significantly reduce illegal immigration. Effective, commonsense immigration reform would make our nation safer and bring people who are already members of our communities more completely into our society. Enactment of enforcement-only legislation is not a solution. The SAFE Act and similar proposals are premised on the criminalization of immigrants and immigrant communities and do little to improve public safety. As our nation’s leaders seek to respond to the incident in San Francisco, AILA hopes the focus will be on solutions that protect all members of our communities.

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**STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL**

**SUBMITTED TO THE U.S. SENATE COMMITTEE ON THE JUDICIARY**

**HEARING ON “OVERSIGHT OF THE ADMINISTRATION’S MISDIRECTED  
IMMIGRATION ENFORCEMENT POLICIES: EXAMINING THE IMPACT ON  
PUBLIC SAFETY AND HONORING THE VICTIMS”**

**July 21, 2015**

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our research and analysis regarding immigration enforcement.

The Immigration Council is saddened by the tragic murder of Kathryn Steinle, which has prompted today’s hearing. We share the public’s and policymakers’ desire to understand what happened and whether there are lessons to be learned. At the same time, we caution that anecdotes are no substitute for hard data and that our laws and policies must be grounded in analysis of the facts, thoughtful discussion, and practical solutions.

For too long, U.S. immigration laws and policies have been shaped by fear and stereotype rather than by empirical evidence. Empirical data shows that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals. Yet, we have spent billions of dollars deporting millions of people who have committed only immigration violations, and we have focused on quantity, not quality of deportations, while separating families.

There is no doubt that our nation is safer when everyone is accounted for and fully documented. A major benefit of comprehensive immigration reform is that every person in this country would get documents and be “on the grid” of U.S. life, with driver’s licenses, social security numbers, and other forms of identification. Such a system would help us make smart national security decisions and differentiate those who are law-abiding from those who are not. Comprehensive immigration reform is practical policy, and more productive than finger-pointing at local officials or demonizing an entire group for the mistakes of a few.

Instead of debating the patchwork of local immigration enforcement laws that have developed over the past several years, Congress should get to the important job of passing immigration

reform. Calibrating our system to get everyone on the books would go further towards securing our communities than any other piece-meal measures currently on the table. It also would allow us all to benefit from the economic potential of immigrants.

We submit to you below (1) our recent research regarding the relationship between immigration and crime, which confirms that immigrants are less likely to commit serious crimes or be behind bars than the native-born and that high rates of immigration are associated with lower rates of violent crime and property crime; (2) our paper outlining the legal implications of detainees, and (3) our analysis regarding the failures of the “enforcement first” approach to immigration reform.

### **I. Immigrants Are Not Likely to Commit Crimes**

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are less likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with lower rates of violent crime and property crime. This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. The Immigration Council’s report, *The Criminalization of Immigration in the United States*, by Walter A. Ewing, Ph.D., Daniel E. Martinez, Ph.D., and Rubén G. Rumbaut, Ph.D, available at <http://immigrationpolicy.org/special-reports/criminalization-immigration-united-states>, explains the data and highlights the following:

#### *Higher Immigration is Associated with Lower Crime Rates*

- Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million.
- During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

#### *Immigrants are Less Likely than the Native-Born to Be Behind Bars*

- An analysis of data from the 2010 American Community Survey (ACS) indicates that roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born. This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses.
- The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma.
  - In 2010, less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men.

#### *Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior*

- Several studies have found that immigrants are less likely than the native-born to engage in either violent or nonviolent “antisocial” behaviors; that immigrants are less likely than the native-born to be repeat offenders among “high risk” adolescents; and that immigrant youth who were students in U.S. middle and high schools in the mid-1990s and are now young adults have among the lowest delinquency rates of all young people.
- Immigrants are a self-selected group of people who tend to be highly motivated. They have left their homes and moved to a new country to improve their lives and the lives of their children. There is a great incentive to stay out of trouble.

## II. Detainers Raise a Host of Legal Questions

In considering state and local responses to Immigration and Custom’s (ICE) practice of issuing “detainer” requests—a request to local law enforcement to hold a noncitizen—it is important to remember that immigration detainers, as ICE practiced them until November 2014, have been ruled illegal and unconstitutional by several courts. Those rulings are a major reason why, among others, the Secretary of Homeland Security Jeh Johnson stated that the previous system wasn’t working. Returning to that system, or legislatively mandating it, is not a viable legal option.

The Immigration Council’s report, *The Faulty Legal Arguments Behind Immigration Detainers*, by law professor Christopher Lasch, available at <http://www.immigrationpolicy.org/perspectives/faulty-legal-arguments-behind-immigration-detainers>, explains how immigration detainers work and why they were unconstitutional. Put simply, a detainer must be based on probable cause of a violation—which ICE detainers were not. Localities were subjecting themselves to risk for liability for holding someone under an ICE detainer.

Under ICE’s new Priority Enforcement Program (PEP), the federal government now will request notification of release rather than a detainer for many individuals meeting its priorities. ICE has said that will provide probable cause to justify detainers in “special circumstances.” Nonetheless, many concerns persist regarding whether this program satisfies the Fourth Amendment requirements. One thing that is clear is that returning to the pre-PEP use of detainers is not an option.

## III. “Enforcement First” Has Proven to be Unsuccessful

As explained in the Immigration Council’s report, *The Fallacy of “Enforcement First”* at <http://www.immigrationpolicy.org/just-facts/fallacy-enforcement-first>, the United States has been pursuing an “enforcement first” approach to immigration control for more than two-and-a-half decades—and it has yet to work. The U.S. currently spends more on immigration enforcement—\$18 billion per year—than all other federal law enforcement combined.<sup>1</sup> Since the last major legalization program for unauthorized immigrants in 1986, the federal government

<sup>1</sup> Consolidated Appropriations Act, 2014, P.L. 113-76, 128 Stat. 5, 248-52 (Jan. 17, 2014), at <http://www.gpo.gov/fdsys/pkg/PLAW-113publ76/pdf/PLAW-113publ76.pdf>; Doris Meissner, Donald M. Kerwin, Muzaffar Chishtii, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, MIGRATION POLICY INSTITUTE (2013), [www.migrationpolicy.org/pubs/enforcementpillars.pdf](http://www.migrationpolicy.org/pubs/enforcementpillars.pdf).

has spent over \$200 billion on immigration enforcement.<sup>2</sup> Yet during that time, the unauthorized population has tripled in size to 11 million. This is a testament that enforcement measures alone pale in the face of a strong economy where the demand for foreign workers outstrips the available visas. Meanwhile, punitive laws separate families unnecessarily despite the natural desire of immigrants to be reunited with their families.

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The American Immigration Council hopes that our research and analysis helps foster a practical, fact-based conversation about what we can do to ensure that our immigration system works for everyone. “Enforcement-only” proposals rely on stereotypes, not evidence, and ignore that this approach has proven unsuccessful. Congress has the power to make our communities safer by passing comprehensive immigration reform.

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<sup>2</sup> Marc R. Rosenblum, Migration Policy Institute, Testimony to House Judiciary Committee, *Examining the Adequacy and Enforcement of Our Nation’s Immigration Laws* (Feb. 3, 2015), p. 18, at [http://judiciary.house.gov/?a=Files.Serve&File\\_id=31971212-6FDB-4FE6-ABBB-406B7C673B21](http://judiciary.house.gov/?a=Files.Serve&File_id=31971212-6FDB-4FE6-ABBB-406B7C673B21).



## **Badges Supporting Fallen Officers' Families.**

[www.OurFallen.org](http://www.OurFallen.org)

### **Statement of State Senator Phil Wyman (Ret.), California**

on behalf of the fallen police officers

represented by Badges Supporting Fallen Officers' Families.

Among the tens of thousands of victims of illegal immigrant murderers and drunk drivers nationwide, like the beautiful Kate Steinle of San Francisco, have been many police officers. These murders have not been coincidental. They are not accidental. They are not random. They are not few. They are many. In the case of Steinle's sanctuary city of San Francisco, Edwin Ramos, an MS13 gang banger and drug dealer murdered, execution style, Tony Bologna and his sons Michael and Mathew and reckless driver Robert Galo killed Drew Rosenberg. In Sacramento County Deputy Sheriff Danny Paul Oliver served protecting the very illegal who killed him. The murderer was a twice-deported illegal immigrant, Luis Enrique Monroy-Bracamonte, who also shot and murdered Placer County Sheriff Michael Davis Jr. These murders have been caused by a peculiarly perverse violation of the rule of law known as sanctuary cities as well as other lax enforcement of immigration laws. In an abusive exercise of discretion and selective enforcement these cities are not merely indifferent to the law. They show utter contempt for the law, act capriciously above or outside the law, and rewrite the law. They deal dismissively with the plain language of the law, the Constitution, statutes, and ballot initiatives. Mayors, city councilmen, police chiefs, sheriffs ought to be guardians of the law enacted by legislative authority. The law deserves reverence not contempt. As an example California's AG once instructed local sheriffs and DAs to do as they please regardless of federal immigration law. Such whims disrespect the law. There are hundreds of sanctuary cities nationwide and over thirty sanctuary cities in my state of California. The human consequences may be counted in thousands of murders, rapes and assaults. Sanctuary cities by refusing to enforce federal immigration law, provide *de facto* amnesty for the worst of illegal immigrants. They protect illegal immigrant criminals and gang members from deportation and prosecution. Police officers and innocent civilians have died because sanctuary cities prevented the incarceration or deportation of illegal immigrant criminals. Sanctuary cities protect criminals endangering the lives and property of citizens and law enforcement officers. Covering the entire nation, within 72 hours of their loss, Fallen's goal is to present a fallen officer's family with \$25,000". These funds can be used for whatever the surviving family needs such as assisting with the costs of funeral and burial arrangements, transportation for out of area

family members, mortgage, other financial obligations and any unforeseen expenses. Fallen strives to involve the 900,000 law enforcement officers in the US in this effort through a \$25 annual contribution as well as corporate sponsors and citizens that recognize the sacrifice law enforcement officers and their families make protecting us and our families. Donations made to Fallen are tax deductible under the provisions of the IRS Code 501(c)(3). (Tax ID 45-3752411) Fallen contacts: Bret Daniels, CEO, [\(916\) 870-7199](tel:9168707199) [BretDaniels@OurFallen.org](mailto:BretDaniels@OurFallen.org) and Jim Remick, [\(916\) 730-4182](tel:9167304182) [JimRemick@OurFallen.org](mailto:JimRemick@OurFallen.org). Senator Phil Wyman, [phillip.wyman@gmail.com](mailto:phillip.wyman@gmail.com)

Tristan Dunford, Associate Counsel: [Tristan\\_Dunford@judiciary-rep.senate.gov](mailto:Tristan_Dunford@judiciary-rep.senate.gov)

**Other law enforcements victims of illegal immigrant criminals are:**

In the sanctuary city of Phoenix, drunken illegal immigrant Jesus Cabrera Molina, killed Phoenix Arizona Peace Officer Daryl Raetz. In the sanctuary city of Mesa, Arizona a drunken illegal immigrant Raul Silva Corona killed Peace Officer Brandon Mendoza. In Elmore Ohio, Igmidio Mista, an illegal immigrant shot and killed police Officer Jose Andy Chavez and two others. In Waxahachie, Texas, Alejandro Pardo, a drunk Mexican national, killed Modena Dollison. In the sanctuary city of Houston Texas, Johoan Rodriguez, was arrested for intoxicated manslaughter of police officer Kevin Will. Unknown smugglers likely murdered U.S. Border Patrol Agent Brian A. Terry in Mexico. In the sanctuary city of Phoenix Salvador Vivas-Diaz, driving drunk killed Police Officer Shane Figueroa. In the sanctuary city of Houston, Robert Pedroza Carrillo, 37, an illegal immigrant from Mexico is accused of fatally shooting Huston Police Officer Henry Canales. Lebanon, Tennessee, Jose Chavez, an illegal immigrant was been arrested in the vehicular death of off-duty police officer Jeffery Stone. In the sanctuary city of Phoenix, Salvador Vivas-Diaz, a drunken illegal immigrant was arrested in the death of Phoenix police officer Shane Figueroa. In Fort Myers, Florida, Abel Arango, an illegal immigrant was accused of fatally shooting Police Officer Andrew Widman. In the sanctuary city of Houston, Hung Troung, a drunken illegal immigrant was charged in the manslaughter death of Huston Police officer Gary Gryder. In the sanctuary city of Houston, Juan Leonardo Quintero-Perez, an illegal immigrant, was convicted for shooting to death Officer Rodney Johnson. In the sanctuary city of Phoenix, Erik Jovani Martinez, an illegal immigrant was arrested for the murder of Phoenix police officer Nick Erfle. In Flint, Ramon Felix Pineda, a drunk illegal immigrant, was arrested in the death of Flint police officer Vincent Owen D'Anna. Near the sanctuary city of Los Angeles, Domingo Esqueda, a drunken illegal immigrant, plead guilty to gross vehicular manslaughter in the death of CHP Officer Gregory Bailey. . In Cobb County, GA Joel Camacho Perea, a drunken illegal immigrant, killed Deputy Loren Lilly. In the sanctuary city of Phoenix Rudy Romero, an illegal immigrant, shot and killed officer Collins during a bank robbery. Adrian George Camacho an illegal immigrant with gang ties and an extensive criminal record shot Officer Tony Zeppetella, 13 times during a traffic stop. In the sanctuary city of Denver Raul Garcia-Gomez, an illegal immigrant, shot and killed Detective Donald Young moonlighting as a security guard. Juan Lizcano, an illegal immigrant, ambushed Police Officer Brian Jackson. Benito Albarran, Mexican national illegally in the US, shot Patrolman Daniel Howard Golden responding to a domestic dispute. Felipe Petrona-Cabana, an illegal, ambushed and shot Police Officer Marc Atkinson. In the sanctuary city of Long Beach, California Oscar Manuel Gallegos, an illegal immigrant with a lengthy criminal record, is wanted in the shooting of Long Beach police officers Roy Wade and Abe Yap. Source: [Victims of Illegal Aliens Memorial](#)



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## Catch and Release

### Interior immigration enforcement in 2013

By Jessica M. Vaughan

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#### Summary

A review of internal ICE metrics for 2013 reveals that hundreds of thousands of deportable aliens who were identified in the interior of the country were released instead of removed under the administration's sweeping "prosecutorial discretion" guidelines. In 2013, ICE reported 722,000 encounters with potentially deportable aliens, most of whom came to their attention after incarceration for a local arrest. Yet ICE officials followed through with immigration charges for only 195,000 of these aliens, only about one-fourth. According to ICE personnel, the vast majority of these releases occurred because of current policies that shield most illegal aliens from enforcement, not because the aliens turned out to have legal status or were qualified to stay in the United States.

Many of the aliens ignored by ICE were convicted criminals. In 2013, ICE agents released 68,000 aliens with criminal convictions, or 35 percent of all criminal aliens they reported encountering. The criminal alien releases typically occur without formal notice to local law enforcement agencies and victims.

These findings raise further alarm over the Obama administration's pending review of deportation practices, which reportedly may further expand the administration's abuse of "prosecutorial discretion". Interior enforcement activity has already declined 40 percent since the imposition of "prosecutorial discretion" policies in 2011.<sup>1</sup> Rather than accelerating this decline, there is an urgent need to review and reverse the public safety and fiscal harm cause by the president's policies.

#### Key Findings

- In 2013, ICE charged only 195,000, or 25 percent, out of 722,000 potentially deportable aliens they encountered. Most of these aliens came to ICE's attention after incarceration for a local arrest.
- ICE released 68,000 criminal aliens in 2013, or 35 percent of the criminal aliens encountered by officers. The vast majority of these releases occurred because of the Obama administration's prosecutorial discretion policies, not because the aliens were not deportable.
- ICE targeted 28 percent fewer aliens for deportation from the interior in 2013 than in 2012, despite sustained high numbers of encounters in the Criminal Alien and Secure Communities programs.
- Every ICE field office but one reported a decline in interior enforcement activity, with the largest decline in the Atlanta field office, which covers Georgia and the Carolinas.
- ICE reports that there are more than 870,000 aliens on its docket who have been ordered removed, but who remain in defiance of the law.

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- Under current policies, an alien's family relationships, political considerations, attention from advocacy groups, and other factors not related to public safety can trump even serious criminal convictions and result in the termination of a deportation case.
- Less than 2 percent of ICE's caseload was in detention at the end of fiscal year 2013.
- About three-fourths of the aliens ICE detained in 2013 had criminal and/or immigration convictions so serious that the detention was required by statute. This suggests the need for more detention capacity, so ICE can avoid releasing so many deportable criminal aliens.

Unless otherwise noted, the data for this report are from the 2013 fiscal year-end edition of ICE's "Weekly Departures and Detention Report" (WRD), which is prepared by the Information Resource Management Unit of ICE's Office of Enforcement and Removal Operations (ERO).<sup>2</sup> This report compiles a variety of ICE caseload statistics, including encounters, arrests, detention, and removal of aliens. The tables in this report use data taken directly from the WRD.

## ICE Agents Catch and Release Aliens on a Massive Scale

Table 1 summarizes key metrics on ICE's caseload. Notably, only a fraction of the cases on ICE's docket are actually deported in any given year. The departures figure, about 387,000, includes all forms of deportation, including formal removal and voluntary return,<sup>3</sup> and counts all cases that land in ICE custody for some reason, regardless of which agency made the arrest. In 2013, about two-thirds of the departures reported by ICE were the result of a Border Patrol arrest.<sup>4</sup>

The Obama administration and anti-enforcement activist groups have tried to portray the number of departures as "record-breaking" and indicative of robust immigration enforcement. They have tried to support this claim by showing that the number of departures credited to ICE is higher than ever before. However, an independent analysis of ICE records obtained in a lawsuit showed that ICE was able to achieve these "record" departures only because the agency was taking credit for removing a large number of individuals who were apprehended by the Border Patrol. Such cases made up the majority of ICE's reported deportations in 2013, but they had never been counted that way in previous administrations.<sup>5</sup> Although former DHS Secretary Janet Napolitano denied that the ICE reports on her watch were misleading, her successor, Jeh Johnson, recently admitted to a House committee that the administration's deportation figures are not comparable to previous administrations because of the large number of border removal cases.<sup>6</sup>

**Table 1. ICE Metrics Summary, 2013**

<b>Total Departures</b>	<b>386,644</b>
Criminal Departures	216,810
Non-Criminal Departures	151,834
<b>Total Docket</b>	<b>1,813,504</b>
Pending Final Order	941,000
Post Final Order	872,504
Average Daily Population Detained	33,788
Average Length of Stay (days)	29
Encounters	721,976
Detainers	212,455
Arrests	213,820
Charging Documents Issued	194,861
Book-Ins (includes cases from other agencies)	440,557
<b>Source:</b> ICE.	

In the context of other key metrics reported in this document, the number of departures recorded by ICE is unimpressive and concerning. A more accurate picture of the state of interior enforcement can be found in the set of four metrics that relates directly to interior enforcement and the work of ICE agents and officers in the Enforcement and Removal Operations (ERO) division of ICE: encounters, arrests, detainers and charging documents Issued. These are found in the shaded part of Table 1.

In 2013, ICE officers reported about 722,000 encounters with aliens, meaning the alien was questioned, fingerprinted, or otherwise screened about immigration status, most often in a jail setting, or possibly as part of an enforcement operation, but always as the result of an actionable lead. In most cases these leads come from local jails or vetted identifications through ERO's Criminal Alien and Secure Communities programs. In the last several years, these programs have produced record numbers of encounters for ICE agents and officers, even as the number of aliens charged has declined.

Yet out of these 722,000 encounters with illegal and criminal aliens reported in 2013, ICE agents filed charges against only 195,000, or 27 percent, of the aliens. While some of the remaining 73 percent of aliens encountered might be the subject of detainers for future charges, and a small number may have turned out not to be amenable to deportation, most of the other illegal aliens were simply ignored. According to ICE personnel, the vast gap between the number of encounters reported and the number of aliens put on the path to removal exists because officers are not permitted to file charges against aliens who do not fall into the administration's narrowly defined criteria for enforcement, regardless of the criminal charges or the circumstances in which the alien was identified. Under current policies, an alien generally must have serious criminal convictions, prior deportations, or immigration violations before an officer can move to deport them. These constraints have led to a 40 percent decline in interior ICE arrests since the first "prosecutorial discretion" policies were implemented in June 2011.

Note that even as ICE moved to deport roughly 200,000 aliens from the interior in 2013, ICE booked more than 400,000 aliens into custody (detention). The difference between the two figures reflects the number of Border Patrol and other agency cases that are referred to ICE custody for processing. These cases show up in ICE's metrics as a departure and in Border Patrol or CBP metrics as an apprehension.

Finally, Table 1 shows the shocking number of cases on ICE's docket — 872,000 as of the end of the 2013 fiscal year — who had received final orders of removal, but who had not yet departed. Cases are counted in this category after all due process has been exhausted. There are therefore hundreds of thousands of alien fugitives in the United States right now who have been ordered removed and ignored those orders. While a few thousand of these are aliens who cannot be removed because they refuse to cooperate in obtaining travel documents or their home countries will not accept them, the vast majority are illegal aliens who have absconded from immigration hearings, an offense similar to contempt of court. The administration has indicated it is considering an executive action to forbid ICE from taking action against these individuals, rationalizing that these are mere immigration offenses.<sup>7</sup>

Table 2 provides details on encounters and charging documents issued broken down by ICE Field Offices. The Buffalo and Los Angeles field offices logged the greatest number of encounters, but the San Diego, New Orleans, and Houston field offices show the largest percentage of charging documents issued out of all encounters. The field offices with the worst ratio of encounters to aliens charged were Buffalo, Chicago, Miami, and Los Angeles.

**Table 2. Aliens Encountered, Charged, and Released , 2013**

AOR	Encounters	Charged	Released	Percent Released
<b>Total</b>	<b>721,976</b>	<b>194,861</b>	<b>527,115</b>	<b>73%</b>
Atlanta	31,662	14,381	17,281	55%
Baltimore	5,465	1,675	3,790	69%
Boston	5,669	2,973	2,696	48%
Buffalo	101,425	1,357	100,068	99%
Chicago	77,134	9,998	67,136	87%
Dallas	30,641	11,911	18,730	61%
Denver	10,728	4,222	6,506	61%
Detroit	7,645	4,247	3,398	44%
El Paso	7,772	3,518	4,254	55%
Houston	15,504	11,292	4,212	27%
Los Angeles	109,744	20,386	89,358	81%
Miami	74,724	10,200	64,524	86%
New Orleans	11,592	8,189	3,403	29%
New York City	26,012	7,830	18,182	70%
Newark	11,172	3,883	7,289	65%
Philadelphia	10,705	4,135	6,570	61%
Phoenix	24,073	10,585	13,488	56%
Salt Lake City	14,304	4,275	10,029	70%
San Antonio	38,825	13,193	25,632	66%
San Diego	8,087	7,694	393	5%
San Francisco	37,754	17,265	20,489	54%
Seattle	22,613	5,806	16,807	74%
St. Paul	12,681	4,599	8,082	64%
Washington	13,033	4,757	8,276	64%
Other	13,012	6,490	6,522	50%

Source: ICE.

## Despite High Encounters, 28 Percent Fewer Aliens Targeted in 2013

A comparison of the number of charging documents issued in 2012 and 2013, shown in Table 3, reveals that despite the high number of encounters, significantly fewer illegal and criminal aliens were targeted by ICE last year. Overall, 28 percent fewer aliens were charged in 2013 compared to the previous year. These numbers do not include cases initiated by the 287(g) partnership program, in which some local officers have the authority to initiate deportations.

AOR	2013 CDI	2012 CDI	Percent Change
<b>Total</b>	<b>179,578</b>	<b>249,575</b>	<b>-28%</b>
Atlanta	8,818	20,895	-58%
Baltimore	1,610	2,190	-26%
Boston	2,967	4,104	-28%
Buffalo	1,357	1,348	1%
Chicago	9,998	13,415	-25%
Dallas	11,267	14,492	-22%
Denver	4,087	5,688	-28%
Detroit	4,133	5,541	-25%
El Paso	3,518	5,196	-32%
Houston	9,412	14,445	-35%
Los Angeles	17,459	26,028	-33%
Miami	9,453	13,094	-28%
New Orleans	8,110	11,335	-28%
New York City	7,830	8,013	-2%
Newark	3,645	4,628	-21%
Philadelphia	4,135	4,633	-11%
Phoenix	9,216	12,492	-26%
Salt Lake City	3,639	5,989	-39%
San Antonio	13,193	15,843	-17%
San Diego	7,693	11,052	-30%
San Francisco	17,265	22,887	-25%
Seattle	5,806	7,127	-19%
St. Paul	4,599	5,923	-22%
Washington	4,076	6,682	-39%
Other	6,292	6,535	-4%

**Source:** ICE.  
\*Excluding 287(g)

Every ICE field office except Buffalo experienced a decline in the number of aliens targeted for deportation. The largest decline in enforcement was in the Atlanta field office, which covers Georgia and the Carolinas. The Salt Lake City, DC/Virginia, and Houston field offices also saw larger than average declines.

## ICE Released One-Third of Criminal Aliens Located

One way ICE tracks its caseload is according to criminality. Aliens are classified as "criminal" if they have been convicted of a crime, not including traffic offenses. Any alien lacking a conviction, even if there are criminal charges that have not yet been resolved, is classified as "non-criminal". Table 4 provides a breakdown by ICE field office of criminal alien encounters and charging documents issued.

**Table 4. Criminal Alien Releases, 2013**

	Criminal Encounters	Criminal CDIs	Criminal Releases	Percent Criminal Releases
<b>Total</b>	<b>193,357</b>	<b>125,478</b>	<b>67,879</b>	<b>35%</b>
Atlanta	18,397	9,989	8,408	46%
Baltimore	1,318	1,092	226	17%
Boston	1,282	1,665	-383	(30%)
Buffalo	1,274	540	734	58%
Chicago	10,410	6,950	3,460	33%
Dallas	10,113	10,605	-492	(5%)
Denver	6,586	3,603	2,983	45%
Detroit	1,983	3,278	-1,295	(65%)
El Paso	1,690	2,182	-492	(29%)
Houston	16,909	7,851	9,058	54%
Los Angeles	21,510	14,932	6,578	31%
Miami	6,787	6,291	496	7%
New Orleans	3,913	5,740	-1,827	(47%)
New York City	7,571	2,180	5,391	71%
Newark	3,581	1,432	2,149	60%
Philadelphia	1,882	2,061	-179	(10%)
Phoenix	10,026	5,802	4,224	42%
Salt Lake City	7,547	3,271	4,276	57%
San Antonio	36,228	7,548	28,680	79%
San Diego	4,348	3,894	454	10%
San Francisco	8,308	12,147	-3,839	(46%)
Seattle	3,269	3,763	-494	(15%)
St. Paul	3,772	3,337	435	12%
Washington	8,688	3,130	5,558	64%
Other	1,967	2,195	-228	(12%)

Source: ICE.

In 2013, ICE agents reported encountering 193,000 criminal aliens — yet they targeted only 125,000 of these criminal aliens for deportation, letting off 68,000, or 35 percent of the total. The ICE field offices with the largest ratios of criminal releases were San Antonio, New York City, DC/Virginia, and Newark (N.J.).

These figures suggest that despite claims of a focus on public safety, the administration's prosecutorial discretion criteria are allowing factors such as family relationships, political considerations, or attention from advocacy groups to trump criminal convictions as a factor leading to deportation.

For example, the prosecutorial discretion directives issued by ICE headquarters instruct officers to release illegal aliens if the alien is a parent or caregiver, if the alien claims to be in school, if the alien has been here a long time, or if the alien claims to be eligible for the Deferred Action for Childhood Arrivals (DACA) program, among other factors.<sup>8</sup> If an alien is found to have applied for legal status, protocol requires the deportation charges be put on hold, and the benefits application may be expedited, presumably to spare the alien the consequences a criminal conviction might have on the alien's eligibility for the legal status.<sup>9</sup> In addition, ICE agents and officers have been instructed to ignore convictions for state crimes if the conviction occurred under a state law that the administration opposes or thinks is too harsh. Finally, many criminal aliens have been released from ICE custody, received case continuances, and sometimes even case dismissals as a result of petitions, protests, and vigils staged by illegal alien advocacy groups.

One locality that has been specifically targeted by ICE for politically motivated prosecutorial discretion is Maricopa County, Ariz. ICE attorneys in the Arizona field office reportedly are required to terminate deportation cases in which illegal aliens have been convicted of felony identity theft, which is a "crime involving moral turpitude" that requires mandatory detention and should cause the alien to be removed. Reportedly, some of these illegal aliens also have managed to qualify for DACA,

despite convictions for crimes that defrauded the state and federal governments and caused severe problems for the victim of the theft. Some of the illegal aliens benefitting from ICE's failure to enforce the law are also active in local advocacy groups demanding a halt to deportations.

The release of so many convicted criminals back into U.S. communities, when they could be removed to their home countries, is a large-scale abuse of authority that inevitably leads to public harm. There is no possible excuse or logical argument, and certainly no legal justification, for failing to deport tens of thousands of aliens with criminal convictions who have been encountered by an ICE officer. ICE has claimed it lacks the resources to deport more aliens than it has for the last several years, but it has yet to explain why it has used these resources primarily to detain and process individuals apprehended by the Border Patrol, whom the Border Patrol could remove, instead of deporting criminal aliens discovered by ICE officers in the interior. Instead, the administration has repeatedly asked Congress to give it *less money* for detention. This year the president's budget requests a reduction of \$255 million in funding for detention space for ICE, even though they are not now maintaining custody of every alien whose detention is required by law, nor every alien who poses a risk to the public or is a flight risk.

We know from experience and from empirical evidence that releasing illegal aliens who have already been involved in crime leads to more crime and more victims. This phenomenon was quantified in 2012 in a report commissioned by the House Judiciary committee. This analysis found that 26,000 illegal aliens who were released instead of removed went on to commit another 58,000 crimes soon after release. These additional crimes included 59 murders, 21 attempted murders, more than 4,000 major felonies and other 1,000 other violent crimes.<sup>10</sup>

Table 5. Aliens Mandatory to Detain

AOR	Mandatory	Non-Mandatory	Total	Percent Mandatory
<b>Total</b>	<b>24,659</b>	<b>7,477</b>	<b>32,136</b>	<b>77%</b>
Atlanta	1,450	722	2,172	67%
Baltimore	227	64	291	78%
Boston	490	126	616	80%
Buffalo	355	74	429	83%
Chicago	696	338	1,034	67%
Dallas	576	131	707	81%
Denver	383	106	489	78%
Detroit	391	133	524	75%
El Paso	1,384	267	1,651	84%
Houston	1,929	555	2,484	78%
Los Angeles	1,172	930	2,102	56%
Miami	1,400	403	1,803	78%
New Orleans	1,552	434	1,986	78%
New York City	507	210	717	71%
Newark	890	282	1,172	76%
Philadelphia	708	195	903	78%
Phoenix	2,055	723	2,778	74%
Salt Lake City	311	103	414	75%
San Antonio	4,691	532	5,223	90%
San Diego	1,005	104	1,109	91%
San Francisco	696	211	907	77%
Seattle	955	487	1,442	66%
St. Paul	361	116	477	76%
Washington	475	231	706	67%

Source: ICE.

Table 6. Aliens Detained, 2013

<b>Pending Final Order</b>	
Detained	18,294
Non-Detained	922,706
<b>Total</b>	<b>941,000</b>
<b>Post Final Order</b>	
Detained	13,842
Non-Detained	858,662
<b>Total</b>	<b>872,504</b>
<b>Total Docket</b>	<b>1,813,504</b>
Percent Detained	1.77%

Source: ICE.

## Only a Tiny Share of ICE Cases Are in Detention

Table 5 shows the number of aliens who were in ICE detention as of the date of the report. Just over 32,000 people were being held by ICE at that time. Table 6 shows that this population is a tiny fraction (1.8 percent) of the total ICE caseload of more than 1.8 million cases, which helps explain why there is such a large number of post-final order cases who have not departed. It is not a priority for ICE to locate them, and with interior enforcement in abeyance, there is little incentive for them to leave on their own.

More than three-fourths of these individuals are in detention because their immigration and/or criminal violations are so serious that their detention by ICE is mandatory under statute, without possibility of bond. These offenses include: serious felonies, crimes of moral turpitude, drug offenses, firearms offenses, prostitution and certain domestic violence crimes.

## Conclusion

The recent campaign by advocacy groups to portray the president as a tough immigration enforcer at the helm of a system that is producing “record” deportations bears no resemblance to the reality of immigration enforcement today. Interior immigration enforcement has declined significantly and ICE is ignoring hundreds of thousands of illegal aliens, including tens of thousands with criminal convictions, who are encountered by ICE officers and agents.

Top DHS officials have indicated that they are looking for ways to further relax interior enforcement. Specifically, the administration is considering a new policy to forbid ICE officers from removing illegal aliens who have been previously deported, who are fugitives, or who have skipped immigration hearings. One faux justification for excusing these lawbreakers will be that the agency needs to better focus its limited resources on convicted criminals. The argument is misleading on many levels, including the fact that a large share of these repeat immigration violators were originally removed because of criminal convictions. Lawmakers should request that ICE produce the records detailing the criminal history of repeat immigration violators in order to shed light on this issue. Regardless of criminality, common sense dictates that those who repeatedly and habitually violate our immigration laws inherently pose a risk to public safety and to the integrity of our immigration system: What force does an order of removal have if the administration deems that those ordered removed are free to remain in the United States if they so choose? It makes a mockery of our legal system.

Rather than scaling back interior enforcement, the appropriate response for ICE to address the enormous size of its caseload, including the large number of criminal aliens who should be removed, is to become more efficient, not less productive. ICE should expand use of the accelerated forms of removal, such as expedited removal, stipulated removal, and judicial orders of removal.<sup>11</sup> Rather than relying primarily on enforcement, ICE and other DHS agencies should seek to improve compliance with visa program rules and laws against illegal hiring to reduce incentives for illegal settlement. ICE should promote partnerships, such as 287(g), that allow local governments to assist in enforcement using local resources — this is a fiscal no-brainer for ICE. The federal government should challenge sanctuary jurisdictions that obstruct immigration enforcement and make ICE’s job harder. For all its complaints about limited resources, the administration has actually expended considerable resources in the other direction: targeting states that try to support federal law enforcement, while increasing the amount of red tape for its own officers.

Expanding the Obama administration’s deliberate suppression of immigration law enforcement creates not only an extraordinary public safety risk, but undermines the very integrity of the immigration laws designed to protect U.S. workers, taxpayers, and legal immigrants.

## End Notes

<sup>1</sup> Jessica M. Vaughan, "[Lawsuit Documents Criminal Alien Releases, Decline in Enforcement, Cooked Statistics](#)", Center for Immigration Studies blog, April, 2013; and Jessica M Vaughan, "[Deportation Numbers Unwrapped: Raw Statistics Reveal the Real Story of ICE Enforcement in Decline](#)", Center for Immigration Studies *Backgrounder*, October, 2013.

<sup>2</sup> "[Weekly Departures and Detention Report](#)", ICE, October 6, 2013. For a comparison with previous fiscal year metrics, see [here](#).

<sup>3</sup> A removal is the compulsory and confirmed movement of an alien out of the United States based on a formal order of removal, with a penalty for illegal re-entry. Returns include other forms of deportation that do not carry a penalty for illegal re-entry.

<sup>4</sup> Vaughan, "[Deportation Numbers Unwrapped: Raw Statistics Reveal the Real Story of ICE Enforcement in Decline](#)"; ICE, "[FY 2013 ICE Immigration Removals](#)", December 2013.

<sup>5</sup> Vaughan, *op. cit.*

<sup>6</sup> Dan Cadman, "[A Truth Finally Admitted](#)", Center for Immigration Studies blog, March, 2014.

<sup>7</sup> See John Sandweg, former acting ICE Director, "[Who Should Be Deported?](#)" *Los Angeles Times*, March 27, 2014.

<sup>8</sup> The original prosecutorial discretion memo: John Morton, "[Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens](#)", ICE, June 17, 2011. Examples of prosecutorial discretion are recounted in these articles: Jessica M. Vaughan, "[Lawsuit Documents Criminal Alien Releases, Decline in Enforcement, Cooked Statistics](#)", CIS blog, April 9, 2013; Jessica M. Vaughan, "[ICE Exercises Prosecutorial Discretion for ID Fraud](#)", CIS blog, December 20, 2012; Jessica M. Vaughan, "[ICE Agents Protest Disciplinary Action for Enforcing Laws](#)", CIS blog, August 22, 2012; and Michael Volpe, "[Congressman blasts ICE for releasing alleged child rapist](#)", *The Daily Caller*, March 24, 2012.

<sup>9</sup> This protocol results in illegal or removable aliens with criminal convictions receiving priority for adjudication before the millions of qualified benefits applicants, similar to the way illegal alien applicants for DACA were prioritized before those applying as the spouse of U.S. citizens.

<sup>10</sup> Congressional Research Service, "[Analysis of Data Regarding Certain Individuals Identified Through Secure Communities](#)"; July 27, 2012.

<sup>11</sup> For a more detailed explanation of these tools, see "[Deportation Basics](#)", Center for Immigration Studies *Backgrounder*, July 2011.



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## Deportation Numbers Unwrapped

### Raw Statistics Reveal the Real Story of ICE Enforcement in Decline

By Jessica M. Vaughan

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A key talking point for proponents of amnesty for illegal aliens is that the Obama administration has made historic improvements to border security and immigration enforcement, leading to “record” numbers of deportations that surpass the performance of earlier administrations. In December 2012, John Morton, then-director of U.S. Immigration and Customs Enforcement (ICE), announced that his agency had removed nearly 410,000 illegal aliens that year. Major news outlets, pro-amnesty lawmakers, and other Obama administration allies heralded this apparent milestone as evidence that the border and illegal immigration were now under control.

On the same day, to far less fanfare, Morton also announced the implementation of new restrictions on how the agents and officers working under him could use their authority to enforce immigration laws. They were told to curtail the use of detainers, or immigration holds, which give ICE officers the opportunity to question and take custody of illegal aliens identified after arrest by a local law enforcement agency. This directive built on an earlier memo, issued in June 2011, which ordered ICE agents not to arrest certain broad categories of illegal aliens, including minor criminals, long-time residents, students, parents, caregivers, and a long list of other excepted categories for whom there was otherwise no statutory basis for special treatment. These and other directives have been euphemistically characterized as “prosecutorial discretion.”

This report examines data from a collection of mostly unpublished internal Department of Homeland Security (DHS) and ICE statistics, to provide an alternative evaluation of the administration’s record on immigration enforcement that is based on raw statistics rather than pre-packaged press kits. These statistics show that, contrary to what is commonly believed, in fact immigration enforcement in the interior has slowed significantly in the last few years. ICE is arresting and removing noticeably fewer illegal aliens from the interior now than was the case five years ago, and even two years ago. Its focus has shifted away from interior enforcement in favor of processing aliens who are apprehended by the Border Patrol.

While the agency claims that it has stewarded resources effectively by guiding agents to hone in on criminals, in fact the number of criminal aliens removed from the interior also has declined, even as ICE’s Enforcement and Removal Operations division (ERO) is notified of more arrested criminal aliens than ever before, through the Secure Communities program. These statistics stand in stark contrast to claims of “record deportations,” which largely have been taken at face value by the news media and many lawmakers.

The report also presents previously unpublished statistics disclosing the startlingly large number of cases on ICE’s post-final-order docket of aliens who have been ordered removed, but who remain living here in defiance of immigration enforcement. These “non-departed” illegal aliens are emblematic of the dysfunction in our immigration system, and must become a priority for enforcement before public trust in our system can be restored.

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## Key Findings

- The number of deportations resulting from interior enforcement by ICE declined by 19 percent from 2011 to 2012, and is on track to decline another 22 percent in 2013.
- In 2012, the year the Obama administration claimed to break enforcement records, more than one-half of removals attributed to ICE were the result of Border Patrol arrests that would never have been counted as a removal in prior years. In 2008, under the Bush administration, only one-third of removals were from Border Patrol arrests.
- Total deportations in 2011, the latest year for which complete numbers are available, numbered 715,495 – the lowest level since 1973. The highest number of deportations on record was in 2000, under the Clinton administration, when 1,864,343 aliens were deported.
- When claiming record levels of enforcement, the Obama administration appears to count only removals, which are just one form of deportation, and only a partial measure of enforcement. Beginning in 2011, a shift of some of the routine Border Patrol case load to ICE enabled the administration to count an artificially high number of removals.
- Homeland Security Investigations (HSI), the division of ICE that is responsible for work site enforcement, combating transnational gangs, overstay enforcement, anti-smuggling and trafficking activity, and busting document and identity theft rings, now contributes very little to immigration enforcement. In 2013 HSI has produced only four percent of ICE deportations, making just a few thousand arrests per year throughout the entire country.
- ICE is doing less enforcement with more resources. Despite reporting more encounters in 2013 than 2012, ICE agents pursued deportation of 20 percent fewer aliens this year than last.
- Enforcement activity declined in every ICE field office from 2011 to 2013, with the biggest declines in the Atlanta, Salt Lake City, Washington DC/Virginia, and Houston field offices.
- Criminal alien arrests declined by 11 percent from 2012 to 2013, despite the completion of the Secure Communities program, which generates more referrals of arrested aliens than ever before. ICE agents took a pass on hundreds of thousands of aliens who were arrested by local authorities in those years.
- ICE is carrying a case load of 1.8 million aliens who are either in removal proceedings or have already been ordered removed. Less than two percent are in detention, which is the only proven way to ensure departure.
- As of the end of July 2013 there were 872,000 aliens – nearly half of ICE's total docket – who had been ordered removed but who had not left the country.
- The State Department continues to issue tens of thousands of visas annually to citizens of countries that refuse to take back their countrymen who are ordered removed from the United States. Many of these are violent criminals.

The statistics in the tables and charts in this report are taken from internal DHS documents obtained by the Center, including:

- a series of reports prepared by the ICE/ERO Statistical Tracking Unit as part of the discovery process for *Crane v. Napolitano*, the lawsuit brought by ICE agents to challenge the Obama administration's "prosecutorial discretion" and Deferred Action for Childhood Arrivals (DACA) policies;
- two editions of the *Weekly Departures and Detention Report* covering the same 10-month period of fiscal years 2011-2013 (October 1 to the end of July), prepared by the Statistical Tracking Unit of the ICE Enforcement and Removals Operations division; and
- the *Yearbook of Immigration Statistics* published by DHS.

## Total Deportations: Lowest Number Since 1973

Figure 1 shows the total number of expulsions from the United States from 1982 to 2011. This action is commonly known as a “deportation.” In technical immigration law jargon, a deportation is actually just one form of expulsion that is a subset of removals, but for the purposes of this paper, the term deportation refers to all forms of expulsion.<sup>1</sup> They are grouped into two broad categories: removals and returns.

These enforcement actions were carried out by agents of the Customs and Border Protection (CBP) and ICE. They include aliens who were caught in the act of entering the country illegally and those who were arrested in the interior. These individuals were apprehended by or referred to agents of Border Patrol, ICE or other DHS component agencies, including: ICE’s Enforcement and Removal Operations (ERO); ICE, Homeland Security Investigations (HSI); CBP Office of Field Operation (CBP-OFO) agents at the ports of entry; officers of U.S. Citizenship and Immigration Services (USCIS), which adjudicates applications for green cards, work permits, and citizenship; or local law enforcement officers working in partnership with ICE and Border Patrol.

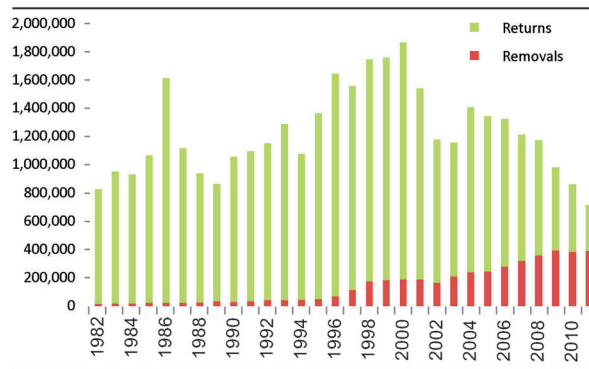
Deportation totals have fluctuated over the last 30 years, peaking in 1986, 2000, and 2004. The all-time record year was 2000, the last year of the Clinton administration. In 2011, the most recent year for which all ICE and CBP totals have been reported, deportations numbered 715,495. This was the lowest year since 1973, when 585,351 deportations were effected.

Figure 1 also shows that the proportion of removals relative to returns has increased significantly since 1997. A removal is a harsher consequence than return, because it bars the deportee from re-entry for a certain number of years and carries the potential for prison time if the deportee re-enters illegally. Aliens who are granted return are not automatically barred from coming back.

Both forms of deportation are used by both the Border Patrol and ICE. As is shown in Table 3 below, about half of the removal cases attributed to ICE are aliens who were apprehended by the Border Patrol and then turned over to ICE for processing. In addition, the Border Patrol and CBP officers handle some removal cases independently of ICE. As for returns, according to the Border Patrol statistics in Table 1, about 40 percent of returns in 2011 were cases that originated as Border Patrol apprehensions, with the other 60 percent completed by ICE and CBP.

To support the claim of “record” deportations in 2012, the Obama administration and its supporters cite the 409,000

Figure 1. Deportations: 1982 - 2011



Source: DHS

removals attributed to ICE that year. This is the highest number of removals credited to ICE in a single year; however, the number is higher because it includes the largest number of Border Patrol cases that ever have been transferred to ICE for processing in a single year (see Table 3). It does not reflect an increase in enforcement activity. In past years, these cases would have been handled by the Border Patrol, and counted in total deportations, but not as removals. Removals are at best half the number of total deportations, and do not represent the entire scope of enforcement actions taken by DHS enforcement agencies.

The President himself confirmed this statistical manipulation in 2011, speaking at a roundtable for Hispanic reporters:

*“The statistics are actually a little deceptive because what we’ve been doing is, with the stronger border enforcement, we’ve been apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours, sent back — that’s counted as a deportation.” he said.<sup>2</sup>*

### Border Patrol Metrics: More Consequences for Fewer Cases

Table 1 shows the case disposition, or outcome, for each alien apprehended by the Border Patrol in 2012. Two-thirds of the aliens caught that year were processed as a formal removal – either expedited removal or the reinstatement of a prior order of removal. About one-fifth were granted the more lenient treatment of voluntary return. As shown in Table 2 and the accompanying Figure 2, 2012 (the year of “record” deportations) was the first year ever in which a majority of Border Patrol apprehensions resulted in the formal removal of the alien, as opposed to voluntary return. Historically, the vast majority of aliens apprehended by the Border Patrol were allowed to return rather than face removal. Programs that were set up in 2011 to process more border apprehension cases as formal removals were implemented with the stated purpose of deterring repeated crossing attempts, but had the side benefit of boosting ICE’s removal statistics.<sup>3</sup>

The other significant trend in the Border Patrol case dispositions is that the number of reinstatements of prior removal orders has increased noticeably over the decade, both in absolute numbers and as a share of the total case load. These are cases of individuals who have been caught and removed on multiple occasions. Once a tiny share of the Border Patrol case load, now about one-fourth of those arrested at the border are processed as reinstatements. This could indicate that the rewards of illegal entry still are believed to outweigh the risk of apprehension, or the consequences of apprehension.

Reinstatements are a significant share of ICE’s interior case dispositions as well. In 2012, more than 40,000 of the removals that resulted from an interior arrest were processed as reinstatements, representing about 24 percent of the interior removal case load.<sup>4</sup> Clearly, a large number of previously deported aliens have managed to re-enter illegally and carry on for some time before detection, typically after arrest for another crime or traffic offense.

Outcome	Number	%
Expedited Removal	145,245	40
Reinstatement of Prior Removal Order	99,420	27
Voluntary Return	80,516	22
Warrant of Arrest/Notice to Appear	28,339	8
Expedited Removal with Credible Fear	4,065	1
Other	7,183	2
<b>Total</b>	<b>364,768</b>	<b>100</b>

Source: Border Patrol

**Table 2. Border Patrol Apprehensions by Disposition: 2000-2012**

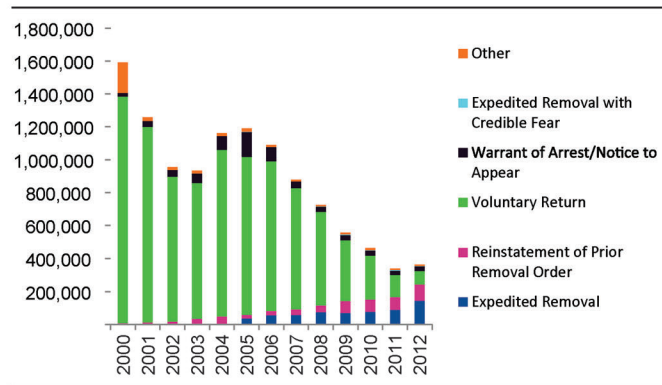
Outcome	2000	2001	2002	2003	2004	2005	2006
Expedited Removal	9	24	12	19	633	35,936	57,116
Reinstatement of Prior Removal Order	7,389	12,626	17,673	33,531	47,649	23,434	25,017
Voluntary Return	1,378,133	1,187,944	879,302	824,098	1,012,516	956,471	908,626
Warrant of Arrest/Notice to Appear	19,497	35,639	41,879	59,219	83,094	153,309	85,074
Expedited Removal with Credible Fear				1	57	634	1,489
Other	185,665	19,863	14,880	15,055	16,379	19,178	11,786
<b>Total</b>	<b>1,590,693</b>	<b>1,256,096</b>	<b>953,746</b>	<b>931,923</b>	<b>1,160,328</b>	<b>1,188,962</b>	<b>1,089,108</b>

Outcome	2007	2008	2009	2010	2011	2012
Expedited Removal	57,950	75,646	71,257	78,133	90,499	145,245
Reinstatement of Prior Removal Order	34,063	39,648	70,325	73,700	75,404	99,420
Voluntary Return	736,138	567,000	371,509	268,142	134,108	80,516
Warrant of Arrest/Notice to Appear	38,958	32,846	30,687	30,157	28,291	28,339
Expedited Removal with Credible Fear	1,711	1,470	1,973	2,828	3,701	4,065
Other	7,929	7,255	10,207	10,422	8,249	7,183
<b>Total</b>	<b>876,749</b>	<b>723,865</b>	<b>555,958</b>	<b>463,382</b>	<b>340,252</b>	<b>364,768</b>

Source: Border Patrol

Figure 2. Border Patrol Apprehensions by Disposition: 2000-2012



Source: Border Patrol

## Interior Enforcement Metrics: Doing Less with More

Americans understand that immigration enforcement in the interior is vital to the rule of law, preventing illegal employment, public safety, and national security. Experts estimate that about 60 percent of the approximately 11.7 illegal aliens who are residing here originally entered the country by illegally crossing a land border, and about 40 percent were admitted through an official port of entry and overstayed their visa or authorized admission. Most illegal aliens do not live in the border region; they are dispersed throughout the nation. Besides the seven million or so aliens who are working illegally, there are more than one million removable criminal aliens who are at large in U.S. communities as a result of release from jail or prison, or after having re-entered illegally after deportation.<sup>5</sup>

To address this problem, Congress has provided ICE with increased funding to enforce immigration laws and remove illegal aliens. In 2008, ICE received \$5.6 billion and 17,938 full-time equivalent (FTE) positions. This grew to \$5.9 billion and 20,271 FTE positions in 2012 – a growth rate of five percent in funding and 13 percent in staff.<sup>6</sup> With additional funding, ICE has been able to launch new technology-based initiatives such as the Secure Communities program, which has dramatically increased its ability to locate illegal aliens who have been arrested and/or booked into jail by local officers for local crimes.

The resource and programmatic enhancements did contribute to increases in interior enforcement from 2008 to 2010, but this activity has declined considerably since 2010. As shown in Table 3 and Figure 3, the number of deportations that resulted from interior enforcement by the two primary agencies of ICE (ERO and HSI) declined by 19 percent from 2011 to 2012, and are projected to fall another 22 percent in 2013.

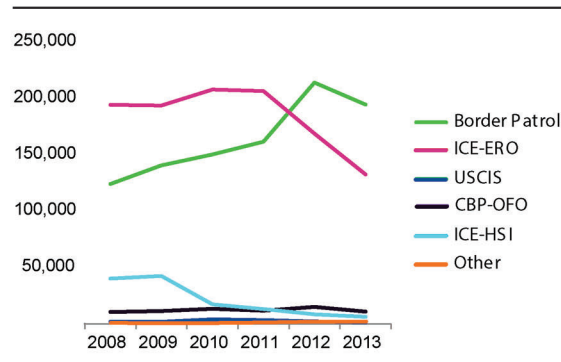
Table 3 also confirms President Obama's statement that the primary driver of the removal numbers is Border Patrol arrests, not interior enforcement. In 2012, more than half (52%) of deportations were the result of a Border Patrol arrest. In 2008, only 33 percent of deportations were the result of a Border Patrol arrest; at that time most illegal border crossing cases were processed by the Border Patrol rather than transferred to ICE.

These statistics also reveal that under the Obama administration, the resources of HSI, which is the division of ICE that is responsible for work site enforcement, combating transnational gangs, overstay enforcement, anti-smuggling and trafficking activities, and busting document and identity theft rings, have been diverted to other activities. As a result HSI now makes only a negligible contribution to immigration enforcement. In 2008, HSI arrests produced 17 percent of ICE-initiated deportations; in 2013 they are projected to produce only four percent of ICE-initiated deportations.

Program	2008	2009	2010	2011	2012	2013 projected
Total	371,235	389,834	392,862	396,906	409,849	347,102
Border Patrol	123,985	140,473	150,240	161,454	213,834	194,407
CBP-OFO	10,466	11,420	13,387	11,697	15,045	10,948
USCIS	1,935	1,929	4,008	3,438	2,207	1,191
ICE-ERO	194,234	193,465	207,680	206,314	168,613	132,546
ICE-HSI	39,223	41,494	16,417	12,287	7,584	5,441
Other	1,392	1,053	1,130	1,716	2,566	2,570

Source: ICE

Figure 3. Removals by Program: 2008-2013



Source: ICE

## ICE Metrics Under “Prosecutorial Discretion”

Table 4 presents some of the key metrics for interior immigration enforcement, which come from internal ICE reports that cover the first 10 months of fiscal years 2012 and 2013 (October 1 to the end of July) – the same time period for each year.

These figures provide a more detailed accounting of the drop-off in enforcement activity by ICE/ERO, the division of ICE that is the primary source of interior enforcement. In addition to processing cases referred by other agencies, ERO is responsible for screening aliens who are in jail or prison after committing local crimes, aliens arrested for local offenses such as drunk driving or other traffic offenses, and aliens who have absconded from immigration proceedings. These activities represent the vast majority of current interior enforcement activity.

The first indicator, departures, is the equivalent of deportations (removals plus returns). As of July 2013, ICE had deported nine percent fewer aliens than at the same point in 2012. As discussed above, about half of these deportation cases are aliens apprehended by the Border Patrol.

Departures of criminals have remained nearly constant, but “non-criminal” removals dropped by about 15 percent. In ICE nomenclature, the term “criminal alien” applies to aliens who have been convicted of a felony or misdemeanor. “Non-criminals” includes those with lesser offenses such as traffic infractions, those who admitted to crimes but were not sentenced to jail, those who were not prosecuted, repeat immigration violators, those who skipped out on immigration hearings, those who ignored orders to depart, and a small number of individuals who merely were found to be here illegally or who violated the terms of their legal admission by working or overstaying.

According to the metrics that measure ICE/ERO activity – Encounters, Detainers, Arrests, and Charging Documents Issued<sup>7</sup> – interior enforcement has declined to a greater degree than indicated by the Departures metric alone. Even though ICE agents had encountered slightly more aliens at this point in 2013 than in 2012, they pursued deportation of about 20 percent fewer of them compared to the year before.

These metrics again confirm that the recent increase in the number of ICE removals is driven by the increase in Book-Ins

from other agencies – namely the Border Patrol – and not by an increase in ICE arrests. In each of the two partial years, the number of Book-Ins (to ICE custody) reported is much larger than the number of detainees, arrests, or charging documents issued by ICE itself. According to these records, ICE took custody of more than 200,000 aliens who were apprehended by another agency (the Border Patrol).

These statistics reveal that ICE pursues deportation for only a fraction of the illegal aliens encountered by its agents. In the period of 2012 studied, ICE issued charging documents for 35 percent of the aliens that were encountered. In the same period in 2013, ICE pursued deportation of 27 percent of the aliens encountered. In other words, over the last two years, ICE has allowed about two-thirds of the aliens encountered or referred to its agents to go free and escape deportation. Considering that these encounters are mostly the result of referrals from local jails and police departments, or due to fingerprint matches after arrest, this should be a serious public safety concern to federal and local lawmakers alike, as well as the public. The restrictions imposed on ICE agents as a result of prosecutorial discretion mandates are allowing literally hundreds of thousands of illegal alien offenders to return to U.S. communities each year in defiance of our laws.

Metric	2012	2013	Change
Total Departures	334,249	305,578	-9%
Criminal Departures	174,858	169,385	-3%
Non-Criminal Departures	159,391	136,193	-15%
Total Docket	1,705,332	1,802,660	6%
Pending Final Order	848,416	930,511	10%
Post Final Order	856,916	872,149	2%
Avg. Daily Population Detained	33,839	33,978	0%
Avg. Length of Stay (in days)	26	29	8%
Encounters	591,613	597,005	1%
Detainers	236,087	176,901	-25%
Arrests	221,656	176,194	-21%
Charging Documents Issued	208,728	162,610	-22%
Book-Ins (includes cases from other agencies)	395,824	368,174	-7%

Source: ICE

## Enforcement Activity Declined in Every ICE Field Office

Table 5 shows the steep decline in the number of aliens selected by ICE for deportation in each Field Office from 2011 to 2013. The figures show the number of charging documents issued in the first 10 months of each fiscal year (October to July).<sup>8</sup>

Overall, ICE/ERO initiated deportation for 34 percent fewer aliens in 2013 than the same period in 2011.

The Field Offices that saw the largest declines in the number of aliens put on the path to removal were Atlanta, Salt Lake City, Washington DC/Virginia, and Houston. The smallest declines were in the San Antonio and New York City Field Offices. No Field Office increased the number of aliens charged, even though the Secure Communities program was expanded in most of these jurisdictions over the three-year time period.

**Table 5. Charging Documents Issued by ICE Field Office:  
Oct.-July FY2011, 2012 and 2013**

	2011	2012	2013	% Change
Total	226,411	208,281	149,475	-34%
Atlanta	19,307	17,539	7,293	-62%
Baltimore	1,944	1,859	1,328	-32%
Boston	3,063	3,415	2,525	-18%
Buffalo	1,279	1,151	1,086	-15%
Chicago	14,064	11,244	8,402	-40%
Dallas	13,703	11,701	9,552	-30%
Denver	5,692	4,718	3,447	-39%
Detroit	5,071	4,642	3,452	-32%
El Paso	4,540	4,460	2,927	-36%
Houston	13,384	12,148	7,680	-43%
Los Angeles	23,319	21,398	14,379	-38%
Miami	10,494	11,144	7,933	-24%
New Orleans	10,630	9,595	6,696	-37%
New York City	6,910	6,379	6,594	-5%
Newark	3,996	3,849	3,022	-24%
Philadelphia	4,464	3,893	3,470	-22%
Phoenix	11,686	10,456	7,854	-33%
Salt Lake City	6,019	5,086	3,097	-49%
San Antonio	11,197	13,177	10,745	-4%
San Diego	10,435	9,038	6,213	-40%
San Francisco	22,239	19,348	14,459	-35%
Seattle	6,873	5,985	4,775	-31%
St. Paul	5,714	5,032	3,816	-33%
Washington, DC	6,306	5,652	3,424	-46%
Other	4,082	5,372	5,306	30%

Source: ICE

## Prosecutorial Discretion Results in Fewer Criminal Alien Arrests

The Obama administration has rationalized its policy of “prosecutorial discretion” and amnesty for certain groups of illegal aliens as necessary to maintain a focus on deporting criminal aliens and those who pose a threat to public safety. Yet the total number of criminal alien arrests also declined by 11 percent from 2012 to 2013, as shown in Table 6, which covers activity for the first 10 months of 2012 and 2013.

The biggest declines in criminal alien arrests occurred in the San Diego, Washington DC/Virginia, Miami, and El Paso field offices. Only three field offices increased criminal alien arrests: Dallas, Philadelphia, and Phoenix.<sup>9</sup>

Table 6. Convicted Criminal Arrests by Field Office:  
Oct.-July FY2012 and FY2013

	2012	2013	% Change
Total	143,598	128,441	-11%
Atlanta	8,944	7,874	-12%
Baltimore	1,308	1,150	-12%
Boston	2,384	1,914	-20%
Buffalo	992	968	-2%
Chicago	7,614	6,958	-9%
Dallas	10,272	11,026	7%
Denver	4,039	3,462	-14%
Detroit	4,090	3,283	-20%
El Paso	2,181	1,720	-21%
Houston	8,454	7,043	-17%
Los Angeles	13,771	12,500	-9%
Miami	6,962	5,466	-21%
New Orleans	5,711	5,133	-10%
New York City	3,631	3,110	-14%
Newark	2,008	1,655	-18%
Philadelphia	2,708	2,963	9%
Phoenix	4,262	5,044	18%
Salt Lake City	4,144	4,128	0%
San Antonio	17,387	17,332	0%
San Diego	4,972	3,062	-38%
San Francisco	14,830	12,210	-18%
Seattle	4,379	3,769	-14%
St. Paul	3,898	3,444	-12%
Washington, DC	3,822	2,852	-25%
Other	835	375	-55%

Source: ICE

## Secure Communities Increases Criminal Alien Referrals

Some defenders of the administration's lackluster enforcement record have suggested that the lower ICE interior deportation numbers are the result of better enforcement at the southwest border taking the pressure off of ICE in the interior, plus the implementation of the Deferred Action for Childhood Arrivals amnesty (known as DACA). This explanation is unconvincing. First of all, the Border Patrol reported an increase in apprehensions in 2012, which is generally taken as an indication that illegal crossing attempts (and successful illegal crossings) have increased. A recent study by the Pew Hispanic Center seemed to corroborate the start of a new upward trend in illegal immigration, estimating that the size of the settled illegal alien population is back on the rise.<sup>10</sup> Moreover, even if new illegal arrivals had slackened, the population of established illegal residents is still large enough to keep ICE very busy – even if it focused only on the estimated 1.9 million criminal aliens living in the United States.

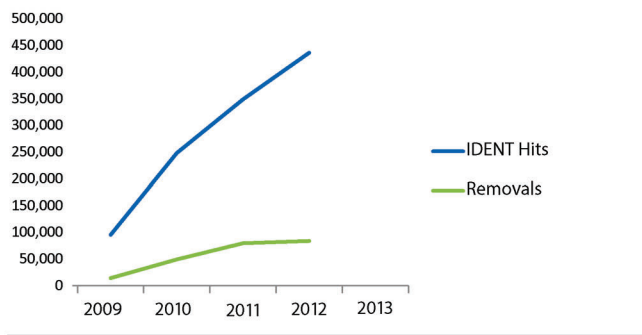
Moreover, in 2012 ICE completed the implementation of the Secure Communities program, which alerts ICE whenever a non-citizen is arrested and fingerprinted by a law enforcement agency. As shown in Table 7, this initiative generated more than 400,000 referrals of arrested aliens to ICE in 2012. This does not include the large number of criminal aliens who do not have fingerprints on file with DHS who also are discovered by local law enforcement or ICE officers working in jails. With the help of this program, ICE's interior criminal alien removal numbers should be increasing, not decreasing, especially considering that illegal alien criminals can be removed expeditiously if ICE personnel are encouraged and trained to do so properly.

Yet program data published by ICE indicate that removals generated by Secure Communities are also declining, and are projected to be 17 percent lower in 2013 compared with 2012, even though the number of aliens identified is larger than ever.

	2009	2010	2011	2012	2013* Partial	2013 Projected
IDENT Hits	95,664	248,166	348,970	436,377	344,499	459,332
Jurisdictions Added	88	570	937	1,479	106	
Removals	14,364	49,511	79,900	83,815	51,892	69,189**
Removal/Hit Rate	15%	20%	23%	19%	15%	

\*as of May 31, 2013  
 \*\* projected decrease of 17%  
 Source: ICE

Figure 4. Arrested Aliens Identified via Secure Communities: 2009-2013



Source: ICE

## Few Dreamers Needed Deferred Action

Some have claimed that the decline in enforcement is to be expected following the implementation of the DACA program. According to former DHS Secretary Janet Napolitano, the program was needed in order to spare hundreds of thousands of long-resident illegal aliens from the threat of deportation, and free up ICE agents to work higher priority cases of criminals and national security threats.

The statistics do not support this claim. Relatively few DACA-eligible illegal aliens actually were facing the threat of deportation. According to ICE records released for *Crane v. Napolitano*, as of March 30, 2013, more than seven months after the launch of the program, there were 4,594 active cases of illegal aliens on ICE's docket who were granted deferred action under DACA. These are much too small a share of the case load to have suppressed enforcement to the degree that has occurred. And, as discussed above, the number of criminal removals has declined, not increased, after DACA.

Clearly, the DACA program was neither needed nor intended to save low-risk illegal aliens from deportation, nor to allow ICE to focus on higher priority cases. The obvious purpose of DACA was to provide work permits and legal presence to hundreds of thousands of long-resident illegal aliens under age 31. DACA has had no noticeable effect on ICE's workload; instead, it has contributed to the "catch and release" nature of immigration enforcement today.<sup>11</sup>

## ICE's Docket: The Non-Departed

Table 8 is a snapshot of ICE's case load at the end of July in 2012 and 2013. This table illustrates the enormity of the immigration enforcement case load – more than 1.8 million cases in 2013.

Of these 1.8 million aliens on the path to deportation in 2013, fewer than 30,000 were in detention at any one time, or about 1.7 percent. Those detained are the aliens on ICE's docket who are most likely to actually depart the country.

Just over half of ICE's daunting docket of cases is made up of individuals who are in proceedings and have not yet been ordered removed (or granted relief). The other half is made up of people who have already been ordered removed – but who are still here. A tiny share (1.5%) of these post-final-order cases are in detention; while awaiting travel documents or acceptance by their home country, but most of them will ultimately be removed.

	2012	2013
<b>Pending Final Order</b>		
Detained	21,499	16,528
Non-Detained	826,917	913,983
Total	848,416	930,511
<b>Post Final Order</b>		
Detained	14,771	13,370
Non-Detained	842,145	858,779
Total	856,916	872,149
<b>TOTAL DOCKET</b>	1,705,332	1,802,660
% Detained	2.1	1.7
Source: ICE		

The group that should be of greatest concern for policy makers is the enormous number of non-detained, post-final-order cases. These are aliens who have been accorded due process, exhausted appeals, and received a final order of removal, but who remain here in defiance of that order. As of the end of July 2013, there were 872,000 individuals on ICE's docket in this category. A relatively small share cannot be removed, either because their home country won't take them back, or because the government there is insufficiently organized to issue travel documents (see below). The vast majority of the 872,000 have simply absconded, skipped out on hearings, and continue to live here as illegal aliens. This number grew by more than 15,000 from 2012 to 2013.

### The Impact of *Zadvydas v. Davis*

Some aliens cannot be removed, or their removal takes a very long time, either because of limitations in bilateral repatriation treaties (as is the case with Cambodia), or because the home country refuses to issue or deliberately slow-walks travel documents for the alien (Cuba and Bangladesh), or because the home country government is dysfunctional (Somalia). In 2001, the Supreme Court ruled in *Zadvydas v. Davis* that such aliens may not be detained for more than six months if their removal is not imminent, except in certain uncommon circumstances.<sup>12</sup>

Because of the *Zadvydas* restrictions, and because DHS and the State Department have declined to follow a statutory mandate to put pressure on recalcitrant countries to take back their citizens, ICE has released more than 17,000 essentially un-removable aliens from detention since 2010 (See Table 9). Most of these aliens are convicted criminals. There is also an unknown number of non-criminal and/or non-detained removable aliens on the docket whose departure is prevented by their home country's recalcitrance or dysfunction. Some additional unknown number of aliens from these countries are treated as exempt from enforcement under the guidance in the Morton Memo of 2011, and thus simply are not arrested by ICE agents who encounter them.

Meanwhile, the State Department continues to issue and renew tens of thousands of visas for citizens of these countries (See Table 10). For example, in 2012 it took an average of 436 days for the government of Malaysia to issue travel documents to its citizens who were ordered removed from the United States. If any of those aliens were detained, at \$120 per day those 436 days of waiting for travel documents cost U.S. taxpayers more than \$52,000 per detained Malaysian. In 2012, the State Department issued 47,000 temporary visas to Malaysians, approving 95 percent of all applicants. Even if an unusually high number complied with their visas and returned home, and just three percent overstayed, that would add another 1,400 illegal aliens to the population who are very difficult to remove, even if they commit crimes. This could be why ICE succeeded in deporting only 31 Malaysians in 2012.<sup>13</sup>

**Table 9. Removable Aliens Released Due to *Zadvydas*: 2010-Present**

Year	
2010	4,946
2011	4,695
2012	5,346
2013 (thru March)	2,311
<b>Total</b>	<b>17,298</b>

May include multiple releases for a single alien.  
Does not include removable aliens not in detention who cannot be removed.  
Source: ICE

**Table 10. Worst Countries for Travel Document Issuance**

	Average Days to Issue Travel Documents 2010-2012		Average Days to Issue Travel Documents in 2012	Non-Immigrant Visas Issued in 2012	Visitor Visa Approval Rate
Qatar	800	Cambodia	558	3,663	66%
Cambodia	522	Iran	545	25,446	62%
St. Kitts & Nevis	410	Iraq	487	10,399	67%
Kuwait	376	Bangladesh	476	15,911	74%
Vietnam	368	St. Kitts & Nevis	467	1,390	73%
Turkmenistan	354	Malaysia	436	47,027	95%
The Gambia	350	Ivory Coast	417	4,622	72%
Sudan	339	Liberia	405	3,168	54%
Somalia	331	Niger	340	1,200	64%
Djibouti	328	Vietnam	315	58,117	78%
Burma	324	Yemen	308	3,497	52%
Iran	303	Burkina Faso	303	2,588	65%
Liberia	295	Haiti	293	29,213	46%
Iraq	269	Djibouti	286	538	35%
Niger	253	Belarus	283	11,018	80%
Yemen	252	Dem. Rep. of Congo	274	5,320	63%
Haiti	245	Somalia	273	202	38%
Sierra Leone	241	Sierra Leone	253	1,807	50%
Burkina Faso	234	Algeria	249	7,364	76%
Ivory Coast	229	Montenegro	244	3,699	69%
Zimbabwe	222	Cuba	241	20,200	61%
Lebanon	202	Kosovo	238	4,328	68%

Source: ICE and the State Department

## Traffic Offenders

Since the implementation of Secure Communities, advocates who are opposed to immigration enforcement have alleged that the program has served as an unfair and overzealous dragnet that results in the deportation of harmless people who have been turned over to ICE as a result of "minor" traffic offenses, such as a broken taillight. Advocates often imply or contend that such traffic stops were baseless, illegitimate, or trumped up in discriminatory practices by local police and sheriffs.

These claims are not supported by ICE records, which are summarized in Table 11.<sup>14</sup> In each of the last three years (2011 through 2013), about 14 percent of all aliens deported were identified due to a conviction for a traffic offense, as opposed to a misdemeanor or felony, and numbered between 40,000 and 60,000 in each of those years.

The records show that the majority of traffic offenses committed by these removed aliens were far from minor. Sixty-four percent of the aliens deported after traffic offenses were convicted of driving under the influence of alcohol or drugs. Thousands of others were convicted of hit and run.

It would be a mistake to assume that the nearly 60,000 individuals who were deported in the last four years after being convicted of mere unspecified traffic offenses were somehow unfairly or inappropriately targeted by ICE. All had immigration violations as well and it is possible, even likely, that most of these offenders had either been deported before or had skipped out on hearings.

Table 11. Traffic Offenders Removed: 2010-2013

	2010	2011	2012	2013 (Oct-March)	Total	Percent
<b>Most Serious Conviction</b>						
Hit & Run	992	1,334	1,312	479	4,117	2%
Transporting Dangerous Material	3	6	5	3	17	<1%
DUI - Drugs	681	684	733	342	2,440	1%
DUI - Alcohol	27,635	35,927	36,166	14,246	113,974	63%
Other Traffic Offense	13,028	19,041	20,044	7,487	59,600	33%
<b>Total</b>	<b>42,339</b>	<b>56,992</b>	<b>58,260</b>	<b>22,557</b>	<b>180,148</b>	<b>100%</b>

Source: ICE

## Conclusion

The Obama administration has sought to portray its performance on immigration enforcement as smarter, better, and more successful than previous administrations. To support this claim, it has presented a few statistical nuggets in clever packaging that have been artificially padded by transferring cases from the Border Patrol to ICE. To use the proverbial “apples and oranges” analogy, the Obama administration, in order to give the impression of a “record” apple harvest, has counted both apples (ICE cases) and oranges painted to look like apples (Border Patrol cases), while leaving a large number of actual apples on the trees.

A better picture of the true state of immigration enforcement in the interior, where most illegal aliens have settled and where most Americans notice the impact, emerges from this analysis of ICE’s internal statistics and metrics. Interior enforcement activity, including arrests and removals of criminal aliens, which are ICE’s highest priority, has declined significantly. More than 870,000 aliens who have been ordered removed are still living here in defiance of our laws. This dysfunction must be addressed before consideration of more mass amnesties or expansions in admissions of any kind. Until we achieve better control of illegal immigration, and the laws we have are taken seriously and enforced, there is no point in passing new ones.

## End Notes

- <sup>1</sup> For definitions and details on the immigration enforcement process, see *Deportation Basics*, by W.D. Reasoner: <http://www.cis.org/deportation-basics>.
- <sup>2</sup> <http://www.washingtontimes.com/news/2011/oct/5/napolitano-us-will-set-record-deportations-2011/#ixzz2i7xLpOIQ>
- <sup>3</sup> One of these programs was the Alien Transfer Exit Program (see <http://articles.latimes.com/2011/sep/29/local/la-me-immigrant-deport-20110930>).
- <sup>4</sup> Internal ICE statistics obtained for *Crane v. Napolitano*.
- <sup>5</sup> ICE statistics cited in <http://www.cis.org/vaughan/secure-communities-please>.
- <sup>6</sup> DHS Budgets in Brief, 2009 and 2013.
- <sup>7</sup> Encounters occur when an alien comes into contact with an ICE officer in an official setting, such as in a jail or street operation, or when an ICE agent is notified about an inmate in local custody, such as through a query to the ICE Law Enforcement Support Center.
- <sup>8</sup> Figures do not include cases generated by the 287(g) programs operating in these districts.
- <sup>9</sup> The increase in criminal arrests in Phoenix may be due to the cancellation of several 287(g) programs in Arizona. These programs formerly handled a significant share of ICE's criminal work load before their cancellation in 2012, and following the termination of the programs, the workload shifted back to ICE. See <http://www.cis.org/vaughan/stopping-immigration-enforcement>.
- <sup>10</sup> <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.
- <sup>11</sup> See <http://www.cis.org/vaughan/lawsuit-documents-criminal-alien-releases-decline-enforcement-cooked-statistics>.
- <sup>12</sup> See <http://www.cis.org/stopping-release-of-criminal-alien> for more details.
- <sup>13</sup> Interestingly, since 2004, Malaysia has been trying to crack down on its own illegal immigration problem. Illegal aliens there reportedly are subject to harsh treatment, including large fines and caning. Amnesty International claims that 10,000 people have been caned in Malaysia for immigration violations.
- <sup>14</sup> The source of these figures is the set of ICE reports released under discovery in *Crane v. Napolitano*.



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## ICE Document Details 36,000 Criminal Alien Releases in 2013

By Jessica M. Vaughan

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### Summary

In 2013, ICE freed 36,007 convicted criminal aliens from detention who were awaiting the outcome of deportation proceedings, according to a document obtained by the Center for Immigration Studies. This group included aliens convicted of hundreds of violent and serious crimes, including homicide, sexual assault, kidnapping, and aggravated assault. The list of crimes also includes more than 16,000 drunk or drugged driving convictions. The vast majority of these releases from ICE custody were discretionary, not required by law (in fact, in some instances, apparently contrary to law), nor the result of local sanctuary policies.

The document reveals that the 36,007 convicted criminal aliens freed from ICE custody in many instances had multiple convictions. Among them, the 36,007 had nearly 88,000 convictions, including:

- 193 homicide convictions (including one willful killing of a public official with gun)
- 426 sexual assault convictions
- 303 kidnapping convictions
- 1,075 aggravated assault convictions
- 1,160 stolen vehicle convictions
- 9,187 dangerous drug convictions
- 16,070 drunk or drugged driving convictions
- 303 flight escape convictions

### Background

This enumeration of FY 2013 criminal aliens freed and the criminal convictions tied to these individuals was prepared by ICE in response to congressional inquiries following a report published by the Center for Immigration Studies. That report, "[Catch and Release](#)", showed that ICE officers declined to bring immigration charges in 68,000 cases of criminal aliens they encountered in 2013.

It is important to recognize that the 36,007 criminal aliens counted in this document are a *different set* of cases from the 68,000 releases reported earlier. The 36,007 criminal aliens counted here are aliens who were being processed for deportation and were freed while awaiting the final disposition of their cases, or afterwards. The 68,000

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**Table 1. Criminal Convictions of Aliens Released from ICE Custody in 2013**

Traffic Offense-Traffic Offense	17,228
Traffic Offense-Driving Under Influence Liquor	15,635
Dangerous Drugs	9,187
Larceny	5,055
Immigration	3,958
Obstructing Judiciary, Congress, Legislature, etc.	3,245
General Crimes (including "crimes against person", "property crimes", "morals-decency crimes", and "public order crimes")	2,867
Assault	2,691
Public Peace	2,608
Burglary	2,510
Fraudulent Activities	2,394
Obstructing the Police	2,104
Weapon Offenses	1,724
Domestic Violence	1,317
Battery	1,267
Invasion of Privacy	1,249
Forgery	1,216
Stolen Vehicle	1,160
Stolen Property	1,131
Family Offenses	1,099
Assault - Aggravated Assault	1,075
Robbery	790
Sex Offenses (not involving Assault or Commercialized Sex)	727
Damage Property	725
Traffic Offense-Hit and Run	647
Commercialized Sexual Offenses	606
Liquor	447
Traffic Offense-Driving Under Influence Drugs	435
Sexual Assault	426
Health/Safety	425
Simple Assault	395
Flight Escape	303
Kidnapping	228
Threat	167
Intimidation	141
Homicide	116
Gambling	62
Extortion	53
Juvenile Offenders	52
Embezzlement	51
Conservation	49
Arson	47
Tax Revenue	36
Smuggling	26
Homicide - Negligent Manslaughter-Vehicle	24
Obscenity	21
Homicide - Negligent Manslaughter-Weapon	19
Bribery	15
Voluntary-Manslaughter	14
Traffic Offense-Transporting Dangerous Material	11
Homicide-Willful Kill-Gun	10
Homicide-Willful Kill-Weapon	9
Homicide-Willful Kill-Non-Family-Weapon	6
Homicide-Willful Kill-Family-Gun	5
Sovereignty-Treason, Sabotage	4
Homicide-Willful Kill-Family-Gun	2
Abortion-Abortifacient (selling, manufacturing, delivering, etc.)	1
Military-Military Desertion	1
Homicide-Willful Kill-Family-Weapon	1
Homicide-Willful Kill-Public Official-Gun	1
<b>Total Convictions</b>	<b>87,818</b>

Source: ICE.

releases were cases of alien criminals encountered by ICE officers, usually in jails, but who were let go in lieu of processing them for immigration removal charges in that year.

The 36,007 criminal aliens itemized in this document were released by means of bond; order of recognizance (unsupervised); order of supervision (which can consist of nothing more than a periodic telephone call to a designated ICE telephone number); an alternative to detention (such as an electronic ankle bracelet, or other form of tracking device); or parole (a form of legal status). The ICE document does not specify the number or type of criminal aliens released according to the form of release.

Separate information obtained by the Center for Immigration Studies reveals that the vast majority of these releases were discretionary, or even contrary to the requirements of various provisions of the Immigration and Nationality Act. Only a small share of these criminal aliens (fewer than 3,000) were released in accordance with a 2001 Supreme Court decision, *Zadvydas v. Davis*, which prevents ICE from indefinitely detaining certain aliens whose countries will not accept them back. (See "[Reining in Zadvydas v. Davis](#)".) Another small number may have been offered parole or legal status, either in exchange for their cooperation with ICE or another law enforcement agency in connection with a criminal prosecution, or because of another compelling public interest.

## Analysis

This document raises questions about the Obama administration's management of enforcement resources, as well as its enforcement plans and priorities. For instance, a series of directives to ICE agents and officers known as "prosecutorial discretion", and the implementation of the Deferred Action for Childhood Arrivals (DACA) program, have made certain broad categories of illegal aliens off-limits for enforcement. These policies have forced ICE officers in the field to avoid or cease deportation action in thousands of cases, [even in cases of aliens charged with or convicted of crimes](#). ICE officers have testified in federal court that some arrested aliens have claimed to be eligible for DACA knowing that they likely will be released from custody and from immigration charges without verification of their claims. ICE should be asked to disclose how many and which of the 36,007 criminal alien releases occurred due to these recent policy changes.

In addition, over the last year certain advocacy groups have called for the Obama administration to scale back the number of deportations or halt them altogether. A number of criminal aliens in detention while awaiting completion of deportation proceedings have been the subject of petition campaigns, prayer vigils, demonstrations, and other forms of protest against enforcement. Typically these protests occur on behalf of a criminal alien who has family members in the United States. ICE should be asked to disclose how many of these releases came after such appeals were made on behalf of criminal aliens.

These figures call into question President Obama's request to Congress for permission to reduce immigration detention capacity by 10 percent in favor of permission to make wider use of experimental alternatives to detention. These alternatives already are subject to serious questions about their efficacy and cost, and ICE's methodology for evaluating the results needs to be carefully scrutinized. The reduced detention bed-space request, submitted as part of the executive branch's budget plan, comes at a time in which ICE's detention space needs are expanding due to rapidly increasing illegal arrivals along parts of the southwest border and continued high numbers of criminal aliens encountered by agents in the interior. The news that ICE released so many criminal aliens convicted of so many serious and violent crimes suggests that ICE could use more detention capacity, not less, in order to prevent further harm to the public from these individuals. ICE should be asked to track and disclose what additional crimes may have been committed by these individuals after their release.

ICE devotes very few resources to victim assistance and notification programs, and these meager efforts are focused primarily on helping victims of human trafficking rather than those who have been harmed by alien criminals. In fact, the only "ombudsman" type of position ICE has established — and maintained even in the face of specific congressional de-funding of the position — focuses on aiding illegal aliens, not their victims. ICE should establish a notification system, modeled on the most successful federal, state, or local victim-witness assistance programs, to alert the victims of alien criminals, local law enforcement agencies, and the public when violent or dangerous criminal aliens are released from its custody.

The criminal aliens released in 2013 had more than 300 convictions for "flight escape," indicating that they had a prior history of fleeing from authorities. Experience (and common sense) suggests that such individuals would be poor candidates

for release while awaiting possible deportation. Studies have shown that fewer than a quarter of deportable aliens who are [released from custody](#) while awaiting the outcome of immigration proceedings will show up for immigration court to finish their case. The departments of Homeland Security and Justice should be asked to disclose how many of these criminal aliens became fugitives after their release from ICE custody.

## Conclusion

The revelation that 36,007 criminal aliens were released from ICE custody in 2013, an average of nearly 100 per day, is shocking, and could further shake public faith in the effectiveness of current immigration enforcement policies. This information is sure to raise concerns that, despite professions of a focus on removal of criminal aliens, Obama administration policies frequently have allowed political considerations to trump public safety factors and, as a result, aliens with serious criminal convictions have been allowed to return to the streets instead of being removed to their home countries.

DHS Secretary Jeh Johnson is on the verge of announcing the results of a review of deportation policies, ordered by the president in response to immigrant advocacy group protests. Most observers believe this review will result in policy changes to further expand the number and categories of illegal aliens who effectively are exempt from immigration enforcement and, if experience is a guide, will further increase the number of criminal aliens who are released instead of deported. Lawmakers and the public must insist that DHS fully disclose and be held accountable for the public safety impact of any additional deportation policy changes.



## ICE Enforcement Collapses Further in 2014

By Jessica M. Vaughan

Immigration enforcement activity by ICE continued to decline significantly in 2014, according to ICE records.<sup>1</sup>

- Total deportations credited to ICE, the majority of which were illegal aliens arrested by the Border Patrol and CBP officers at the ports of entry, declined 15 percent from 2013 to 2014.
- Deportations from the interior dropped 34 percent from last year, and are 58 percent lower than the peak in 2009.
- The number of criminal aliens deported from the interior also declined 23 percent since last year, and declined by 39 percent since the peak in 2011.
- Catch and release policies continue. In 2014, deportation processing was initiated for approximately 143,000 aliens out of the 585,000 aliens encountered by ICE agents. Tens of thousands of those let go had been labeled a criminal threat.
- The number of aliens who have received a final order of removal, but who are still in the United States, has risen to nearly 900,000. Nearly 167,000 of these are convicted criminals who were released by ICE and are currently at large.

ICE enforcement records plainly refute claims of robust enforcement made by the Obama administration and its allies. Reports asserting “record” levels of enforcement have to rely on either cherry-picked metrics, comparisons of unlike sets of cases, or unconventional definitions to support this claim.

### Total Deportations by ICE: 2014

As of late September 2014, ICE had carried out approximately 306,000 deportations. This includes all forms of deportation — both removals and returns.<sup>2</sup> These are deportations carried out by ICE, but they may have originated with an arrest by any of the DHS agencies. They include individuals arrested by ICE Enforcement and Removal Operations (ERO) in jails or in fugitive operations; by ICE Homeland Security Investigations (HSI) in security, crime, gang, or worksite operations; by Border Patrol agents while crossing into the United States illegally between ports of entry; by Customs and Border Protection officers while attempting to gain admission at the legal ports of entry; or by USCIS officers as a result of a failed application for an immigration benefit.

Figure 1 presents monthly deportation figures from October 2012 through September 2014, covering the three most recent fiscal years.<sup>3</sup> These statistics show that 2014 ICE deportation levels ran consistently below 2013 and 2012 levels for most of the year, except for the month of July. The trend indicates that the lower year-end totals are not the result of the surge of illegal Central American families and unaccompanied juveniles that peaked in the spring and early summer, which resulted in the diversion of some ICE interior resources to process and release the illegal arrivals. Rather, the overall decline is the result of consistently lower levels of enforcement activity, particularly in the interior, caused by Obama administration policies that are euphemistically known as prosecutorial discretion, which in practice have shielded tens of thousands of illegal aliens from deportation, as will be shown below.

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These figures are the continuation of several years of decline in total ICE deportations, as shown in Figure 2. The figures included here date from 2007 onward. Total deportation numbers from before 2007 are not comparable to post-2007 totals because they include removals only, not returns.

## ICE Interior Deportations: 2014

As discussed above, the total deportation figures include cases resulting from arrests by all DHS agencies. The mix of types of deportation cases — that is, border vs. interior cases — has changed significantly since 2008. In 2008, most of the deportations carried out by ICE were interior cases that originated with an arrest by an ICE officer. In 2012, the number of interior cases dropped sharply and the number of border deportation cases referred to ICE grew sharply. Ever since then, the majority of deportations credited to ICE have been border cases. This development is illustrated in Figures 3 and 4.<sup>4</sup>

Figure 3 shows the total number of deportations credited to ICE broken down according to whether they originated as a border area arrest or as an arrest of an alien in the interior. The number of interior arrests declined significantly after 2011. In addition, the share of total arrests that were interior arrests declined sharply.

Figure 4 shows the breakdown of border and interior arrests as a percentage of total deportations credited to ICE. As recently as 2009, interior arrests were two-thirds of total deportations credited to ICE. In 2014, interior cases were only one-third of all ICE deportations. This illustrates a significant change in priorities for ICE. Beginning in 2012, less than half of ICE deportations resulted from ICE interior arrests.

The replacement of interior cases with border cases has masked a significant decline in removals of aliens from the interior of the country that began in the 2012 fiscal year. This decline corresponds with the implementation of the so-called “prosecutorial discretion” policies issued by then-ICE Director John Morton in June 2011.<sup>5</sup> According to this new policy, ICE agents and officers are not permitted to arrest certain large categories of illegal aliens, including those who have not been convicted of another crime and those with family members here.

Since this policy was put into place, ICE deportations from the interior have plummeted from a peak of about 236,000 in 2009 to about 100,000 in 2014. Figure 5 illustrates this decline of 58 percent in six years.

This sharp deterioration in interior enforcement has implications for public safety. Because for years ICE has been focused on removing illegal aliens who have committed crimes as the top priority, a decline in interior enforcement means a decline in the number of criminal aliens deported.

Figure 6 shows the decline in deportations of criminal aliens from the interior. Even though most of the decline in total interior deportations resulted from a steep drop in the number of non-criminals (defined as lacking a criminal conviction), still from 2009 to 2014 criminal deportations declined by 28 percent and have declined by 45 percent since 2012, the peak year for criminal alien deportations. In 2014, ICE deported approximately 32,000 fewer criminals from U.S. communities in the interior than it did in 2009 and 69,000 fewer than it did in 2012.

## ICE Metrics Confirm Decline Due to “Prosecutorial Discretion”

Paradoxically, the decline in ICE interior enforcement, including a decline in criminal alien deportations, has occurred over a time period in which ICE was able to identify more criminal aliens than ever before. Basic ICE metrics tracked by the agency on a weekly basis indicate that ICE continues to run a massive catch and release program in which agents are forced to release more deportable aliens than they are allowed to put on the path to deportation.

Figure 7 illustrates the gap between the number of deportable aliens encountered by ICE agents and the number of aliens that ICE ultimately targets for deportation.

Encounters are incidents in which an ICE officer is able to question, verify identity, or otherwise confirm that an alien is potentially deportable, usually in a jail setting (individuals that an officer meets or questions during enforcement operations who clearly are not deportable aliens are not tallied as encounters). Arrests are tallied when an alien is taken into custody

(usually briefly, unless detention is mandatory due to criminal history). Detainers are notifications to other law enforcement agencies (usually jails or prisons) that ICE is interested in taking custody of an alien upon disposition of the other criminal charges. Charging documents are issued when ICE decides to formally initiate deportation proceedings (historically these have included notices to appear in immigration court, removal orders, and reinstatements of prior removal orders). These metrics are not mutually exclusive; for example, an alien subject to a detainer may also be issued charging documents at the same time or later.

Each of these categories of interior enforcement activity declined from 2013 to 2014. Encounters declined 18 percent, arrests declined by 21 percent, detainers issued declined by 24 percent, and charging documents issued declined by 25 percent.

Several factors may be contributing to a decline in encounters, arrests, and charging documents issued, including discontinuation of partnerships with local law enforcement agencies and the establishment of local sanctuary policies that bar ICE officers from screening inmates inside local jails. Nevertheless, the sheer volume of encounters relative to the other metrics indicates that ICE officers are not lacking opportunities to identify deportable aliens and suggests that the agency should have been able to maintain a steady level of enforcement activity.

A review of the statistics broken down by field office, which is included in ICE's weekly report, suggests that the existence of local sanctuary policies does not fully explain the overall decline in enforcement. While sanctuary policies recently have been adopted in certain major metropolitan areas like San Francisco and New York City, every ICE field office except for those in Houston and San Antonio, which presumably processed many of the recent Central American arrivals, experienced a decline in deportations. Field offices such as Atlanta, El Paso, Phoenix, and Salt Lake City also posted significant declines, even in the absence of new sanctuary policies, as did Chicago, where the non-cooperation policy dates back to FY 2012.

According to ICE officials speaking off the record, the decline in interior enforcement activity has less to do with local sanctuary policies and much more to do with policies of prosecutorial discretion that severely limit the circumstances in which ICE officers can arrest or charge an illegal alien encountered. For example, ICE officers, with few exceptions, are required to wait for illegal aliens to be convicted of crimes before initiating deportation proceedings, even if the aliens are otherwise deportable. This presents logistical hurdles for ICE and increases the chances that the alien will abscond from prosecution and/or disappear. In addition, ICE officers are instructed to release or take a pass on illegal aliens whose crimes are designated as "minor" or who have family members in the United States. The result is that only a fraction of deportable aliens that ICE identifies actually will be processed for deportation.

It is important to note that, similarly, only a fraction of those aliens labeled as a criminal threat at the time of encounter were selected for deportation by ICE in 2014. According to the weekly ICE metrics report cited above, as of September 20, 2014, ICE officers had reported 170,125 encounters with aliens deemed a criminal threat. Meanwhile, only 90,500 criminal aliens were issued charging documents, indicating a startlingly large number — potentially nearly 80,000 — of illegal aliens with criminal histories who were able to escape deportation proceedings in 2014, even after being encountered by an ICE officer.<sup>6</sup>

## Number of "Non-Departed" Aliens Still Growing

ICE's weekly metrics report includes information on the number of aliens who have been issued a final order of removal, but who remain in the country. As of September 20, 2014, the total number of such aliens was 897,572. Of these, less than 2 percent (14,629) were detained in ICE custody. Yet 174,258 of these post-final-order deportable aliens were convicted criminals. Only about 4 percent (7,477) of the convicted criminal post-final-order aliens were detained in ICE custody.

This means that, as of the end of the 2014 fiscal year, there were approximately 167,000 convicted criminal aliens *at large in the United States* (released by ICE) who have been ordered removed and exhausted all appeals. In addition, there were approximately 716,000 deportable non-criminal aliens at large who have been ordered removed and exhausted all appeals.

The number of "non-departed" aliens grew by about 25,000 cases from 2013 to 2014. As of the end of the 2013 fiscal year, the total number of post-final-order aliens remaining in the country was 872,504. The number of "non-departed" convicted criminal aliens grew by nearly 7,000. Even more concerning, the number of at-large post-final-order convicted criminals

grew by nearly 8,000 cases, while the number of detained aliens in that category shrank by nearly 1,000 cases. This means that more of the criminal aliens that ICE has been unable to remove are at large than ever before.

## Conclusion

The Obama administration has sought to portray its performance on immigration enforcement as smarter, better, and more successful than previous administrations. In addition, it has sought to deflect public attention away from the decline in interior enforcement by emphasizing border apprehensions, by shifting the border deportation caseload to ICE, and by diverting more ICE resources to supporting the Border Patrol's enforcement activity.<sup>7</sup>

Yet the statistics kept by ICE to measure interior enforcement activity reveal that it is in a state of collapse, with declining arrests and deportations, tens of thousands of criminal aliens being released back to American communities, and many more illegal residents who have been declared immune from enforcement. Such a state of affairs will continue to attract new illegal settlement, further increasing the burden that illegal immigration imposes on the nation. In addition, it serves as an invitation to foreign groups and individuals who wish to inflict harm on Americans to take advantage of our lax policies.

Congress can affect this situation by restraining further executive action that would shield even more illegal residents from enforcement, and by insisting that the executive branch agencies spend the public funds they receive to carry out their enforcement mission in a way that is consistent with congressional and public expectations.

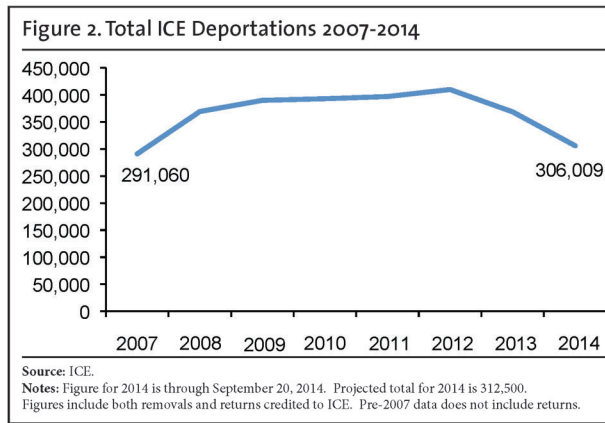
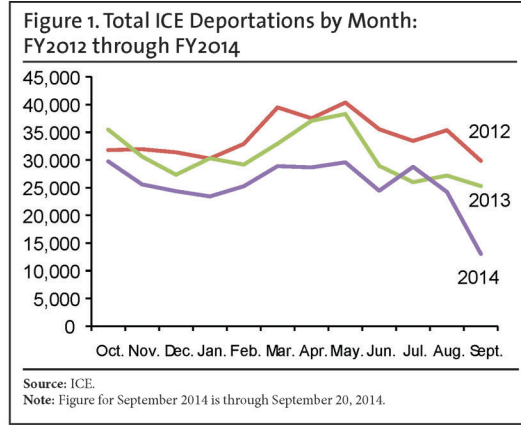
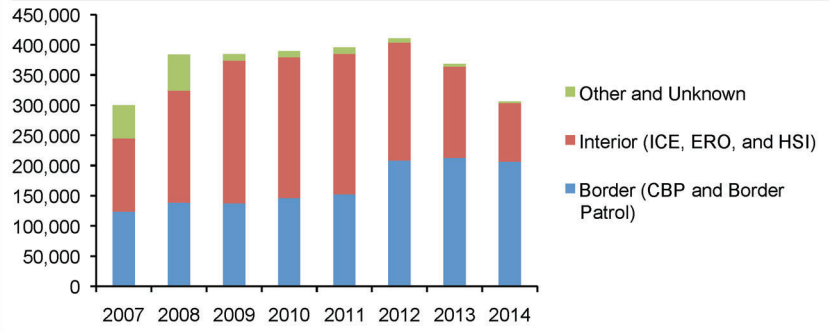
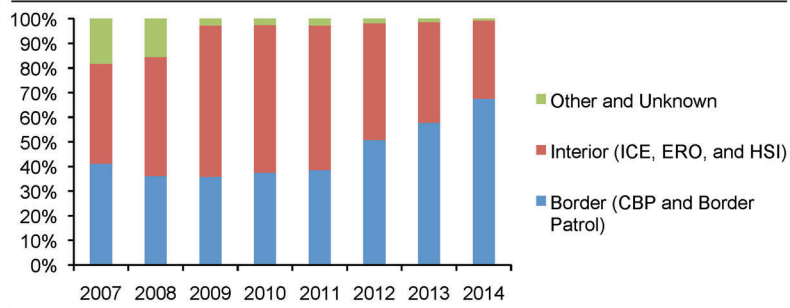


Figure 3. ICE Deportations: Border vs. Interior Cases by Totals, 2007-2014

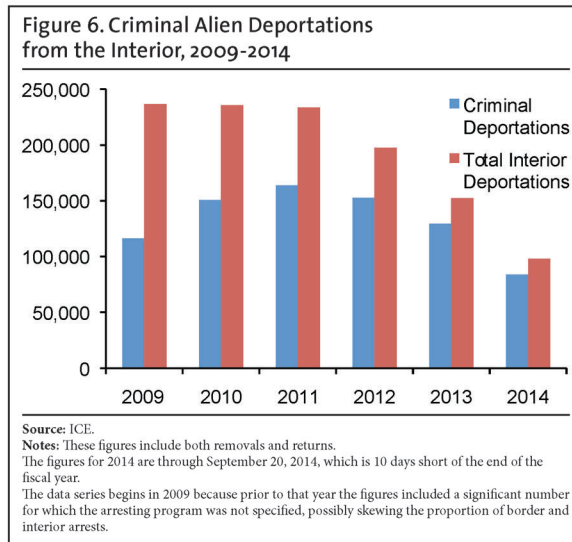
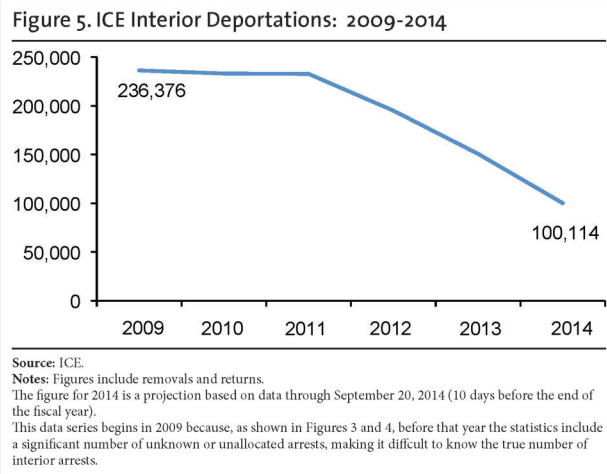


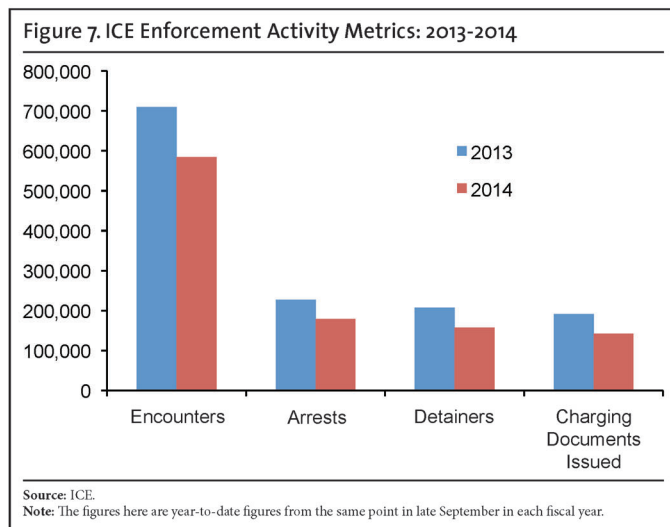
Source: ICE.  
 Notes: 2014 figure is through September 20, 2014.  
 Figures include both removals and returns credited to ICE.

Figure 4. ICE Deportations: Border vs. Interior Cases by Percent, 2007-2014



Source: ICE.  
 Notes: 2014 figure is through September 20, 2014.  
 Figures include both removals and returns credited to ICE.





## End Notes

<sup>1</sup> [“Weekly Departures and Detention Report \(WRD\)”](#), prepared by the Statistical Tracking Unit of the Office of Enforcement and Removal Operations of U.S. Immigration and Customs Enforcement (ICE), edition as of September 22, 2014. Figures from this document are not the final 2014 total, but include data through September 20, 2014, which is 10 days before the end of the fiscal year.

<sup>2</sup> For an explanation of these types of deportations, see [“Deportation Basics”](#), Center for Immigration Studies, July 2011.

<sup>3</sup> The September 2014 is a partial month (Through September 20).

<sup>4</sup> The source for the data on interior vs. border removals is a database of all ICE deportation cases from 2003 to 2013 obtained through a FOIA case. In addition, the ICE weekly deportation report previously cited includes this breakdown for 2014.

<sup>5</sup> [“Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Policies of the Agency for the Apprehension, Detention and Removal of Aliens”](#), June 17, 2011.

<sup>6</sup> Some of the encounters may be duplicates. The author submitted a FOIA request to obtain more details about individual aliens encountered by ICE and their criminal histories, but ICE declined to release this information.

<sup>7</sup> See Jessica M. Vaughan, [“Deportation Numbers Unwrapped: Raw Statistics Reveal the Real Story of ICE Enforcement in Decline”](#), Center for Immigration Studies, October 2013.



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## Rejecting Detainers, Endangering Communities Sanctuaries release thousands of criminals

By Jessica Vaughan

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State and local sanctuary policies caused the release of more than 8,000 criminal alien offenders sought by ICE for deportation in 276 jurisdictions<sup>1</sup> around the country over an eight-month period, according to ICE records obtained by the Center for Immigration Studies in a FOIA request.<sup>2</sup> Sixty-three percent of the individuals freed by local authorities had prior criminal histories or were labeled a public safety concern at the time of their release. Nearly 1,900 of the released offenders subsequently were arrested for another crime within that eight-month period. ICE arrested approximately 750 of the recidivists, but just over 1,000 (60 percent) remained at large.

**276 Jurisdictions Had Sanctuary Policies.** According to the report, as of last year, there were 276 state and local jurisdictions that had adopted policies of non-compliance with some or all ICE detainers. These policies took the form of policies, laws, executive orders, or regulations. These jurisdictions were located in 43 states and the District of Columbia.

**What Is a Detainer?** A detainer is the primary tool used by ICE to take custody of criminal aliens for deportation. It is a notice to another law enforcement agency that ICE intends to assume custody of an alien, and it includes information on the alien's previous criminal history, immigration violations, and potential risk to public safety or security.<sup>3</sup>

**Number of Detainers Refused.** From January 1, 2014, to August 31, 2014, local law enforcement agencies refused to comply with a total of 8,811 detainers, resulting in aliens being released from custody. These detainers were associated with 8,145 individuals, of whom:

- 7,600 had one declined detainer;
- 464 had two declined detainers; and
- 81 had three or more declined detainers.

As of June 2015, the total number of detainers rejected by local sanctuary jurisdictions reportedly had grown to more than 17,000.

**Most Offenders Released Had Prior Arrests; One-Fourth Were Already Felons.** The majority (63 percent) of the individuals freed by local agencies had serious prior criminal records.

- 5,132 were previously convicted or charged with a crime or were labeled a public safety concern. Of these,
- 2,984 had a prior felony conviction or charge;
- 1,909 had a prior misdemeanor conviction or charge related to violence, assault, sexual abuse, DUI, weapons, or drug distribution or trafficking; and
- 239 had three or more other misdemeanor convictions.

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*Jessica M. Vaughan is director of policy studies at the Center for Immigration Studies.*

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The report does not state how many of the released offenders had prior single misdemeanors or other types of violations not directly associated with violence, assault, or drugs.

**1,900 Released Offenders Were Later Arrested 4,300 Times; Most Are Apparently Still at Large, even after Re-Offending.** Of the 8,145 individual aliens freed by local agencies, there were 1,867 (23 percent) who were subsequently arrested again for a criminal offense.

- ICE took action (arrest or removal) against 40 percent (751) of the 1,867 who re-offended.
- 1,116 (60 percent) of the re-offenders were at large at the time of the study.

**Crimes Committed after Release by Sanctuaries.** The 1,867 offenders who were released and subsequently re-offended were arrested 4,298 times during the eight-month period covered by the study. They accumulated 7,491 new charges in total, after their release. Ten percent of the new charges involved dangerous drugs and seven percent were for driving under the influence of alcohol (DUI).

The report describes six instances of very serious crimes committed by criminal alien felons who were sought by ICE with a detainer, but nevertheless released by a local law enforcement agency with sanctuary policies:

- **Santa Clara County, Calif.:** On April 14, 2014, an individual with nine previous convictions (including seven felonies) and a prior removal was arrested for “first degree burglary” and “felony resisting an officer causing death or significant bodily injury”. Following release, the individual was arrested for a controlled substance crime.
- **Los Angeles, Calif.:** On April 6, 2014, an alien was arrested for “felony continuous sexual abuse of a child”. After release, the alien was arrested for “felony sodomy of a victim under 10 years old”.
- **San Francisco, Calif.:** On March 19, 2014, an illegal alien with two prior deportations was arrested for “felony second degree robbery, felony conspiracy to commit a crime, and felony possession of a narcotic controlled substance”. After release, the alien was again arrested for “felony rape with force or fear”, “felony sexual penetration with force”, “felony false imprisonment”, witness intimidation, and other charges.
- **San Mateo County, Calif.:** On February 16, 2014, an individual was arrested for “felony lewd or lascivious acts with a child under 14”. In addition, the alien had a prior DUI conviction. Following release by the local agency, the individual was arrested for three counts of “felony oral copulation with a victim under 10” and two counts of “felony lewd or lascivious acts with a child under 14”.
- **Miami Beach, Fla.:** On December 19, 2013, the police department arrested an alien for felony grand theft. This alien had been ordered removed (and presumably absconded) in 2009. The alien also had prior convictions for strong-arm robbery, cocaine possession, larceny, trespassing, theft, marijuana possession, and resisting an officer. After release by the local agency, the alien was arrested on two separate occasions; once for “aggravated assault with a weapon and larceny” and once for “under the influence of a controlled substance”.
- **Santa Clara County, Calif.:** On November 7, 2013, an alien was arrested (and later convicted) for “felony grand theft and felony dealing with stolen property”. This alien had been ordered removed in 2010 (again, a likely absconder). The alien also had prior felony and misdemeanor convictions for narcotic possession, theft, receiving stolen property, illegal entry, and other crimes. After release by local authorities, the alien was arrested for “felony resisting an officer causing death or severe bodily injury” and “felony first degree burglary”.

**Which Jurisdictions Are Sanctuaries?** As of the date of the report, 276 counties in 43 states had refused to comply with an ICE detainer. The largest number of detainees were refused in the following jurisdictions:

- Santa Clara County, Calif.
- Los Angeles County, Calif.

- Alameda County, Calif.
- San Diego County, Calif.
- Miami-Dade County, Fla.

The ICE report included a list of the 20 detention facilities that had housed the inmates that were freed, but it was redacted from the document. The report states that the following jails were among the top 20:

- Santa Clara County Jail in San Jose, Calif.
- Santa Rita Jail in Dublin, Calif.
- Twin Towers Correctional Facility in Los Angeles, Calif.
- Dade Correctional Institution in Miami, Fla.
- Vista Detention Facility in San Diego, Calif.

**Conclusion.** Local refusal to comply with ICE detainers has become a public safety problem in many communities, and a mission crisis for ICE that demands immediate attention.

When a law enforcement agency decides to release a criminal offender that ICE is seeking to deport, it must take moral, and possibly legal, responsibility for the consequences. Even if the agency believes that it faces legal liability if it complies with a detainer, or if local or state laws forbid compliance, the agency still can communicate with ICE by phone, email, or other means to coordinate a custody transfer that does not require a detainer to be executed. So no sheriff or police department is “forced” to release criminal aliens who would otherwise be taken by ICE.

One way to address this problem is for state governments to pass legislation or issue legal opinions clarifying that law enforcement agencies are authorized and expected to comply with all ICE detainers or make other arrangements with ICE for the transfer of inmates on the path to deportation.

Many believe that the federal government has grounds to sue San Francisco in federal court for obstructing its work. That’s a good idea in theory, but the Obama administration has made it clear that it will assert federal supremacy in immigration matters only when the states like Arizona are trying to help enforce the laws, not when states like California try to block enforcement.

Moreover, the Obama administration has given sanctuaries free rein to ignore detainers by ending the successful Secure Communities program and replacing it with the Priority Enforcement Program.<sup>4</sup> This new program explicitly allows local agencies to disregard ICE notifications of deportable aliens in their custody by replacing detainers with “requests for notification.”

The only truly effective and lasting solution is for Congress to spell out in federal law that local law enforcement agencies must cooperate with ICE by complying with all detainers and responding to all notifications or face sanctions in the form of disqualification from certain kinds of federal funding. Such a provision has been included in the Davis-Oliver Act, introduced by Rep. Trey Gowdy (R-S.C.) and Sen. Jeff Sessions (R-Ala.), and named in honor of two deputies who were killed last year by a previously deported illegal alien cartel operative in California.<sup>5</sup>

The Davis-Oliver Act has earned the endorsement of the National Sheriffs’ Association as well as many individual sheriffs and police chiefs, indicating that sanctuary policies are well out of the mainstream of law-enforcement practice in America. Congress — and the presidential candidates — should join the sheriffs’ association in working for a new approach that will keep the list of victims from growing.

## End Notes

<sup>1</sup> See Bryan Griffith and Marguerite Telford, [“Map of Sanctuary Cities, Counties and States”](#), Center for Immigration Studies, July 2015.

<sup>2</sup> [“Declined Detainer Outcome Report”](#), ICE Law Enforcement Systems & Analysis Unit, October 4, 2014.

<sup>3</sup> For a discussion of recent developments surrounding ICE use of detainers, see Dan Cadman and Mark Metcalf, [“Disabling Detainers”](#), Center for Immigration Studies, January 2015. A copy of the ICE detainer form can be found [here](#).

<sup>4</sup> See memo from DHS Secretary Jeh Johnson entitled [“Secure Communities”](#), one of the executive actions taken on November 20, 2014.

<sup>5</sup> See Dan Cadman, [“Analysis of the Davis-Oliver Act”](#), Center for Immigration Studies, July 2015.



CITIES UNITED FOR IMMIGRATION ACTION

July 28, 2015

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C.

The Honorable Harry Reid  
Minority Leader  
United States Senate  
Washington, D.C.

The Honorable John Boehner  
Speaker of the House  
United States House of Representatives  
Washington, D.C.

The Honorable Nancy Pelosi  
Minority Leader  
United States House of Representatives  
Washington, D.C.

Dear Majority Leader McConnell, Minority Leader Reid, Speaker Boehner, and Minority Leader Pelosi:

The undersigned are members of Cities United for Immigration Action, a coalition of mayors and county leaders committed to strengthening our communities by keeping families together, growing our economies, and fostering trust in law enforcement and government. We write to oppose legislation that would undermine our efforts to maintain welcoming communities and uphold the safety of all residents.

Our hearts go out to the family and friends of Kathryn Steinle. At this time of mourning, we urge our members of Congress to refrain from politicizing this tragedy and fueling an anti-immigrant sentiment.

Our cities and counties are home to millions of immigrant residents who live, work, and contribute to the vitality of our communities. As local leaders, we are uniquely positioned to make the best decisions about serving our residents and ensuring public safety.

Local policies on immigration detainers and cooperation with Immigration Customs and Enforcement reflect informed judgments on how best to promote public safety through strong relationships between immigrant communities and local government. Overbroad immigration enforcement undermines safety for all. A 2013 study found that 44% of Latinos surveyed reported being less likely to contact police officers if they have been the victim of a crime due to concerns about immigration enforcement. When immigrant residents can report crime without fear of deportation, immigrants are more willing to engage with local police and government institutions, our streets and neighborhoods are safer, and those who commit crime are more likely to be brought to justice.

As the Department of Homeland Security institutes the Priority Enforcement Program, we seek to work with DHS and ICE to focus on risks to public safety while maintaining welcoming communities.



CITIES UNITED FOR IMMIGRATION ACTION

Policies that support immigrant integration make our communities stronger. Instead of penalizing localities that seek to create safe and welcoming communities, we call on Congress to address our broken immigration system by enacting comprehensive immigration reform that reflects welcoming values.

Sincerely,

Stephanie Rawlings-Blake, Mayor of Baltimore, MD  
James Diossa, Mayor of Central Falls, RI  
Mark Kleinschmidt, Mayor of Chapel Hill, NC  
Rahm Emanuel, Mayor of Chicago, IL  
Nan Whaley, Mayor of Dayton, OH  
Domenick Stampone, Mayor of Haledon, NJ  
Pedro E. Segarra, Mayor of Hartford, CT  
Dawn Zimmer, Mayor of Hoboken, NJ  
Paul Soglin, Mayor of Madison, WI  
Bill de Blasio, Mayor of New York, NY  
Ras Baraka, Mayor of Newark, NJ  
Michael Nutter, Mayor of Philadelphia, PA  
William Peduto, Mayor of Pittsburgh, PA  
Adrian O. Mapp, Mayor of Plainfield, NJ  
Charlie Hales, Mayor of Portland, OR  
Edwin M. Lee, Mayor of San Francisco, CA  
Javier Gonzales, Mayor of Santa Fe, NM  
Kevin McKeown, Mayor of Santa Monica, CA  
Edward Murray, Mayor of Seattle, WA  
Marilyn Strickland, Mayor of Tacoma, WA  
Muriel Bowser, Mayor of Washington, D.C.  
Fredrick Sykes, Mayor of West Covina, CA

cc: Chairman Chuck Grassley  
Chairman Bob Goodlatte  
Ranking Member Patrick Leahy  
Ranking Member John Conyers, Jr.



**Church World Service Statement in Opposition to Proposals that would  
Dismantle Trust Between Local Police and Communities**

In the aftermath of the recent tragedy in San Francisco, Church World Service (CWS) mourns with the family and community of Kathryn Steinle as they experience a tremendous loss. We are praying for peace and an end to senseless acts of violence that are too prevalent in this country. CWS urges all Members of the U.S. Senate and House of Representatives to refrain from politicizing this tragedy or conflating the actions of one person with an entire community of our immigrant brothers and sisters.

During this time of grief and confusion as investigators learn more about this situation, it is important that we do not over-correct and end up hurting intentional, community-based policing efforts that are vital in communities across the country. Many cities recognize how requests by Immigration and Customs Enforcement (ICE) to hold individuals beyond their court-appointed sentences violate due process and have been found unconstitutional by Federal Courts.<sup>1</sup> Choosing not to honor ICE detainer requests without probable cause or a signed warrant from a judge actually improves public safety by increasing community trust in its police force. When all individuals can report dangerous situations without the fear of being deported and separated from their families, safety is increased for all community members. When local police collaborate with ICE, more crimes go unreported<sup>2</sup> because victims and witnesses are afraid of being deported if they contact the police. Many local law enforcement agencies and community leaders have spoken out about the harm that this collaboration inflicts on their communities.

CWS opposes proposals that would infringe on the rights of states, cities, localities and police departments from regulating how they interact with ICE. H.R.3002, The Mobilizing Against Sanctuary Cities Act; H.R.2964, The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act; H.Amdt 352 offered by Rep. Steven King (IA-4) to H.R. 2578, The FY16 Commerce, Justice, Science Appropriations Act; S.80 introduced by Senator Vitter (R-LA); The Sanctuary Cities Amendment offered by Sen. Cotton (R-AR) to S.1177, The Elementary and Secondary Education Act; and similar proposals are knee-jerk reactions that would do more harm than good. CWS supports the 320 jurisdictions across the United States with policies that limit collaboration with ICE, and strongly opposes punishments for these cities or localities.

CWS is also opposed to mandatory minimum sentences for individuals who re-enter the United States. Such proposals would punish millions of individuals, including parents, grandparents, and young children who are unjustly deported from the United States and then make the journey again to be reunited with their families and communities. It is not in the best interest of these individuals or our communities to further criminalize illegal re-entry. Due to the brokenness of the U.S. immigration system and the Obama Administration's deportation of a record-breaking two million individuals, many of our long-standing community members have been deported. For them, and especially for individuals who have fled indescribable violence, their only option is to return to their homes and families in the United States. It is also important to note that many individuals have been charged with misdemeanors and immigration-related offenses that have been unjustly categorized as "aggravated felonies" because they are not U.S. citizens, making discussions around immigrants and felonies very misleading.<sup>3</sup> Further criminalizing individuals who simply wish to live with their families, or who are fleeing threats of homicide, gang-conspiration, and gender-based violence in their home countries will do nothing to improve the broken U.S. immigration system.

In the aftermath of the tragedy, CWS mourns in solidarity with the people of San Francisco, and joins them in seeking peace and real solutions to respond to this act of violence. CWS also encourages all Senators and Representatives to resist placing blame and punishment on an entire community of undocumented people following the tragic actions of one person. Instead, we must work together to reform current policies that relate to immigration, gun accessibility, mental health and drug rehabilitation, and the criminal justice system. CWS stands ready to work with members of both chambers to this end.

<sup>1</sup> Maria Miranga-Olivares, Plaintiff, v. Clackamas County, Defendant. United States District Court, D. Oregon, Portland Division. 11 April 2014. <[https://scholar.google.com/scholar\\_case?case=7183853699243436215&hl=en&as\\_sdl=20006](https://scholar.google.com/scholar_case?case=7183853699243436215&hl=en&as_sdl=20006)>

<sup>2</sup> Anita Kashu, "The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties." The Police Foundation. April 2009. <[www.policefoundation.org/sites/default/files/g798246/Khashu%282009%29\\_-\\_The\\_Role\\_of\\_Local\\_Police.pdf](http://www.policefoundation.org/sites/default/files/g798246/Khashu%282009%29_-_The_Role_of_Local_Police.pdf)>

<sup>3</sup> "Aggravated Felonies: An Overview." Immigration Policy Center. March 2012. <[www.immigrationpolicy.org/sites/default/files/docs/aggravated-felony-fact-sheet-march-2012.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/aggravated-felony-fact-sheet-march-2012.pdf)>



**CWS Statement to the U.S. Senate Judiciary Committee,  
Regarding its Hearing on Immigration Enforcement Policies on Tuesday July 21, 2015**

As the Committee discusses the Department of Homeland Security's enforcement of immigration laws, Church World Service (CWS) urges all Members of Congress to consider the thousands of families that have been torn apart by our nation's broken immigration system. For decades, the United States has increased border and interior enforcement efforts. In 2013, the United States spent more than \$18 billion on immigration enforcement, more than all other federal law enforcement agencies combined.<sup>1</sup> However, border militarization and fence construction, workplace and home invasion raids, utilizing local police to enforce immigration laws, and inhumane detention, coupled with the House of Representatives' failure to follow the Senate's lead and enact real solutions, have only further damaged an already broken system.

On November 20<sup>th</sup> 2014, President Obama announced executive actions that could provide temporary relief from deportation for some of our undocumented community members. The president has the full constitutional authority, and a moral obligation to keep families together and stop needless deportations. President Obama has signed fewer executive orders than most presidents,<sup>2</sup> and deferred action is one of the many long-standing forms of prosecutorial discretion available to the Executive Branch.<sup>3</sup> CWS supports these executive actions, and is concerned that they are not being implemented as they should. The administration is not abusing prosecutorial discretion, as it rarely implements it. While the Deferred Action for Parents of Americans (DAPA) and expanded Deferred Action for Childhood Arrivals (DACA) programs are delayed due to an injunction by the Fifth Circuit Court, ICE should still be implementing prosecutorial discretion.

However, individuals who are not enforcement priorities continue to be detained and deported. This includes long-standing community members, parents of children, elderly persons and victims of crime. Despite statements by Immigration and Customs Enforcement (ICE) declaring that the agency targets "the worst of the worst" criminals, we have seen grandparents, mothers and fathers, and pastors deported. In March of 2015, ICE engaged in a week-long raid during which officials stole over two thousand immigrants from their homes. More than two thirds of the individuals picked up were convicted only of nonviolent offenses. "Operation Cross Check" showed just how ICE is not implementing the President's November 2014 memo.<sup>4</sup>

In the aftermath of the recent tragedy in San Francisco, there are many outstanding questions. As we grieve for Kathryn Steinle's family and investigators learn more about this situation, it is important that we do not over-correct and end up hurting intentional, community-based policing efforts that are vital in communities across the country. Many cities recognize how requests by Immigration and Customs Enforcement (ICE) to hold individuals beyond their court-appointed sentences violate due process and have been found unconstitutional by Federal Courts<sup>5</sup>. Choosing not to honor ICE detainer requests without probable cause or a signed warrant from a judge improves public safety by increasing community trust in its police force. When all individuals can report dangerous situations without the fear of being deported and separated from their families, safety is increased for all community members. When local police collaborate with ICE, more crimes go unreported<sup>6</sup> because victims and witnesses are afraid of being deported if they contact the police. Many local law enforcement agencies and community leaders have spoken out about the harm that this collaboration inflicts on their communities. CWS opposes proposals that would punish or attempt to stop states, cities, localities and police departments from regulating how they interact with ICE.

CWS urges Congress to support immigration policies that treat our neighbors with the dignity and respect that all people deserve, and to affirm DHS's role in utilizing prosecutorial discretion and respecting local law enforcement officer's efforts to build trust with their communities.

<sup>1</sup> *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. The Migration Policy Institute.

<<http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>>.

<sup>2</sup> "Executive Orders: Washington - Obama," The American Presidency Project. <[www.presidency.ucsb.edu/data/orders.php](http://www.presidency.ucsb.edu/data/orders.php)>.

<sup>3</sup> Immigration and Nationality Act (INA) § 103(a), 8 U.S.C. § 103(a)

<sup>4</sup> "Worst of the Worst?" March 2015 Report. Mennonite Central Committee.

[http://mcc.org/sites/mcc.org/files/media/common/documents/worstoftheworstreport-march242015\\_0.pdf](http://mcc.org/sites/mcc.org/files/media/common/documents/worstoftheworstreport-march242015_0.pdf)

<sup>5</sup> Maria Miranga-Olivares, Plaintiff, v. Clackamas County, Defendant. United States District Court, D. Oregon, Portland Division. 11 April 2014. <[https://scholar.google.com/scholar\\_case?case=7183853698243436215&hl=en&as\\_sdt=20006](https://scholar.google.com/scholar_case?case=7183853698243436215&hl=en&as_sdt=20006)>.

<sup>6</sup> Anita Kashu, "The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties." The Police Foundation. April 2009. <[www.policefoundation.org/sites/g/files/q798246/t/Khashu\\_%282009%29\\_-\\_The\\_Role\\_of\\_Local\\_Police.pdf](http://www.policefoundation.org/sites/g/files/q798246/t/Khashu_%282009%29_-_The_Role_of_Local_Police.pdf)>.

**Praying for Healing: Faith Community Call for Solidarity with San Francisco**

Last week, the life of Kathryn Steinle was tragically cut short by a senseless act of gun violence. Today, as united members of the faith community, we offer our heartfelt condolences to Kathryn's family and friends. We join the broader San Francisco community as we grieve, and pray for peace and healing for all who are impacted by this tragedy. Her death is a tremendous loss. In this moment, as our country has been shaken by a series of recent shootings that have resulted in the loss of life, we must come together to share both grief and resilience.

As we mourn, we must resist the inclination to allow grief and despair to turn us against one another, or to blame an entire community for the actions of one individual. The resiliency of our community must triumph over knee-jerk reactions that would harden our hearts. The City of San Francisco's policies are rooted in core constitutional principles and promote the safety of all community members, regardless of immigration status. These policies do not protect individuals from the criminal justice system, nor do they promote the release of individuals who have been convicted of violent offenses. These ordinances and policies build trust between local law enforcement and community members, so all individuals can report dangerous situations and seek protection from violence without the fear of being deported and separated from their families. More than 320 jurisdictions across the United States, including almost all of California, have adopted similar policies that limit or end detainer requests by Immigration and Customs Enforcement. These ICE "holds" seriously undermine due process and have been found by federal courts, most recently in the U.S. District Court for Oregon, to be unconstitutional as they violate the Fourth Amendment prohibition against unreasonable search and seizure.

We urge all people of faith and good will, including our political leaders and members of the media, to support the long-standing efforts of law enforcement officials to foster trusting relationships with the communities they protect and serve. We believe the ordinances uphold the dignity of every person, regardless of their immigration status, and strengthen our communities.

Faith communities in the United States organized a sanctuary movement decades ago, in an effort that saved thousands of lives from death squads in Central America. More recently, congregations have opened their doors in an act of sanctuary to keep families and communities together when faced with deportations. Though some have chosen to use this tragedy to further a political agenda based on fear and racial profiling, we respectfully ask that they not conflate or confuse this isolated tragedy with the commitment of cities and congregations to welcome and provide sanctuary to undocumented individuals.

We mourn Kathryn Steinle's death and pray for healing and peace for her family and friends. We also stand with the city of San Francisco with purpose in our resolve that to be hospitable is to be whole.

Christian Church (Disciples of Christ), Refugee and Immigration Ministries  
 Church World Service  
 Columban Center for Advocacy and Outreach  
 Conference of Major Superiors of Men  
 Franciscan Action Network  
 Ignatian Solidarity Network  
 Leadership Conference of Women Religious  
 Missionary Servants of the Most Holy Trinity  
 PICO Network  
 Presbyterian Church (U.S.A.)  
 Sisters of Mercy of the Americas  
 United Methodist Church, General Board of Church and Society  
 United Church of Christ Justice and Witness Ministries



July 20, 2015

The Honorable Chuck Grassley  
Chairman, Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking Member, Committee on the Judiciary  
437 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

As law enforcement leaders dedicated to preserving the safety and security of our communities, we are deeply troubled by the tragic murder of Kathryn Steinle in San Francisco on July 1, 2015. Like other Americans, we are concerned that a dangerous criminal with multiple felonies was out in the streets, and our hearts go out to Ms. Steinle's family and friends.

Even before this tragic incident, we have been alarmed to see various legislative proposals that would attempt to impose ineffective "one-size-fits-all" policies that would cause great harm to our departments and our communities. These troubling proposals are increasing in a misguided attempt to address Ms. Steinle's murder. Some would defund or condition funding of "sanctuary cities," including H.R. 3002 and H.R. 3009 in the House, Sen. Paul's yet-to-be-numbered sanctuary cities bill, as well as amendments submitted by Sens. Cotton and Vitter to the Every Child Achieves Act of 2015. These proposals, along with existing SAFE Act-type proposals to require state and local law enforcement to become immigration agents (such as H.R. 1148 and S. 1640), would threaten crucial federal law enforcement funding and undermine basic community policing principles. The Law Enforcement Immigration Task Force (LEITF) opposes these and similar proposals and urges Congress to reject them.

**We Oppose Proposals that Impose Federal Immigration Enforcement Responsibilities on Local Law Enforcement**

As several of our members noted in a February 10, 2015, letter to the leadership of the Subcommittee on Immigration and Border Security,

Immigration enforcement is, first and foremost, a federal responsibility. Immigration enforcement at the state and local levels diverts limited resources from public safety. State and local law enforcement agencies face tight budgets and should not be charged with the federal government's role in enforcing federal immigration laws.

Since DHS announced that it would be replacing the flawed Secure Communities program with the Priority Enforcement Program (PEP), many law enforcement agencies have been working with the federal government on implementation of the new program. Recognizing the need to tailor it to the needs of particular jurisdictions, DHS is in the process of reaching out to jurisdictions to build trust for the program and to ensure that it meets the needs of a particular jurisdiction. We must give this process some time to determine if it will provide a way for local law enforcement and DHS to work together to identify and remove dangerous individuals from our communities.

The current legislative proposals would undermine this process, compelling local law enforcement officers to act as immigration agents while imposing a federal “one-size-fits-all” approach. These approaches would reduce trust between immigrant communities and law enforcement, while imposing troubling federal mandates on law enforcement.

### **We Oppose Proposals that Undermine Community Policing**

State and local law enforcement agencies work every day to build trusting relationships with residents, and need that trust to do our job: apprehend criminals and maintain public safety. All should feel safe in our communities and comfortable in reporting crimes, serving as witnesses, and calling for help in emergencies. This improves community policing and safety for everyone.

The legislative proposals described above pose real danger to existing relationships between immigrant communities and state and local law enforcement. When state and local law enforcement agencies are required to enforce federal immigration laws, undocumented residents may fear that they, or people they know or depend upon, risk deportation by working with law enforcement. This fear undermines trust between law enforcement and the communities we serve, creating too much room for dangerous criminals and violent crime.

Rather than require state and local agencies to engage in additional immigration enforcement, Congress should focus on reforms to allow state and local law enforcement to focus resources on these very clear threats to safety: dangerous criminals, violent crime and criminal organizations.

### **We Oppose Proposals that Threaten Crucial Law Enforcement Grants**

Our Task Force has consistently urged the federal government to ensure that state and local law enforcement have adequate resources. However, rather than provide additional resources to encourage better cooperation between federal, state and local law enforcement, the “sanctuary cities” proposals actually threaten crucial existing funding resources. This approach is deeply problematic. Because some of these proposals specifically target major cities that have expressed concern with the well-known constitutional deficiencies with immigration detainees, several of our largest law enforcement agencies may lose critical funding that enables them to keep their streets safe.

**Conclusion**

We urge Congress to reject proposals that tie law enforcement funding to federal mandates to carry out immigration enforcement functions and to reject SAFE Act-style proposals that foist federal immigration enforcement on states and localities. Our immigration challenge is national and deserves a national approach, and we continue to recognize that what our broken system truly needs is a permanent legislative solution.

Sincerely,

The Law Enforcement Immigration Task Force

Chief Art Acevedo  
Austin Police Department  
Texas

Chief Richard Biehl  
Dayton Police Department  
Ohio

Chief Mike Brown  
Salt Lake City Police Department  
Utah

Retired Chief Chris Burbank  
Salt Lake City Police Department  
Utah

Sheriff Mark Curran  
Lake County Sheriff's Office  
Illinois

Sheriff Tony Estrada  
Santa Cruz County Sheriff's Office  
Arizona

Assistant Chief Randy Gaber  
Madison Police Department  
Wisconsin

Chief Ron Haddad  
Dearborn Police Department  
Michigan

Chief Dwight Henninger  
Vail Police Department  
Colorado

Chief Michael Koval  
Madison Police Department  
Wisconsin

Chief Brian Kyes  
Chelsea Police Department  
Massachusetts

Chief Jose Lopez  
Durham Police Department  
North Carolina

Sheriff Leon Lott  
Richland County Sheriff's Department  
South Carolina

Chief J. Thomas Manger  
Montgomery County Police Department  
Maryland

Sheriff William McCarthy  
Polk County Sheriff's Office  
Iowa

Sheriff Margaret Mims  
Fresno County Sheriff's Office  
California

Chief John Mina  
Orlando Police Department  
Florida

Chief Roy Minter  
Peoria Police Department  
Arizona

Lieutenant Andy Norris  
Tuscaloosa County Sheriff's Office  
Alabama

Commissioner Keith Squires  
Utah Department of Public Safety  
Utah

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South Bend Police Department  
Indiana

Chief Michael Tupper  
Marshalltown Police Department  
Iowa

Sheriff Lupe Valdez  
Dallas County Sheriff's Office  
Texas



## Major County Sheriffs' Association

### Sheriff Michael J. Bouchard

Vice President – Government Affairs  
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July 21, 2015

The Honorable Chuck Grassley  
 Chairman, Judiciary Committee  
 U.S. Senate  
 135 Hart Senate Office Building  
 Washington, DC 20510

The Honorable Patrick J. Leahy  
 Ranking Member, Judiciary Committee  
 U.S. Senate  
 437 Russell Senate Office Building  
 Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy,

On behalf of the Major County Sheriffs Association, an association of sheriffs collectively representing over 100 million Americans, we submit to the Senate Judiciary Committee our statement for the record in response to the hearing, "Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims."

In response to the July 1, 2015 murder of Kathryn Steinle, there has been much discussion regarding grant penalties as a way to bring "sanctuary cities" into line with federal policy. While we understand the debate and political tension surrounding "sanctuary cities," the proposed solution of grant penalties does nothing address the core issue of a broken immigration system and lack of information sharing between state and locals. Rather, grant penalties will only further prevent law enforcement from effectively protecting their communities and themselves at a time when violent crime continues to rise.

The Major County Sheriffs Association believes that solving the issue of "sanctuary cities" requires a comprehensive and multifaceted approach that would increase border security and enhance information sharing between federal and state law enforcement regarding illegal immigrants.

MCSA has long advocated for comprehensive policy that would secure our nation's porous borders. The range of threats and crimes that continue to impact public safety in our communities – from narcotics to gangs and human trafficking – can be traced in large part back to continuing insecurity along our borders. Additionally, MCSA has repeatedly brought to light the need for increased information sharing between Federal, State, local and tribal law enforcement.

Information sharing is absolutely critical to maintaining public safety and combatting a wide variety of interstate and international threats that impact our communities. One specific area that we remain concerned about focuses on timely delivery of key information from the Federal level to States and locals on known criminal aliens that may reside in our communities. Information sharing responsibilities are binary meaning

that information should not just flow from the bottom up. State and local law enforcement officers have a need to know – for officer safety and basic policing operations – about any resident criminal alien threats that Federal law enforcement agencies are already aware of.

While we appreciate Congress' continued support for law enforcement, we strongly feel a law enforcement grant penalty solution would not only negatively impact law enforcement efforts across the country, but also not achieve its intended purpose. Any proposed solution that includes grant penalties is a failed attempt to address a problem that cannot be solved with a surface-level solution. "Sanctuary cities" present an array of challenges for state and federal governments, and will continue to do so without a clear solution that addresses the foundation of the problem. If Congress ultimately settles on a grant penalty, MCSA strongly advocates for a penalty that originates from another funding stream, separate from those designed to assist state and local law enforcement, given that "sanctuary" policies are derived by local politicians, not law enforcement officials.

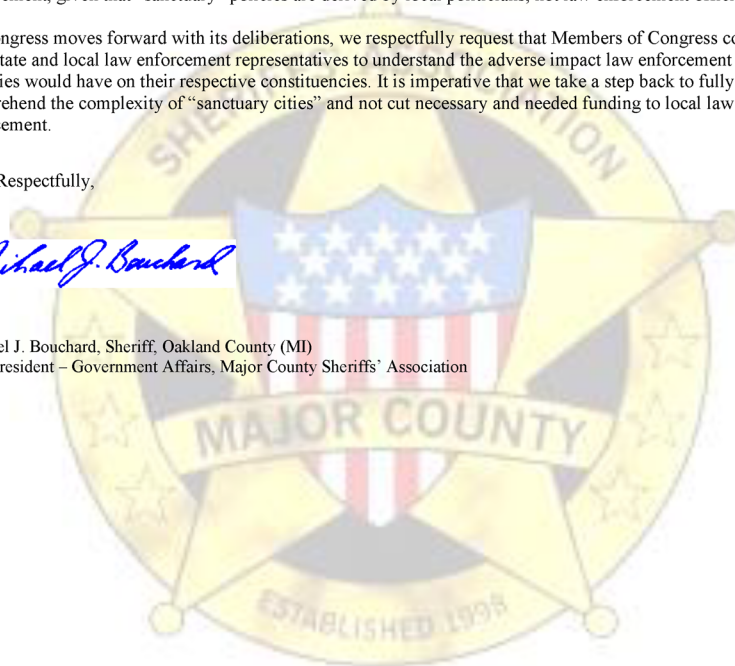
As Congress moves forward with its deliberations, we respectfully request that Members of Congress contact their state and local law enforcement representatives to understand the adverse impact law enforcement grant penalties would have on their respective constituencies. It is imperative that we take a step back to fully comprehend the complexity of "sanctuary cities" and not cut necessary and needed funding to local law enforcement.

Very Respectfully,



*Michael J. Bouchard*

Michael J. Bouchard, Sheriff, Oakland County (MI)  
Vice President – Government Affairs, Major County Sheriffs' Association





**STATEMENT OF THE NATIONAL COUNCIL OF LA RAZA**

Hearing on  
"Oversight of the Administration's Misdirected Immigration Enforcement Policies:  
Examining the Impact on Public Safety and Honoring Victims"

Submitted to  
United States Senate  
Committee on the Judiciary

Submitted by  
Clarissa Martinez de Castro  
Deputy Vice President  
Office of Research, Advocacy, and Legislation

July 23, 2015

Raul Yzaguirre Building  
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Washington, DC 20036-4845

[www.nclr.org](http://www.nclr.org)

The National Council of La Raza (NCLR) is the largest national Hispanic civil rights and advocacy organization in the United States, an American institution recognized in the book *Forces for Good* as one of the highest-impact nonprofits in the nation. We represent nearly 300 Affiliates—local, community-based organizations in 41 states, the District of Columbia, and Puerto Rico—that provide education, healthcare, housing, workforce development, and other services to millions of Americans and immigrants, annually.

To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

NCLR has a long history of fighting for sensible immigration laws, evidenced through our work in the Hispanic community, in the states and in Washington, DC. Most of our Affiliates teach English, provide health care services, promote financial literacy, and otherwise ease the integration of immigrants into the mainstream. We support and complement the work of our Affiliates by advocating for public policies here in Washington and at the state level. For America's Latino community, 75% of who are United States citizens, real immigration solutions are a top concern and priority both as a matter of policy and of civil rights.

The nation's immigration system is experiencing a systemic failure. Its multiple components are designed to work in tandem to (1) achieve a legal and regulated flow of workers and the reunification of families, (2) implement enforcement measures that advance national security and public safety and help ensure employers maintain a legal workforce, (3) support the successful integration of immigrants into society, and (4) conduct itself in way that upholds the nation's values and traditions respecting the legal and civil rights of America's diverse community. A breakdown in any one area has an impact on the effectiveness of all the others, and on the ability to maintain a legal and orderly process.

Congress has long had in its reach a solution that the vast majority of Americans supports—laid out in bipartisan legislation passed in the Senate in 2013—yet that solution continues to be blocked. The recent tragic death of Kathryn Steinle in San Francisco again puts in high relief the consequences of Congressional inaction.

First and foremost, our sympathies and prayers are with the Steinle and other families testifying in this hearing, who have suffered the tragic loss of a loved one. This loss is made more acute, if that were possible, by the refusal of Republican leadership to bring to a vote S744, which among other things included measures to strengthen community safety and allow law enforcement efforts to focus on the detention and removal of dangerous criminals.

While we see some members rush to introduce reactionary legislation arguing the need to act, we cannot oversee the fact that those very members have at every turn opposed sensible solutions from becoming a reality. We urge a respectful and serious conversation following this recent tragedy instead of a rush to pass measures that would criminalize communities wholesale, making law enforcement's ability to focus on those who mean us harm even more challenging.

In the current context, we should keep in mind that:

**Community policing is an important tool for local law enforcement.** Data and statements from law enforcement officials show that police need cooperation from everyone in the community to do their job and keep the public safe. They need witnesses and victims to be able to come forward. While misrepresentation about so-called "sanctuary cities" abound, these policies are designed to promote community safety, are premised on the community policing model, and are not designed to protect dangerous criminals.

States and localities should be permitted to pursue policies that foster trust and cooperation between communities and police. If victims and witnesses are afraid to interact with police, the police simply cannot do its job. A 2013 study found that nearly half of all Latinos surveyed reported being less likely to contact police officers if they have been a victim of crime out of fear that such contact could provide an opportunity for police officers to inquire into their immigration status or that of a person they know.<sup>1</sup> The same study found that 70% of undocumented individuals reported that they are less likely to contact police if they are the victim of a crime due to local police entanglement with federal immigration enforcement.

Many local law enforcement agencies have refrained from asking about the immigration status of a victim or witness precisely to ensure public cooperation and trust. In a recent [opinion editorial](#), Dayton Police Chief Richard Biehl stated "Sanctuary policies and practices are not designed to harbor criminals. On the contrary, they exist to support community policing, ensuring that the community at large — including immigrant communities — trusts state and local law enforcement and feels secure in reporting criminal conduct. Cooperation with federal immigration enforcement officials still can exist, but state and local law enforcement should carefully tailor policies to ensure that community policing is not undermined. What everyone wants is a safe community."

**This tragedy should not be used to scapegoat immigrants or allow for widespread racial profiling.** During this time, we urge a respectful dialogue that protects all communities. Labeling immigrants as criminals is not only harmful, it is incorrect. A report by the American Immigration Council demonstrates that increased immigration to the United States has in fact coincided with a significant decrease in both violent and property crimes nationwide.<sup>2</sup> We know that the majority of the immigrant population comes to this country to reunite with family and work, and make meaningful contributions that enrich their communities.

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<sup>1</sup> Nik Theodore, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," University of Illinois at Chicago (May 2013).

<sup>2</sup> Walter A. Ewing, Ph.D., *et al.*, "The Criminalization of Immigration in the United States," Immigration Policy Center (July 2015).

Furthermore, what we have seen as a result of the entanglement of immigration enforcement and local law enforcement is an increase in racial profiling. There is widespread evidence that delegating to states and localities the enforcement of federal immigration laws threatens civil rights and subjects entire communities to unlawful law enforcement stops, arrests, and detention. Just last week, Maricopa County settled with the U.S. Department of Justice (DOJ) in litigation stemming from the rampant discrimination and raids targeting Latinos under the pretense of immigration enforcement. There is an upcoming federal court trial that will address the DOJ finding that he targeted Latino drivers.

**The solution has been and continues to be in the hands of Republican leadership—it is time to pass immigration reform.** The Senate passed bipartisan legislation in 2013 that among other things would have required that undocumented immigrants prove their identity, pass a criminal background check, and pay taxes in order to earn their legalization, allowing ICE to focus on dangerous elements. It is time for Congress to finish the job. We firmly believe that the moral, economic and political imperatives for action are aligned, and Congress has an opportunity and a responsibility to deliver immigration reform that:

- Restores the rule of law by creating a roadmap to legalization and earned citizenship for 11 million aspiring Americans, and promoting smart enforcement that improves safety, supports legal immigration, and prevents discrimination;
- Preserves the rule of law by creating workable legal immigration channels that reunite families, strengthen our economy, and protect workers' rights; and
- Strengthens the fabric of our society by adopting proactive measures that advance the successful integration of new immigrants.

The intertwined nature of these elements make a comprehensive approach a necessity and piecemeal efforts will fall short in addressing legitimate frustration over the consequences of this outdated system. This is illustrated by the fact that annually, federal immigration enforcement has reached \$18.5 billion and exceeds that of all other federal criminal law enforcement combined, yet that alone cannot solve the issues we face.

There is a reason why 326 counties, 32 cities, and 4 states chose to limit their cooperation with Immigration and Customs Enforcement (ICE): although the Secure Communities program was established to target the most dangerous criminals, more than half the people deported were non-criminals or people with traffic violations. In 2013 alone, only 12% of the people deported through the program were the agency's top priority. Additionally, two federal courts ruled that ICE requests for local law enforcement to hold individuals beyond when they would otherwise be released, violated the Constitution.

Donald Trump was widely condemned for his inflammatory remarks seeking to paint a whole community as criminals. Congress should not follow his reprehensible path by turning his remarks into legislation.

July 20, 2015

Dear Members of Congress,

We, the undersigned civil rights, immigrant rights, victims' services, and human rights organizations write to express our strong opposition to any legislation that would seek to undermine state and local law enforcement's efforts to build and restore community trust.

Good policies are made over time, by examining our shared values and opinions, and by working toward equality and justice for all people. They are not made based on a single, tragic incident or by taking the actions of one individual to justify a policy that criminalizes an entire community. Sadly, in response to the tragic death of Kathryn Steinle, some politicians, including Senator David Vitter, are proposing legislation that scapegoats all immigrants based on the acts of one. These reactionary policy proposals are focused on heavy-handed, enforcement-only approaches despite the fact that studies show that deportation-only policies do not reduce crime rates. Rather, those policies only foster an atmosphere of mistrust and fear, and undermine public safety in all of our communities.

Such proposals are not even supported by the federal agency they are purportedly aimed at helping – the Department of Homeland Security (DHS). As DHS Secretary Jeh Johnson himself acknowledged in a July 14, 2015 hearing before the House Judiciary Committee, "I do not believe that mandating through federal legislation conduct of sheriffs and police chiefs is the way to go. I think it will [be] hugely controversial. I think it will have problems with the Constitution." Secretary Johnson also confirmed he is not alone in this belief, when he testified, "In my judgment, and the judgment of a lot of other border security, immigration enforcement experts, the way to most effectively work with these jurisdictions, again, is a cooperative one, not by hitting them over the head with federal legislation that will engender a lot more litigation."<sup>1</sup>

Policies like those introduced by Senator Vitter would undermine trust between local and state law enforcement and the communities they serve to protect. Over 320 localities in diverse geographic regions such as Kansas, California, Florida, Illinois, Pennsylvania and many other states have limited their involvement in immigration enforcement because of concerns about liability for failure to uphold Fourth Amendment protections and concerns that such involvement undermines community trust in the police, a critical component to effective policing.

States and localities should be permitted to pursue policies that foster trust and cooperation with their local communities. If victims and witnesses are afraid to come forward and work with the police, the police simply cannot do their jobs.<sup>2</sup> Moreover, as confirmed by a July 2015 report by the American Immigration Council, increased immigration to the United States has in fact

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<sup>1</sup> Testimony of Department of Homeland Security Secretary Jeh Johnson before the United States House of Representatives Judiciary Committee, July 14, 2015.

<sup>2</sup> A 2013 study found that 44 percent of Latinos surveyed reported being less likely to contact police officers if they have been a victim of crime because they fear that such contact could provide an opportunity for police officers to inquire into their immigration status or that of a person they know. Nik Theodore, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," University of Illinois at Chicago (May 2013).

coincided with a significant decrease in both violent and property crimes nationwide.<sup>3</sup> We know that the majority of the immigrant population comes to this country to reunite with family, work and make meaningful contributions that enrich their communities. What we need is a long-term Congressional solution aimed at addressing our broken immigration system, not reactionary policy proposals that focus on only one facet of the system.

The dialogue surrounding this tragic event only fosters stereotypes and misinformation about the immigrant community. To be clear – the immigration system is broken and needs reform. But moving forward with reactionary and sweeping legislation on one facet of the system doesn't solve the problem. The real solution to our immigration challenges is broad and humane immigration reform which would place undocumented immigrants on a workable and earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country.

Sincerely,

National Organizations

Advancing Justice – Asian Law Caucus  
 Alliance for Citizenship  
 American Civil Liberties Union  
 American Immigration Lawyers Association  
 America's Voice Education Fund  
 Asian Americans Advancing Justice – AAJC  
 Asian Pacific American Labor Alliance  
 Asian Pacific Institute on Gender Based Violence  
 Black Alliance for Just Immigration (BAJI)  
 Center for Gender & Refugee Studies  
 Center for Popular Democracy  
 Church World Service  
 Farmworker Justice  
 Futures Without Violence  
 Immigrant Defense Project  
 Immigrant Legal Resource Center  
 Latin American Working Group Education Fund  
 Leadership Conference on Civil and Human Rights  
 League of United Latin American Citizens  
 Mi Familia Vota  
 National Asian American Pacific Islander Mental Health Association (NAAPIMHA)  
 National Coalition Against Domestic Violence  
 National Council of La Raza (NCLR)  
 National Day Laborer Organizing Network (NDLON)  
 National Domestic Workers Alliance  
 National Education Association

<sup>3</sup> Walter A. Ewing, Ph.D., *et al.*, "The Criminalization of Immigration in the United States," Immigration Policy Center (July 2015).

National Guestworker Alliance  
 National Immigration Forum  
 National Immigrant Justice Center  
 National Immigration Law Center  
 National Korean American Service and Education Consortium  
 National Latin@ Network: Casa de Esperanza  
 National Lawyers Guild  
 National LGBTQ Task Force Action Fund  
 National Queer Asian Pacific Islander Alliance (NQAPIA)  
 PICO National Network  
 Service Employees International Union (SEIU)  
 South Asian American Leading Together (SAALT)  
 Southeast Asia Resource Action Center (SEARAC)  
 United We Dream  
 We Belong Together

Regional, State, and Local Organizations

Alliance San Diego  
 Asian Americans Advancing Justice – Chicago  
 Asian Americans Advancing Justice – LA  
 Asian Counseling and Referral Service  
 California Immigrant Policy Center  
 California Immigrant Youth Justice Alliance  
 Canal Alliance  
 Capital Region Organizing Project  
 Central American Resource Center (CARECEN-LA)  
 Chinese for Affirmative Action  
 Chula Vista Democratic Club  
 CLEAN Carwash Campaign  
 Community Leadership Association (ALC)  
 Council on American-Islamic Relations San Diego Chapter  
 Enlace  
 Florida Immigration Coalition (FLIC)  
 Gamaliel of California  
 Genesis  
 Illinois Coalition for Immigrant and Refugee Rights  
 Immigrant Law Center of Minnesota  
 Inland Empire Immigrant Youth Coalition  
 Justice Overcoming Boundaries  
 Kitsap Immigrant Assistance Center  
 Korean Resource Center  
 Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
 MAAC Project  
 Make the Road New York

Massachusetts Immigrant and Refugee Advocacy Coalition  
Nebraska Appleseed Center for Law in the Public Interest  
New Orleans Workers' Center for Racial Justice  
New York Immigration Coalition  
North Bay Organizing Project  
Northwest Immigrant Rights Project  
OneAmerica  
Orange County Immigrant Youth United (OCIYU)  
San Diego and Imperial Counties Labor Council  
San Diego Dream Team  
San Diego Immigrant Rights Consortium  
San Joaquin Immigrant Youth Collective  
Services, Immigrant Rights, and Education Network (SIREN)  
Skagit Immigrant Rights Council  
South Asian Network  
Tennessee Immigrant and Refugee Rights Coalition  
Unitarian Universalist Refugee and Immigrant Services and Education (UURISE)  
VA Coalition for Immigrant Rights  
Washington Community Action Network  
Washington State Coalition Against Domestic Violence  
Workers Defense Project

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The Fowler Law Firm,  
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Emma Leheny  
California Teachers Association

Ghazal Tajmiri  
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& Sutcliffe LLP

*Organizations listed for  
identification purposes only*

**EXECUTIVE DIRECTOR**  
Marielena Hincapié

## Statement of National Immigration Law Center

## Senate Judiciary Committee

## HEARING:

## “Oversight of the Administration’s Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims”

July 21, 2015

Dear Members of the Senate Judiciary Committee,

The National Immigration Law Center (NILC) is writing to express our strong opposition to all legislation that seeks to mandate the entanglement of state and local police and federal immigration authorities. These enforcement-only proposals would undermine the efforts of over 320 jurisdictions that have adopted policies that build community trust and cooperation with local police to enhance public safety for all of the communities they protect.

NILC is a nonpartisan organization exclusively dedicated to defending and advancing the rights of low-income immigrants and their families. Policymakers, faith and community-based organizations, legal aid attorneys, government agencies, and the media recognize NILC staff as experts on a wide range of issues that affect the lives of immigrants in the U.S. and frequently call upon us to explain the real-life impact of immigration-related laws and policies. Our experience working on immigration law enforcement, immigrant workplace issues, and due process protections for indigent and vulnerable immigrants, including unaccompanied children, who face deportation informs our view that legislation that mandates cooperation between state and local law enforcement and immigration authorities—or fiscally punishes localities that refuse this cooperation—is the wrong approach to keeping our communities safer or to addressing our nation’s complex immigration challenges.

Kathryn Steinle’s death in San Francisco several weeks ago was nothing short of tragic. We express our sincere condolences to her family and her loved ones. Some politicians have seized on this tragedy to promote harmful stereotypes and misinformation about the immigrant community. Rather than turn hastily to broad and punitive enforcement-only measures, we urge

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members of Congress to carefully examine the strong and compelling reasons behind policies — adopted by over 320 municipalities across the country — that limit entanglement of local law enforcement and federal immigration authorities. These policies represent mainstream and widely embraced practices to enhance community safety and have been adopted in states as diverse as California, Florida, Illinois, Kansas and Pennsylvania, among others.

**Separating local law enforcement from immigration promotes public safety**

Jurisdictions across the country have embraced community trust policies to limit immigration enforcement entanglement because policies that increase the role of state and local police in immigration enforcement — including the 287(g) program, state immigration enforcement laws, Secure Communities, among others — have proven dangerously ineffective and produced substantial public safety costs for participating localities and their communities. For example, a 2013 academic survey found that 70 percent of undocumented immigrants as well as 28 percent of U.S.-born Latinos reported that they would be less likely to contact police officers as a crime victim because they feared the officers would use the interaction to enforce immigration laws.<sup>i</sup>

This fear directly undermines public safety, impedes effective criminal law enforcement and diverts limited police resources towards immigration enforcement.<sup>ii</sup> As a result, many jurisdictions embraced community trust policies precisely because they felt that the Secure Communities program had seriously damaged immigrant community trust in police as federal officials asked them to help ensnare individuals and tear apart families and communities. These community trust policies have promoted public safety without insulating anyone from violations of local, state or federal laws, including our immigration laws. They have also not negatively impacted rates of crimes in the communities that have adopted them. Indeed, as confirmed by a report earlier this month, studies have shown that increased immigration to the United States has in fact coincided with a significant decrease in both violent and property crimes.<sup>iii</sup>

Many state and local law enforcement leaders have been vocal in opposing their entanglement with immigration authorities for similar reasons. For example, the Major Cities Chiefs Police Association has argued that local immigration enforcement undermines community trust and cooperation and significantly diverts resources from the core mission of police to create safe communities.<sup>iv</sup> Similarly, the President's Task Force on 21<sup>st</sup> Century Policing recommended in its May 2015 report that, "Whenever possible, state and local law enforcement should not be involved in immigration enforcement."<sup>v</sup>

The Department of Homeland Security (DHS) has also emphasized that it does not support legislative proposals to increase or mandate the role of state and local authorities in immigration enforcement. DHS Secretary Johnson and other DHS officials have acknowledged the enormous failings of the Secure Communities program, which tried to mandate strong state and local immigration enforcement involvement, and recognized the need to eliminate the program.<sup>vi</sup> As recently as July 14, 2015, DHS Secretary Jeh Johnson reiterated this position when he testified before the U.S. House of Representatives that, "I

do not believe that federal legislation mandating the behavior of a lot of sheriffs and police chiefs is the way to go. I believe it will lead to more litigation, more controversy, and it will be counterproductive.”<sup>vii</sup>

**Constitutional violations and fiscal impact of mandating cooperation with immigration**

Beyond the threats to community trust in local law enforcement, mandating entanglement with immigration officials also imposes serious public safety costs and can violate fundamental constitutional rights that prevent unlawful detention of individuals. Indeed, several federal courts have found that prior federal immigration detainer policies that lead to individuals being held solely for immigration purposes violated the 4th amendment.

These unlawful detentions have generated major fiscal costs for state and local jurisdictions over the past decade, including for excessive arrests and detentions of suspected immigrants and legal defense. Numerous researchers have documented how, especially in contexts of encouraged immigration enforcement involvement, state and local police officers have arrested and booked suspected immigration law violators for minor offenses at higher rates than other minor crime suspects and excessively detained them.<sup>viii</sup> State and local jurisdictions nationwide have incurred millions of dollars in legal defense costs in response to allegations of immigration enforcement-related rights abuses, racial profiling, and unjustified detentions, as well as a lack of constitutional authority to enforce federal immigration laws. Local jurisdictions have paid damages from \$8,000 to \$200,000 to individuals whose rights were violated in immigration enforcement-related activities.<sup>ix</sup>

**Congress should look to comprehensive reform, not enforcement-only proposals**

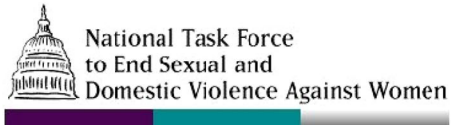
In the wake of Kathryn Steinle’s death, politicians have rushed to embrace false stereotypes of immigrant criminality and to legislate mandated increases in state and local immigration law enforcement involvement. Such enforcement-only policy proposals have had a poor track record in our communities, foster harmful stereotypes and misinformation about the immigrant community and stand contrary to the true legislative reform that our broken immigration system needs.

To be clear – the immigration system is broken and needs reform. But moving forward with reactionary and sweeping legislation on one facet of the system doesn’t solve the problem. The real solution to our immigration challenges is broad and humane immigration reform which would place undocumented immigrants on a workable and earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country.

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<sup>i</sup> Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013.  
[http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

- <sup>ii</sup> Clint Bolick, Goldwater Institute, *Mission Unaccomplished: Misplaced Priorities of the Maricopa Sheriff's Department*, Policy Report No. 229, 2 December 2008, 9; Kathy A. White and Lucy Dwight, The Colorado Fiscal Institute, *Misplaced Priorities: SB90 & The Cost to Local Communities*, 1 December 2012, <http://www.coloradofiscal.org/misplaced-priorities-sb90-the-costs-to-local-communities/>; Colorado Fiscal Institute, "The Facts are In: Colorado's "Show Me Your Papers Law" Drains Economy, Threatens Civil Rights," 5 December 2012, <http://www.coloradofiscal.org/the-facts-are-in-colorados-show-me-your-papers-law-drains-economy-threatens-civil-rights/>.
- <sup>iii</sup> Walter A. Ewing, Daniel E. Martinez, Ruben G. Rumbart, American Immigration Council, *The Criminalization of Immigration in the United States*, 8 July 2015; Kristin F. Butcher and Anne Morrison Piehl, "Why Are Immigrants' Incarceration Rates So Low? Evidence on Selective Immigration, Deterrence, and Deportation," National Bureau of Economic Research Working Paper Series, Working Paper 13229, <http://www.nber.org/papers/w13229>
- <sup>iv</sup> Chief Thomas Manger, Major Cities Chiefs Association, to Hon. Bob Goodlatte and Hon. Trey Gowdy, 13 March 2015; Major Cities Chiefs, *Immigration Policy*, 2013, [https://www.majorcitieschiefs.com/pdf/news/2013\\_immigration\\_policy.pdf](https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf); Police Executive Research Forum, *Local Police Perspectives on State Immigration Policies*, July 2014.
- <sup>v</sup> President's Task Force on 21<sup>st</sup> Century Policing, *Final Report of the President's Task Force on 21<sup>st</sup> Century Policing*, May 2015, 18, [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf).
- <sup>vi</sup> Jeh Johnson, Secretary, Department of Homeland Security, Subject: Security Communities, 20 November 2014, [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).
- <sup>vii</sup> Jeh Johnson testimony before U.S. House Judiciary Committee, *Hearing: Oversight of the Department of Homeland Security*, 14 July 2015, Congressional Quarterly Transcripts.
- <sup>viii</sup> Judith A. Greene, Justice Strategies, *Responding to Immigration Detainers in California*, 22 August 2012; Amalia Greenberg Delgado and Julia Harumi Mass, ACLU of Northern California, *Costs and Consequences: The High Price of Policing Immigrant Communities*, February 2011; Azadeh Shahsahani, ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)*, March 2010; Trevor Gardner II and Aarti Kohli, Chief Justice Earl Warren Institute on Race, Ethnicity, & Diversity, University of California at Berkeley, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, September 2009
- <sup>ix</sup> National Immigration Forum Staff, "Community and Courtroom Responses to Immigration Detainers," 20 October 2014, <http://immigrationforum.org/blog/community-and-courtroom-responses-to-immigration-detainers-3/>; Tim Henderson, "More Jurisdictions Defying Feds on Deporting Immigrants," *Pew Stateline*, 31 October 2014, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/10/31/more-jurisdictions-defying-feds-on-deporting-immigrants>



July 14, 2015

Dear Senator,

As the Steering Committee of the National Taskforce to End Sexual And Domestic Violence (“NTF”), comprising national leadership organizations advocating on behalf of sexual and domestic violence victims and women’s rights, we represent hundreds of organizations across the country dedicated to ensuring **all** survivors of violence receive the protections they deserve. For this reason, we write to express our deep concerns about the impact of Senator Vitter’s (S.A.2213) and Senator Cotton’s (S.A.2146) amendments to S.A. 2089, amending the Elementary and Secondary Education Act of 1965 Reauthorization, S. 1117.

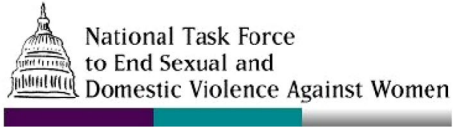
We are concerned these amendments preventing funding to “sanctuary” cities will significantly hinder the ability of certain cities to build trust and cooperation between vulnerable and isolated victims of domestic and sexual violence and law enforcement. Last year marked the twentieth anniversary of the bipartisan Violence Against Women Act (“VAWA”), which has, since it was first enacted, included critical protections for immigrant victims of domestic and sexual violence. The Vitter and Cotton Amendments to S.1177 through S.A. 2089 undermine the spirit and protections of VAWA and will have the effect of pushing immigrant survivors and their children (many of whom are likely U.S. Citizens) deeper into the shadows and into danger.

As recognized in VAWA, bipartisan legislation supporting our nation's response to domestic and sexual violence and stalking, immigrant victims of violent crimes are often fearful of contacting law enforcement due to fear that they will be deported. A recent and comprehensive survey shows that 41% of Latinos believe that the primary reason Latinos/as do not come forward is fear of deportation.<sup>1</sup>

Policies that minimize the intertwining of local law enforcement with ICE help bring the most vulnerable victims out of the shadows by creating trust between law enforcement and the immigrant community, which in turn helps protect our *entire* communities.<sup>2</sup> Fear of deportation also strengthens the ability of abusers and traffickers to silence and trap their victims. Not only are the individual victims harmed, but their fear of law enforcement leads many to abstain from reporting violent perpetrators or coming forward, and, as a result, dangerous criminals are not identified and go unpunished. These criminals remain on the streets and continue to be a danger to their communities.

<sup>1</sup> <http://m.huffpost.com/us/entry/7112130?> <http://nomore.org/nomas/>

<sup>2</sup> A study conducted by the University of Illinois- Chicago found that increased involvement of local police and immigration enforcement eroded trust between the police and immigrants, undocumented and documented. 45% of documented immigrants were less likely to report a crime while 70% of undocumented immigrants responded similarly. <http://www.motherjones.com/politics/2015/07/sanctuary-cities-public-safety-kate-steinle-san-francisco>



The Vitter and Cotton amendments undermine "sanctuary" policies that cities have determined are appropriate for their respective communities, and decrease the ability of law enforcement agencies to respond to violent crimes and assist all (immigrant, citizens, etc.) victims of crime. As recognized in VAWA, law enforcement plays a critical role in our coordinated community response to domestic and sexual violence. Federal law enforcement funding supports critical training, equipment, and agency staffing that assists domestic and sexual violence victims. These amendments will allow violent crimes to go uninvestigated and leave victims without redress due to reductions in funding.

For these reasons, we urge you to affirm the intent and spirit of VAWA and oppose the Vitter and Cotton amendments to S.1117. Thank you very much for taking this important step to protect and support immigrant survivors of domestic violence and sexual assault.

For more information, please contact Grace Huang, Washington State Coalition Against Domestic Violence at [grace@wscadv.org](mailto:grace@wscadv.org), or (206) 389-2515 x 209, or Andrea Carcamo, National Latin@ Network: Casa de Esperanza, at [acarcamo@casadeesperanza.org](mailto:acarcamo@casadeesperanza.org) or (703) 942-5582.

Sincerely,

The National Task Force to End Sexual and Domestic Violence



**Statement for the Record**

**Submitted to the Senate Committee on the Judiciary**

**Hearing: “Oversight of the Administration’s Misdirected Immigration Enforcement Policies”**

**July 21, 2015**

Jesuit Refugee Service/USA (JRS/USA) is an international Catholic non-governmental organization whose mission is to accompany, serve and advocate for the rights of refugees and other forcibly displaced persons. JRS works in 47 countries worldwide to meet the educational, health, social and other needs of almost 780,000 refugees and other forcibly displaced persons. JRS services are available to refugees and displaced persons regardless of their race, ethnic origin, or religious beliefs.

In January 2015, JRS/USA and 13 U.S.-based Jesuit law schools began a partnership to examine the fate of Central Americans migrating north to the United States. Of particular concern was the increase in the number of unaccompanied and separated migrant children from the Northern Triangle of Central America — Honduras, El Salvador and Guatemala.

While this migration is part of a mixed flow, including economic migrants as well as refugees, many are fleeing targeted persecution by gangs, organized criminal groups, drug cartels, and state actors. Organized criminal groups have increasingly dominated communities in the Northern Triangle, where weak and often corrupt state institutions have proven unable or unwilling to tackle violence and lawlessness.

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) states that the Department of Health and Human Services must “ensure, to the greatest extent practicable” that all unaccompanied children, with exception to Mexicans and Canadians, be provided access to counsel and the appointment of a child advocate. This ensures that children receive proper care and that their requests for asylum and other forms of relief are processed fairly and in a way that is consistent with their age and development.

Legal practitioners at Jesuit law schools in the U.S. are working to assist asylum seekers and other vulnerable migrants from Central America through direct legal representation, advocacy and outreach.

We urge policymakers to address the needs of migrants seeking protection and refuge in the U.S., including making every effort to provide access to legal representation. Even in enforcement practices, it is critical that anyone who comes to our borders seeking safety is provided a fair and equitable process to articulate their claims for protection and that their dignity and well-being is respected throughout the entire legal process.

# RLS RAINS LUCIA STERN, PC

Peter A. Hoffmann  
Attorney at Law  
PHoffmann@RLSlawyers.com

July 13, 2015

VIA ELECTRONIC MAIL, FACSIMILE & FIRST CLASS MAIL

Sheriff Ross Mirkarimi  
San Francisco Sheriff's Department  
City Hall, Room 456  
1 Carlton Goodlett Place  
San Francisco, CA 94102

**Re: Grievance and Demand to Meet & Confer regarding ICE Procedures Directives**

Dear Sheriff Mirkarimi:

On behalf of the San Francisco Deputy Sheriffs' Association ("SFDSA" or "Association"), please accept this correspondence as a formal grievance and demand to initiate the meet and confer process concerning the San Francisco Sheriff's Department's ("Department") March 9, 2015 directive titled "Immigration & Custom Enforcement Procedures (ICE)" and its subsequent directive titled "Immigration & Custom Enforcement Procedures (ICE) Contact and Communication" issued on March 13, 2015.

As evidenced by the tragic death of Kate Steinle on July 1<sup>st</sup>, the Department's refusal to coordinate, much less cooperate, with federal law enforcement agencies recklessly compromises the safety of sworn personnel, citizens, and those who merely come to visit the San Francisco area. Given that the Department unilaterally implemented these changes without discussing the matter during its monthly labor-management meetings with the Association, much less satisfied its meet and confer obligations with the SFDSA as required by Article I.G. ("Negotiation Responsibility") of the Memorandum of Understanding ("MOU") between the City & County of San Francisco ("CCSF") and sections 3504-3505 of the Meyers-Milius-Brown Act ("MMBA") (Government Code section 3500 *et seq.*), the Association hereby demands that the Department immediately rescind the directives and comply with its statutory and contractual obligations to meet and confer in good faith before seeking to implement any changes to longstanding Department policies and procedures designed to safeguard law abiding citizens. Moreover, it is the Association's sincere belief that any changes that the Department might pursue should honor Ms. Steinle's life by correcting the Department's flawed philosophy so that the people of San Francisco – citizens, visitors, and employees alike – are safer in the future. Alternatively, should

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Sheriff Ross Mirkarimi

**Re: Grievance and Demand to Meet & Confer regarding ICE Procedures Directives**

July 13, 2015

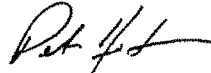
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the Department adhere to your directives to limit future communications with ICE, the SFDSA believes that only the sheriff – and not deputized personnel – should review and personally approve (or deny) each ICE Immigration Detainer, ICE Administrative Warrant, ICE Internal Order to Detain or Release, ICE entries in NCIC, and other requests from ICE.

Thank you for your prompt attention to this important matter. The Association looks forward to your written response on or before July 24, 2015.

Respectfully,

**RAINS LUCIA STERN, PC**



Peter A. Hoffmann

PAH:my

cc: Eugene Cerbone, SFDSA President  
Martin Gran, Employee Relations Director  
Jim Bickert, RLS



July 20, 2015

Dear Senator:

We write on behalf of mayors and their city governments to register our strong opposition to legislation that would withhold federal law enforcement assistance from so-called "sanctuary cities."

We believe that decisions related to how law enforcement agencies prioritize their resources, direct their workforce, and define the duties of their employees must reside with local government leadership. This includes defining the role of local police officers in the context of enforcing federal immigration laws. It is our strong belief that effective policing cannot be achieved by forcing an unwanted role upon the police by threat of sanctions or withholding of law enforcement assistance funding as has been proposed.

At a time when law enforcement agencies are working hard to strengthen police-community relations and build trust, legislative proposals to withdraw funding from communities are particularly troubling and counterproductive to those efforts.

Building relationships based on trust with immigrant communities is central to overall public safety, according to the recently released President's Task Force Recommendations on 21<sup>st</sup> Century Policing. In order to strengthen these relationships and to foster the trust so essential to public safety, the Task Force also recommended terminating the Department of Homeland Security's use of the state and local criminal justice system, to enforce civil immigration laws against civil and non-serious criminal offenders, including through detention, notification, and transfer requests.

Further, shifting the federal responsibility of enforcing civil immigration law to state and local governments diverts critical resources from their law enforcement agencies, compromises public safety, and hinders local police department efforts to work with immigrant communities in preventing and solving crimes.

Immigration enforcement laws and practices must be nationally based, consistent, and fully funded by the federal government. Immigration is a federal, not a state or local, responsibility.

We urge you not to take precipitous action that will have a negative impact on law enforcement agencies and public safety across the nation.

Sincerely,

A handwritten signature in black ink that reads "Tom Cochran".

Tom Cochran  
CEO and Executive Director  
The United States Conference of Mayors

A handwritten signature in black ink that reads "Clarence E. Anthony".

Clarence E. Anthony  
CEO and Executive Director  
National League of Cities



Statement of Andrea Cristina Mercado and Miriam Yeung, co-chairs of We Belong Together

Submitted to the United States Senate Committee on the Judiciary

Hearing on “Oversight of the Administration’s Misdirected Immigration Enforcement Policies:  
Examining the Impact on Public Safety and Honoring the Victims”

July 21, 2015

Chairman Grassley, Ranking Member Leahy and members of the Committee, we are Andrea Cristina Mercado and Miriam Yeung, co-chairs of We Belong Together. Thank you for the opportunity to submit testimony for inclusion in the record for today’s hearing.

We Belong Together is a campaign co-anchored by the National Domestic Workers Alliance and the National Asian Pacific American Women’s Forum to mobilize women in support of common-sense immigration reform that will keep families together and empower women. We Belong Together was launched on Mother’s Day in 2010 and has exposed the dangerous impact of immigration enforcement on women and families, advocated for comprehensive immigration reform legislation and campaigned President Obama to take executive action within his legal authority to improve the broken immigration system.

We are saddened by the tragic death of Kathryn Steinle in San Francisco. We now face an important opportunity to thoughtfully debate policy solutions to address the prevention and aftermath of violence and its impact on individuals, families and all those living in our country today. The tragic death of Ms. Steinle should not be used to scapegoat immigrants or promote negative and divisive stereotypes.

Since its inception the We Belong Together campaign has demanded an end to harsh immigration enforcement policies that separate families, traumatize children and infringe upon the rights and dignity of women and immigrants. Women make up over half of all immigrants in the U.S., and immigrant women – who are community leaders, mothers, workers, and survivors of gender-based violence – continue to get ensnarled in the over-funded and punishing immigration enforcement system.

Immigrant women are disproportionately vulnerable to exploitation and abuse in the workplace and in the home:

- Immigrant women are three to six times more likely to experience domestic violence because immigration status is often used as a tool of control to force women to remain in violent relationships.
- An estimated 70% of women crossing the U.S./ Mexico border without family are sexually assaulted during their journey to the U.S.
- Immigrant women workers are the lowest paid demographic in our country. They also experience alarmingly high rates of wage theft, compensation below minimum wage requirements, physical abuse and human trafficking.
- Immigration status and fear of retaliation makes many immigrant women fearful of asserting their labor and human rights.

State policies that criminalize immigrants and entangle the responsibilities of local law enforcement and federal immigration authorities, such as Arizona's notorious SB 1070; federal policies like 287(g) and Secure Communities; and informal partnerships between police and Immigration and Customs Enforcement (ICE) exacerbate the barriers women face to accessing safety and justice.

In November of 2014, the Department of Homeland Security (DHS) announced that the Secure Communities program would be replaced by a new program, PEP. Unfortunately, like Secure Communities, PEP is based on the flawed model of local and state police acting as immigration agents or in concert with immigration authorities. Such a model erodes community trust of law enforcement and discourages immigrant survivors of violence from going to the police. It has the collateral effect of prohibiting mothers from seeking medical help, assistance from non-governmental organizations or other services for themselves or their children. We Belong Together continues to call for the end to any entanglement between local police and immigration authorities, including programs like PEP, which by design result in due process violations, racial profiling and destroy the trust of communities of color which is necessary to achieve the core law enforcement mission of protecting all of our communities.

Throughout the country, immigrant women have waged campaigns to end the entanglement of policing and immigration. Many state and local law enforcement agencies have responded to the serious concerns of immigrant women and families and adopted policies that limit cooperation between police and DHS and ensure constitutional safeguards are met. Over 300 counties, 32 cities and four states have adopted no detainer, limited detainer or sanctuary city policies. These policies reflect a commitment to building trust with communities of color; enhancing access to safety and legal protections for survivors of domestic violence, sexual assault and human trafficking; and respecting due process protections for all community members. We Belong Together stands firm in its defense of these policies.

We Belong Together denounces any federal proposals that infringe on the ability of states and localities to engage in policies that promote public safety and community policing. Increased criminalization of immigrant communities will only further shatter an already broken system and endanger immigrant survivors who are particularly vulnerable to arrest as they face cultural and linguistic barriers, which often lead to miscommunications when interfacing with law

enforcement. Misguided policies that prosecute and jail migrants for reuniting with family members fail to recognize the transnational nature of American families today and cost taxpayers billions of dollars to the benefit of private prison companies.

We Belong Together urges the Obama Administration to enhance protections for women, families and survivors of violence by ending the entanglement of immigration enforcement with state and local policing. ICE should also end federal immigration enforcement in states or localities that have anti-immigrant laws or a record of racial profiling or other civil rights abuses.

Congress should end the current era of legislative inaction and enact permanent, humane and comprehensive reforms to our immigration system that address the needs of women and families. These reforms must include a broad pathway to citizenship for all members of the undocumented community, relief for families shattered by the visa backlogs, humanity and discretion in the immigration enforcement system, protections for women workers including the expansion of humane opportunities for women and their families to enter or remain in the U.S. to work, and enhanced protections for survivors of gender-based violence and human trafficking.