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# U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

APRIL 14, 2015

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# CONTENTS

APRIL 14, 2015


Page

OPENING STATEMENTS

The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary ..... 1
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Member, Committee on the Judiciary ..... 3
The Honorable Trey Gowdy, a Representative in Congress from the State of South Carolina, and Member, Committee on the Judiciary ..... 20
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary ..... 21

WITNESS

The Honorable Sarah R. Saldaña, Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security
Oral Testimony ..... 23
Prepared Statement ..... 26

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Member, Committee on the Judiciary ..... 6
Material submitted by the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary ..... 10
Material submitted by the Honorable Henry C. "Hank" Johnson, Jr., a Representative in Congress from the State of Georgia, and Member, Committee on the Judiciary ..... 67

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Material submitted by the Honorable Luis V. Gutierrez, a Representative in Congress from the State of Illinois, and Member, Committee on the Judiciary ..... 96
Response to Questions for the Record from the Honorable Sarah R. Saldaña, Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security ..... 97

# U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

**TUESDAY, APRIL 14, 2015**

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
*Washington, DC.*

The Committee met, pursuant to call, at 10:17 a.m., in room 2141, Rayburn Office Building, the Honorable Bob Goodlatte, (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Smith, Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan, Gowdy, Labrador, Farenthold, Collins, DeSantis, Buck, Trott, Bishop, Conyers, Lofgren, Jackson Lee, Johnson, Pierluisi, Chu, Deutch, Gutierrez, DelBene, Jeffries, and Peters.

Staff Present: (Majority)Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; Dimple Shah, Counsel; Kelsey Williams, Clerk; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian; Maunica Sthanki, Counsel; and Rosalind Jackson, Professional Staff Member.

Mr. GOODLATTE. Good morning.

The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time. We welcome everyone to this morning's hearing on Oversight of U.S. Immigration and Customs Enforcement, and I will begin by recognizing myself for an opening statement.

As the Obama administration consistently shrinks the universe of criminal and unlawful aliens that U.S. Immigration and Customs Enforcement can remove, ICE apprehensions have decreased 40 percent since this time last year. ICE administrative arrests of criminal aliens declined 32 percent compared to this time last year. The average daily population of aliens in detention facilities has declined to approximately 26,000 beds. This has occurred despite a mandate in law that requires ICE to maintain a 34,000 average daily population in detention facilities. And the number of unlawful or criminal aliens that ICE has removed from the interior of the country has fallen by more than half since 2008.

Many factors have contributed to the sharp decline of interior immigration enforcement under this Administration including the collapse of issuance and compliance with ICE detainers because of ICE's own detainer policy issued on December 21, 2014, that limits

ICE's ability to issue detainers; ICE's failure to defend its detainer authority; ICE's implementation of its new enforcement priorities announced by Secretary Johnson on November 20, 2014; and the demise of the Secure Communities program on this same date.

Detainers are a key tool used by ICE. They are notices issued by ICE and other DHS units that ask local, state, and Federal law enforcement agencies not to release removable aliens held at their facilities in order to give ICE an opportunity to take them into its custody and put them in removal proceedings.

Due to the detainer debacle this Administration has created, ICE officers must wake up in the early hours of the morning, put their lives at risk, and go out into the community to apprehend convicted criminal aliens that have been released onto the streets.

Director, you yourself are part of the confusion. You testified before Congress one day stating that detainers should be made mandatory, and the next day you retracted your testimony.

When aliens released onto the streets go on to commit additional crimes, yet could have been placed ICE custody, this Administration is responsible. From January 1, 2014 to September 30, 2014, over 10,000 detainers were not honored. The recidivism rate for these aliens was 29 percent. Innocent citizens and law enforcement officers could be injured, maimed, or murdered due to a detainer not being issued or honored because of this Administration's policies. The Administration is responsible and will be held accountable.

When President Obama announced unilateral changes to our immigration system with a wave of his pen and cell phone on November 20, 2014, he indicated that he would allow millions of unlawful and criminal aliens to evade immigration enforcement. He did this with the issuance of new, so-called "U.S. Immigration and Customs Enforcement priorities" for the apprehension, detention, and removal of aliens.

Under the Obama administration's new enforcement priorities, broad categories of unlawful and criminal aliens will be beyond the reach of the law even if they don't qualify for the President's unconstitutional legalization programs. This means that millions of removable aliens will remain in the U.S. without any risk of removal.

Simultaneously, President Obama effectively announced the end of Secure Communities. Despite the fact that the President claims he took action to prioritize immigration enforcement against criminal aliens, he is scrapping a tool that identifies criminal aliens booked in jails across the United States so that Federal law enforcement officials can prioritize their removal. Secure Communities, created in 2008, was a simple and highly successful program to identify criminal aliens once arrested and jailed. It protected American citizens and immigrants alike from aliens who were a danger to their communities.

As ICE has said on numerous occasions, Secure Communities simply uses an already-existing Federal information sharing partnership between ICE and the Federal Bureau of Investigation that helps to identify criminal aliens so that ICE can take enforcement action. As of August 2014, the Administration indicated that over

375,000 convicted criminal aliens were removed as a result of Secure Communities.

We just learned that in addition to releasing over 36,000 convicted criminal aliens in fiscal year 2013, ICE released 30,558 convicted criminal aliens in fiscal year 2014 pursuant to its so-called "priorities." The agency released thousands of criminal aliens convicted of offenses involving dangerous drugs, assault and domestic violence, stolen vehicles, robbery, sex offenses, sexual assault, kidnapping, voluntary manslaughter, and even homicide. Twenty-seven percent of the aliens released were so-called "level ones," according to the Administration; the worst of the worst.

Director, ICE's first duty and highest obligation is public safety. The nonsensical actions of this Administration demonstrate its lack of desire to enforce the law even against unlawful aliens convicted of serious crimes. I can only hope that, as the new director of ICE, you will reconsider these policies put in place by your predecessors and return ICE to an agency that puts public safety and the enforcement of our immigration laws as its number one concern.

It is now my pleasure to recognize the Ranking Member of the Immigration se statementand Border Security Subcommittee, the gentlewoman from California, Ms. Lofgren, for her opening statement.

Ms. LOFGREN. Thank you, Mr. Chairman.

Today's hearing is our first opportunity as a Committee to speak with the Honorable Sarah Saldaña, the Director of U.S. Immigration and Customs Enforcement, known as ICE. The job that the director took on at the end of last year is a difficult one. I think we can all agree on that point. So I look forward to hearing more about how she intends to approach this challenge.

One of the many responsibilities she must carry out at ICE is implementing a series of immigration enforcement memoranda issued in November by Secretary Johnson. These memoranda grew out of a directive issued last March by President Obama when he asked Secretary Johnson to "do an inventory of the department's current practices to see how it can conduct enforcement more humanely within the confines of the law."

I believe the memoranda contains a number of commonsense reforms to our immigration enforcement efforts and they represent the Secretary's best efforts to carryout the President's directive. It is important to remember that these reforms did not take place overnight and they were developed to respond to a particular problem that we have observed over many years.

During the Bush administration, ICE officials regularly conducted worksite raids targeting people who were living and working in the country without authorization, but who posed no threat to national security or public safety. Half of the people deported from the interior by ICE in the last Administration had never been convicted of a crime or had been convicted only of immigration or traffic offenses. Many were helping to grow our economy, put food on our table, while also supporting their own American spouses and children.

The Bush administration began to shift away from that unfocused style of enforcement in its final years and this Administration has sought to continue the trend. Because earlier efforts fell

short, Secretary Johnson's November memo, "policies for the Apprehension, Detention, and Removal of Undocumented Immigrants," hones in more carefully on the Department's top three civil immigration enforcement priorities and incorporates clear prosecutorial discretion guidance.

The memo explains that prosecutorial discretion may be exercised not only for persons who fall outside of those priorities but also for persons who appear to be priorities but who have compelling extenuating circumstances. When making enforcement decisions, the memo directs immigrations, officials to consider individual circumstances such as the length of time the person has lived in the United States, Military service, number of years that have passed since an offense leading to a conviction, family or community ties, and other compelling humanitarian factors such as poor health, age, pregnancy, or young children. The memorandum makes clear that "[d]ecisions should be based on the totality of the circumstances."

Given limited resources, it makes sense to focus, first, on persons who pose a threat to national security or public safety before we turn our attention to people who have lived in the country for years, have strong equities, and who are contributing members of their communities.

So I hope we will hear today about what the agency is doing to ensure that the totality of the circumstances is considered in each case. I am concerned about reports that I continue to receive about enforcement actions being taken against people who appear to be candidates for prosecutorial discretion.

The well-publicized case of Mennonite Pastor from Iowa, Pastor Max Villatoro, is one such case. Although Pastor Max's 17-year-old conviction for driving while intoxicated undoubtedly counts as a "significant misdemeanor" and undoubtedly places him within the Priority two category, the extended length of time since that offense, his four U.S. citizen children, his marriage to a DACA beneficiary, and his years of service to his congregation appear to make him an ideal candidate for discretion. Yet he was deported to Honduras last month.

The memorandum also explains that detention resources generally should not be used for persons "who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest."

When I talk about these issues, I am always reminded of Francisco Castañeda, who testified before the Immigration Subcommittee just 4 months before he died from cancer that went untreated throughout his 11 months in ICE custody. I was reminded of Mr. Castañeda again when I read an article last week about a detainee who died of intestinal cancer after being detained since 2010. I understand the Office of Professional Responsibility is reviewing this matter, but I think the case raises important questions about the November 20 memo.

I also believe it is difficult to square the language in the memo with the Department's current policy of holding women and children in family detention for extended periods of time—8, 9, 10

months—even after they have established a credible or reasonable fear of persecution. In recent months, we have received reports about the detention of a child with brain cancer, a mother with ovarian cancer, a mother with a congenital brain disorder, and a 15-day-old baby held with his post-partum mother. We are aware of at least one suicide attempt by a woman at the new Dilley facility.

Our experience contracting with private prison companies to run family detention facilities has not been a good one. When the Corrections Corporation of America received a contract to convert a medium security prison into what became the Hutto facility, the results were awful. After litigation, Congressional oversight, and sustained public outrage, families were moved out of the facility. I am concerned that we are today making the same mistake we made then, but on a much larger scale.

Finally, I think Secretary Johnson was wise to announce the end of Secure Communities. Right from the start, the program was based on misrepresentation to Federal, state and local officials, including me. It became deeply unpopular when it became clear that it was largely being used to apprehend and remove non-criminals and court challenges in legislative change to the state and local level rendered the program largely defunct.

Now, when I spoke with the Director last month about the Department's efforts to roll out a priority enforcement program, we agreed that ICE must first regain the trust of state and local governments and law enforcement agencies. And that process begins with regaining the trust of immigrant communities. I believe the DHS memoranda issued in November has put us on the right track to a commonsense approach on immigration enforcement and I look forward to working with the director to ensure that the memoranda are being implemented in their entirety.

And Mr. Chairman, I would like to ask unanimous consent to put two things in the record. One, a letter from We Belong Together about this hearing. And also the appropriations language that does not specify 34,000 people in detention. It says, "The department shall maintain a level of not less than 34,000 detention beds."

That is not people but beds. And I think we need to make clear what the statute requires. And I would ask unanimous consent to put both of those in the record. And I would yield back.

Mr. GOODLATTE. The time of the gentlewoman has expired. Without objection, her unanimous consent request will be granted.

[The information referred to follows:]

We Belong TOGETHER
Women for Common Sense Immigration Reform

**Statement of Andrea Cristina Mercado and Miriam Yeung, co-chairs of We Belong Together**

**Submitted to the Committee on the Judiciary of the U.S. House of Representatives Hearing on "Oversight of U.S. Immigration and Customs Enforcement"**

**April 14, 2015**

Chairman Goodlatte, Ranking Member Conyers 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.

Women make up over half of all immigrants in our country today and it is estimated that there are over 5 million undocumented women in the U.S. Over the past year, tens of thousands of women and children have fled gender-based violence and gang recruitment in Central America and sought refuge in the U.S. 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.

Across the country, women have looked to Congress for humane legislative solutions. Most recently, women leaders campaigned President Barack Obama for broad administrative relief and enforcement reforms to address the suffering of families torn apart by our broken immigration system. In November of 2014, President Obama announced the Immigration Accountability Executive Actions which could benefit close to 5 million members of the undocumented community by providing protection from deportation and work authorization. The President's actions in expanding the Deferred Action for Childhood Arrivals (DACA) program and creating the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) will help many immigrant women, however, many remain ineligible for protection from detention and deportation. Many such women are survivors of gender-based violence and women workers contributing to our economy and community. LGBTQ immigrant women are vulnerable to abuse

within the enforcement system, this is particularly true for transgender immigrant women. Families continue to be torn apart and immigrant women remain targets of unjust detention and deportation.

**Enforcement and Prosecutorial Discretion**

As part of the President's executive actions announced in November of 2014, Secretary Jeh Johnson issued a memorandum addressing Department of Homeland Security (DHS) enforcement priorities and practices, titled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. This memo sets forth when DHS should prioritize enforcement actions though for each enforcement priority discussed, the Johnson memo directs DHS personnel to consider equities to determine if individuals should be considered to fall within the priority. The consideration of equities and ability to exercise favorable discretion is applicable for individuals with criminal records. Equities to consider include community and family ties, compelling humanitarian factors and military services. We Belong Together is extremely concerned about reports of ICE's increased enforcement activities that are not in compliance with the Johnson memo and the deportation of individuals who may be eligible for DAPA or DACA. These concerns have been exacerbated by Director Saldaña's own comments to members of Congress endorsing the deportation of all "criminal aliens" and lamenting DHS' shift away from the use of detainers. ICE should ensure proper training, implementation, and accountability mechanisms to ensure compliance with the Johnson memo. ICE should also ensure that individuals who are eligible for DAPA or DACA are not the subjects of enforcement activities.

The Johnson memo underlines that individuals with domestic violence convictions can provide mitigating evidence to establish that they are the victims, if relevant. Immigrant survivors are particularly vulnerable to arrest as they face cultural or linguistic barriers which often lead to miscommunications when interfacing with law enforcement. Survivors should be allowed to provide any credible evidence to establish that they are victims and ICE personnel making decisions on discretion should be trained in applying the appropriate evidentiary standards and the dynamics of domestic violence.

**The Entanglement of Policing and Immigration Enforcement**

The flawed model of local and state police acting as immigration agents or in concert with immigration authorities puts immigrant women and families in danger. Programs like 287(g), the Criminal Alien Program (CAP), the Criminal Alien Removal Initiative (CARI) and the newly created Priority Enforcement Program (PEP) are based on this flawed model. These programs lead to an increase in civil rights violations, racial profiling and other forms of discriminatory policing. In addition, these programs disrupt the ability of communities to trust law enforcement and tear away at community policing initiatives, considered to be a best practice in law enforcement. Immigrant women subject to domestic violence, sexual assault or other forms of violence are discouraged from turning to the police for safety and justice. Any program or informal partnerships between police and immigration authorities should be ended. As ICE rolls out the new PEP program, ICE leadership should meaningfully engage with stakeholders and community members and address how this program will impact community trust and safety.

**Immigration Detention**

The U.S. immigration detention system has grown exponentially in recent years, with DHS currently maintaining a daily capacity of over 34,000 detention beds. A 2009 DHS report documented that just under 10% of immigration detainees are women, who are spread out across the country in approximately 150 facilities and jails. Most of these facilities do not offer women detainees much privacy and employ mostly male staff. Pregnant women are also held in immigration detention and many facilities have allowed for the shackling of pregnant women. Other abuses faced by women in detention include the denial of adequate gynecological and prenatal care, as well as lack of proper sanitation. Transgender immigrant women are often held in solitary confinement as a form of so-called protective custody or are placed in facilities with men, not in accordance with their gender identity. ICE should ensure that all facilities are in compliance with the most updated detention standards, that the Prison Rape Elimination Act (PREA) regulations are robustly implemented and monitored and that alternatives to detention are considered and utilized over detention in facilities.

Recently, ICE has been growing its capacity to detain families as a response to the increase in migration of women and children fleeing persecution and violence in Central America. Most recently, mothers detained at the Karnes County Residential Center in Karnes City, Texas have engaged in a hunger and work strike to expose and protest the inhumane detention of their families. Advocates have reported retaliatory threats and abuse made towards the striking women by GEO Group staff. ICE should ensure that no such retaliation is occurring and Director Saldaña should use her authority to release these women and children – including infants, toddlers and nursing mothers – into alternatives to detention as they await the adjudication of their immigration cases. Moreover, ICE should end the inhumane practice of family detention immediately. For those currently detained, ICE should ensure robust trauma-informed practices are implemented, that detainees in family detention facilities – most who are survivors of abuse or violence – are able to access legal information and representation, as well as culturally and linguistically appropriate social services from non-governmental organizations trained in serving survivors of abuse.

We Belong Together will continue to press ICE to ensure its enforcement activities do not stray from our constitutional framework of due process, fairness and respect for human rights. We Belong Together also hopes to work with members of the Committee to achieve permanent humane legislative solutions that uplift the needs and contributions of immigrant women.

Homeland Security Appropriations Language Requiring that DHS Maintain a Minimum Number of Detention Beds, But Not Requiring that Such Beds be Occupied

- "*Provided further*, That funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2015."
    - Department of Homeland Security Appropriations Act 2015, Pub. L. No. 114-4, 129 Stat. 39, 69 (2015).

- "*Provided further*, That funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2014."
    - Consolidated Appropriations Act 2014, Pub. L. No. 113-76, 128 Stat. 5, 251 (2014).

- "*Provided further*, That funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2013."
    - Consolidated and Further Continuing Appropriations Act 2013, Pub. L. No. 113-6, 127 Stat. 198, 347 (2013).

- "*Provided further*, That funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2012."
    - Consolidated Appropriations Act 2012, Pub. L. No. 112-74, 125, Stat. 786, 950 (2011).

- "*Provided*, That U.S. Immigration and Customs Enforcement shall maintain a level of not fewer than 33,400 detention beds throughout fiscal year 2011."
    - Department of Defense and Full-Year Continuing Appropriations Act 2011, Pub. L. No. 112-10, 125 Stat. 38, 141 (2011).

- "*Provided further*, That funding made available under this heading shall maintain a level of not less than 33,400 detention beds through September 30, 2010."
    - Department of Homeland Security Appropriations Act 2010, Pub. L. No. 111-83, 123 Stat. 2142, 2149 (2009).

Mr. GOODLATTE. And, without objection, I would like to place into the record a break down of criminal convictions associated with criminal aliens that ICE released in 2014, a breakdown of criminal convictions associated with the 2,457 Zadvydas releases in 2014, and the enforcement and removal operation's weekly report for the week of March 29 to April 4, 2015.

[The information referred to follows:]

**Breakdown of the Types of Specific Criminal Convictions Associated with Criminal Aliens Placed in a Non-Custodial Setting in Fiscal Year 2014**

The following table provides a breakdown of the types of specific criminal convictions associated with the 30,558 criminal aliens placed in a non-custodial setting in Fiscal Year 2014. Please note that an alien may have more than one criminal conviction. As such, the total number of criminal convictions is greater than the total number of criminal aliens released from ICE custody.

| Conviction Category | Number of Convictions |
|---|---|
| Traffic Offense - Traffic Offense | 15,197 |
| Traffic Offense - Driving Under Influence Liquor | 13,636 |
| Dangerous Drugs | 8,408 |
| Larceny | 4,514 |
| Immigration[1] | 4,088 |
| Obstructing Judiciary, Congress, Legislature, Etc.[2] | 3,062 |
| General Crimes[3] | 2,645 |
| Assault | 2,372 |
| Public Peace | 2,367 |
| Fraudulent Activities | 2,147 |
| Burglary | 2,124 |
| Obstructing the Police | 1,839 |
| Weapon Offenses | 1,589 |
| Assault - Domestic Violence | 1,346 |
| Assault - Battery | 1,194 |
| Invasion of Privacy | 1,183 |
| Stolen Vehicle | 1,074 |
| Forgery | 1,063 |
| Assault - Aggravated Assault | 994 |
| Stolen Property | 969 |
| Family Offenses | 962 |
| Robbery | 734 |
| Sex Offenses (Not Involving Assault or | 673 |

[1] Immigration crimes include "illegal entry," "illegal reentry," "false claim to U.S. citizenship," and "alien smuggling."

[2] "Obstructing Judiciary& Congress& Legislature& Etc." refers to several related offenses including, but not limited to: Perjury; Contempt; Obstructing Justice; Misconduct; Parole and Probation Violations; and Failure to Appear.

[3] "General Crimes" is a National Crime Information Center (NCIC) charge category. Within the category of "General Crimes" are the following offense codes: crimes against person (7099), property crimes (7199), morals-decency crimes (7299), and public order crimes (7399).

| Conviction Category | Number of Convictions |
|---|---|
| Commercialized Sex) | |
| Damage Property | 665 |
| Traffic Offense - Hit and Run | 654 |
| Liquor | 459 |
| Commercialized Sexual Offenses | 449 |
| Health / Safety | 379 |
| Traffic Offense - Driving Under Influence Drugs | 378 |
| Sexual Assault | 373 |
| Assault - Simple Assault | 295 |
| Flight / Escape | 240 |
| Kidnapping | 186 |
| Assault - Intimidation | 140 |
| Threat | 135 |
| Homicide | 86 |
| Arson | 56 |
| Conservation | 49 |
| Juvenile Offenders | 38 |
| Extortion | 36 |
| Gambling | 34 |
| Homicide - Negligent Manslaughter - Vehicle | 34 |
| Smuggling | 31 |
| Tax Revenue | 27 |
| Embezzlement | 26 |
| Obscenity | 19 |
| Bribery | 17 |
| Homicide - Negligent Manslaughter - Weapon | 15 |
| Homicide - Willful Kill - Gun | 15 |
| Voluntary - Manslaughter | 13 |
| Homicide - Willful Kill - Weapon | 10 |
| Homicide - Willful Kill - Non-family - Gun | 9 |
| Traffic Offense - Transporting Dangerous Material | 4 |
| Homicide - Willful Kill-Family - Gun | 2 |
| Homicide - Willful Kill - Family - Weapon | 2 |
| Homicide - Willful Kill - Non-family - Weapon | 2 |
| Obstructing Criminal Investigation | 1 |
| **TOTAL** | **79,059** |

2

**Breakdown of the Types of Specific Criminal Convictions Associated with Criminal Aliens Placed in a Non-Custodial Setting in Fiscal Year 2014 Due to *Zadvydas v. Davis***

Out of 30,558 convicted criminal aliens that ICE released from detention, 2,457[1] were released pursuant to *Zadvydas v. Davis*. The table below provides a breakdown of the types of specific criminal convictions associated with criminal aliens released in fiscal year 2014 due to the requirements of *Zadvydas v Davis*. Please note that an alien may have more than one criminal conviction. As such, the total number of criminal convictions is greater than the total number of criminal aliens released:

| Conviction Category | Number of Convictions[2] |
|---|---|
| Dangerous Drugs | 3,435 |
| Larceny | 1,614 |
| Assault | 1,461 |
| Burglary | 1,302 |
| Obstructing Judiciary, Congress, Legislature, Etc. | 787 |
| Traffic Offense - Traffic Offense | 779 |
| Fraudulent Activities | 612 |
| Stolen Vehicle | 586 |
| Weapon Offenses | 584 |
| Obstructing the Police | 513 |
| Traffic Offense - Driving Under Influence Liquor | 481 |
| Public Peace | 439 |
| Robbery | 435 |
| Stolen Property | 397 |
| Invasion of Privacy | 389 |
| General Crimes[3] | 340 |
| Forgery | 281 |
| Sex Offenses (Not Involving Assault or Commercialized Sex) | 246 |
| Immigration[4] | 235 |
| Sexual Assault | 202 |
| Damage Property | 153 |
| Homicide | 122 |
| Family Offenses | 116 |
| Health / Safety | 104 |
| Flight / Escape | 89 |
| Commercialized Sexual Offenses | 88 |

[1] Information provided to the House Judiciary Committee via staff briefing with ICE on April 2, 2015

[2] Please note that an alien may have more than one criminal conviction. As such, the total number of criminal convictions is greater than the total number of criminal aliens released from ICE custody.

[3] General Crimes" is a National Crime Information Center (NCIC) charge category. Within the category of"General Crimes" are the following offense codes: crimes against person (7099), property crimes (7199), morals-decency crimes (7299), and public order crimes (7399).

[4] Immigration crimes include "illegal entry," "illegal reentry," "false claim to U.S. citizenship," and "alien smuggling."

| Conviction Category | Number of Convictions[1] |
|---|---|
| Kidnapping | 69 |
| Liquor | 50 |
| Traffic Offense - Hit and Run | 48 |
| Threat | 41 |
| Extortion | 27 |
| Arson | 22 |
| Traffic Offense - Driving Under Influence Drugs | 22 |
| Gambling | 16 |
| Smuggling | 15 |
| Juvenile Offenders | 11 |
| Bribery | 4 |
| Conservation | 4 |
| Embezzlement | 3 |
| Obscenity | 2 |
| Tax Revenue | 2 |
| **TOTAL** | **16,126** |

U.S. Immigration and Customs Enforcement

## Weekly Enforcement and Removal Operations Enforcement Report
## For the period of March 29, 2015 – April 4, 2015

For Official Use Only (FOUO)/Pre-decisional

I. **Year to Date ERO Snapshot Summary of Convicted Criminal Arrest Comparisons**

| Convicted Criminal Threat Level | FY 14 YTD Fiscal Year End queries run on 10/06/2014 filtered through 04/04/2014 | FY 15 YTD (current) IIDS queries run on 04/06/2015 (Data are through 04/04/2015) | Percentage Change from FY14 YTD (Year-end queries) to FY15 YTD (current queries) | 03/30/2015-04/04/2015 # Arrests |
|---|---|---|---|---|
| Level 1 | 32,705 | 25,629 | -22% | 1,027 |
| Level 2 | 19,302 | 13,486 | -30% | 528 |
| Level 3 | 23,164 | 12,219 | -47% | 492 |
| **Total Convicted Criminal Arrests** | **75,171** | **51,334** | **-32%** | **2,047** |

II. **Year to Date ERO Snapshot Summary of Convicted Criminal Removal Comparisons**

| Program | FY 14 YTD Fiscal Year End queries run on 10/06/2014 filtered through 04/04/2014 | FY 15 YTD (current) IIDS queries run on 04/06/2015 (Data are through 04/04/2015) | Percentage Change from FY14 YTD (Year-end queries) to FY15 YTD (current queries) | 03/30/2015-04/04/2015 Removals |
|---|---|---|---|---|
| **Total Convicted Criminal Removals** | **96,514** | **67,858** | **-30%** | **1,046** |
| ***CBP Total*** | ***47,762*** | ***35,326*** | ***-26%*** | ***498*** |
| Level 1 | 10,083 | 8,449 | -16% | 117 |
| Level 2 | 10,272 | 8,664 | -16% | 115 |
| Level 3 | 27,407 | 18,213 | -34% | 266 |
| ***ICE Total*** | ***48,346*** | ***32,338*** | ***-33%*** | ***544*** |
| Level 1 | 23,846 | 18,102 | -24% | 353 |
| Level 2 | 12,350 | 8,130 | -34% | 123 |
| Level 3 | 12,150 | 6,106 | -50% | 68 |
| ***OTHER Total*** | ***406*** | ***194*** | ***-52%*** | ***4*** |
| Level 1 | 140 | 66 | -53% | 3 |
| Level 2 | 106 | 60 | -43% | 0 |
| Level 3 | 160 | 68 | -58% | 1 |

**Weekly ERO Enforcement Report**
**Page 2 of 6**

III. **Point in Time Comparison Chart**

| Convicted Criminal Threat Level | FY 14 YTD IIDS Query run on 04/06/2014 with data through 04/04/2014 | FY 15 YTD (current) IIDS queries run on 04/06/2015 (Data are through 04/04/2015) | Percentage Change from FY14 YTD (04/06/2014 queries) to FY15 YTD (current queries) |
|---|---|---|---|
| Level 1 | 31,504 | 26,617 | -16% |
| Level 2 | 20,408 | 16,854 | -17% |
| Level 3 | 35,138 | 24,387 | -31% |
| **Total Convicted Criminal Removals** | **87,050** | **67,858** | -22% |

***Note: FY14 YTD figures in chart III reflect an entire year of data entry but were filtered on the closest EID date in FY14 to the current FY15 YTD queries.***

IV. **Breakdown of Convicted Criminal At Large Arrests**

| | 10/01/2014 - 04/04/2015 Street Arrest Comparison to 10/01/2013 - 04/04/2014 | | | | | | | | | | | | 03/29/2014- 04/04/2015 Street Arrests | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Convicted Criminal | | | ICE Threat Level 1 | | | ICE Threat Level 2 | | | ICE Threat Level 3 | | | Convicted Criminal | ICE Threat Level 1 | ICE Threat Level 2 | ICE Threat Level 3 |
| | FY 2015 | FY 2014 | % Change | FY 2015 | FY 2014 | % Change | FY 2015 | FY 2014 | % Change | FY 2015 | FY 2014 | % Change | | | | |
| **Total** | 11,983 | 12,287 | -2% | 5,227 | 4,714 | 11% | 3,585 | 3,638 | -1% | 3,171 | 3,935 | -19% | 492 | 219 | 140 | 133 |
| Atlanta | 993 | 981 | 1% | 454 | 325 | 40% | 375 | 373 | 1% | 164 | 283 | -42% | 45 | 27 | 16 | 2 |
| Baltimore | 266 | 300 | -11% | 94 | 90 | 4% | 67 | 71 | -6% | 105 | 139 | -24% | 12 | 7 | 1 | 4 |
| Boston | 364 | 478 | -24% | 183 | 218 | -16% | 94 | 108 | -13% | 87 | 152 | -43% | 16 | 9 | 4 | 3 |
| Buffalo | 93 | 98 | -5% | 53 | 53 | 0% | 18 | 21 | -14% | 22 | 24 | -8% | 2 | 2 | 0 | 0 |
| Chicago | 1,133 | 1,228 | -8% | 443 | 351 | 26% | 334 | 392 | -15% | 356 | 485 | -27% | 36 | 15 | 7 | 14 |
| Dallas | 950 | 728 | 30% | 391 | 294 | 33% | 242 | 217 | 12% | 317 | 217 | 46% | 35 | 15 | 8 | 12 |
| Denver | 360 | 300 | 20% | 136 | 108 | 26% | 133 | 124 | 7% | 91 | 68 | 34% | 15 | 4 | 7 | 4 |
| Detroit | 399 | 575 | -31% | 122 | 134 | -9% | 151 | 211 | -28% | 126 | 230 | -45% | 13 | 2 | 4 | 7 |
| El Paso | 80 | 96 | -17% | 38 | 38 | 0% | 25 | 21 | 19% | 17 | 37 | -54% | 4 | 1 | 2 | 1 |
| Houston | 405 | 487 | -17% | 190 | 230 | -17% | 91 | 125 | -27% | 124 | 132 | -6% | 19 | 7 | 5 | 7 |
| Los Angeles | 1,104 | 914 | 21% | 625 | 494 | 27% | 303 | 212 | 43% | 176 | 208 | -15% | 58 | 27 | 15 | 16 |
| Miami | 824 | 859 | -4% | 438 | 371 | 18% | 241 | 247 | -2% | 145 | 241 | -40% | 41 | 26 | 9 | 6 |
| New Orleans | 369 | 458 | -19% | 111 | 163 | -32% | 116 | 133 | -13% | 142 | 162 | -12% | 10 | 1 | 6 | 3 |
| New York City | 514 | 609 | -16% | 295 | 329 | -10% | 101 | 138 | -27% | 118 | 142 | -17% | 12 | 7 | 2 | 3 |
| Newark | 407 | 270 | 51% | 165 | 82 | 101% | 102 | 67 | 52% | 140 | 121 | 16% | 16 | 5 | 7 | 4 |
| Philadelphia | 341 | 367 | -7% | 116 | 135 | -14% | 95 | 114 | -17% | 130 | 118 | 10% | 18 | 6 | 7 | 5 |
| Phoenix | 260 | 366 | -29% | 107 | 127 | -16% | 75 | 91 | -18% | 78 | 148 | -47% | 12 | 5 | 2 | 5 |
| Salt Lake City | 319 | 376 | -15% | 140 | 131 | 7% | 100 | 131 | -24% | 79 | 114 | -31% | 16 | 9 | 3 | 4 |
| San Antonio | 329 | 404 | -19% | 166 | 162 | 2% | 92 | 107 | -14% | 71 | 135 | -47% | 9 | 6 | 2 | 1 |
| San Diego | 391 | 450 | -13% | 120 | 142 | -15% | 112 | 107 | 5% | 159 | 201 | -21% | 12 | 2 | 4 | 6 |
| San Francisco | 848 | 929 | -9% | 343 | 353 | -3% | 264 | 271 | -3% | 241 | 305 | -21% | 46 | 18 | 13 | 15 |
| Seattle | 566 | 313 | 81% | 253 | 121 | 109% | 167 | 84 | 99% | 146 | 108 | 35% | 17 | 12 | 4 | 1 |
| St. Paul | 431 | 334 | 29% | 131 | 130 | 1% | 206 | 138 | 49% | 94 | 66 | 42% | 19 | 1 | 9 | 9 |
| Washington | 228 | 352 | -35% | 108 | 127 | -15% | 79 | 130 | -39% | 41 | 95 | -57% | 9 | 5 | 3 | 1 |
| Unassigned AOR | 9 | 15 | -40% | 5 | 6 | -17% | 2 | 5 | -60% | 2 | 4 | -50% | 0 | 0 | 0 | 0 |

## V. FOSC Activities

### i. Criminal Lead Activity

| CRIMINAL LEAD ACTIVITY (as of 04/06/2015) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | FUGITIVE LEADS | | REENTRY LEADS | | AT LARGE LEADS | | NEW LEADS (disseminated between 03/30/15 - 04/05/15) | |
| SC PRIORITY | TOTAL | Count | Portion | Count | Portion | Count | Portion | Count | Portion |
| SC Priority 1 | 1299 | 52 | 34.44% | 588 | 49.04% | 659 | 56.47% | 49 | 54.44% |
| SC Priority 2 | 437 | 35 | 23.18% | 166 | 13.84% | 236 | 20.22% | 12 | 13.33% |
| SC Priority 3 | 781 | 64 | 42.38% | 445 | 37.11% | 272 | 23.31% | 29 | 32.22% |
| **TOTAL** | 2517 | **151** | | **1199** | | **1167** | | **90** | |

### ii. Other FOSC Support

| Information Request Activity (10/1/14 - 04/05/15) | |
|---|---|
| FIELD GENERATED | 1,969,622 |
| FOSC GENERATED | 280,011 |
| **TOTAL** | **2,249,633** |

## VI. Population Count by Priority and Mandatory Detention Status

| Civil Enforcement Priority Level | Mandatory | Non-Mandatory | Total | Mandatory % | Non-Mandatory % | Total % |
|---|---|---|---|---|---|---|
| 1.1 ICE Threat Level 1 | 7,509 | 1,161 | 8,670 | 29% | 4% | 33% |
| 1.2 ICE Threat Level 2 | 2,414 | 1,389 | 3,803 | 9% | 5% | 15% |
| 1.3 ICE Threat Level 3 | 2,065 | 1,241 | 3,306 | 8% | 5% | 13% |
| 1.4 Other: INA Mandatory | 126 | 0 | 126 | 0% | 0% | 0% |
| 1.5 Other: Risk to Public Safety | 59 | 89 | 148 | 0% | 0% | 1% |
| 2.1 Recent Illegal Entrants (CBP) | 8,258 | 887 | 9,145 | 32% | 3% | 35% |
| 2.2 Recent Illegal Entrants (Other) | 0 | 0 | 0 | 0% | 0% | 0% |
| 2.3 Visa and Visa Waiver Program Abuse | 16 | 0 | 16 | 0% | 0% | 0% |
| 3.1 Fugitive Aliens | 35 | 2 | 37 | 0% | 0% | 0% |
| 3.2 Previously Removed Aliens | 148 | 0 | 148 | 1% | 0% | 1% |
| 3.3 Visa, Identification, or Benefit Fraud | 5 | 2 | 7 | 0% | 0% | 0% |
| 4 Other | 125 | 422 | 547 | 0% | 2% | 2% |
| **Grand Total** | **20,760** | **5,193** | **25,953** | **80%** | **20%** | **100%** |

## Footnotes

### I. Year to Date ERO Snapshot Summary of Convicted Criminal Arrest Comparisons

FY2015 YTD data are updated through 04/04/2015 (IIDS v1.16 run date 04/06/2015; EID as of 04/04/2015).

FY2014 represents FY2014 year-end historical data run on 10/06/2014 with data filtered through 04/04/2014 for comparison purposes.

Starting in FY2013, ERO Arrests include all ERO Programs. ERO Programs includes Detention and Deportation (DDP), Fugitive Operations (FUG), Alternatives to Detention (ATD), Criminal Alien Program (CAP), Detained Docket Control (DDC), Non-Detained Docket Control (NDD), Violent Criminal Alien Section (VCS), Joint Criminal Alien Response Team (JCT), Juvenile (JUV), Law Enforcement Area Response (LEA), and 287 (g).

Starting in October 2010, ICE Threat Levels were implemented to fall in line with Director Morton's Civil Enforcement Priorities. For FY2013 through FY2015, ICE Threat Level is based on convictions for an individual up until the time of the removal.

The ICE Threat Levels reflect the priorities outlined in Director Morton's June 2010 Memorandum entitled ICE Civil Immigration Enforcement Priorities effective October 1, 2010. Since FY 2011, ICE has defined criminality as whether or not an alien has an ICE Threat Level (convicted criminal) or not (non-criminal immigration violator). For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel refer to the following offense levels: Level 1, Level 2, and Level 3 offenders. Level 1 offenders are those aliens convicted of "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act, or two (2) or more crimes each punishable by more than 1 year, commonly referred to as "felonies." Level 2 offenders are aliens convicted of any other felony or three (3) or more crimes each punishable by less than 1 year, commonly referred to as "misdemeanors." Level 3 offenders are aliens convicted of "misdemeanor" crime(s) punishable by less than 1 year. Prior to FY 2011, ICE used SC levels 1, 2, and 3 for prioritization purposes.

### II. Year to Date ERO Snapshot Summary of Convicted Criminal Removal Comparisons

FY2015 YTD data are updated through 04/04/2015 (IIDS v1.16 run date 04/06/2015; EID as of 04/04/2015).

FY2014 represents FY2014 year-end historical data run on 10/06/2014 with data filtered through 04/04/2014 for comparison purposes.

For FY2013 through FY2015, ICE Threat Level is based on convictions for an individual up until the time of the removal.

Starting in FY2009, ICE began to "lock" removal statistics on October 5th at the end of each fiscal year and counted only the aliens whose removal or return was already confirmed. Aliens removed or returned in that fiscal year but not confirmed until after October 5th were excluded from the locked data and thus from ICE statistics. To ensure an accurate and complete representation of all removals and returns, ICE will include the removals and returns confirmed after October 5th into the next fiscal year. The number of removals in FY2009, excluding the "lag" from FY2008, was 387,790. The number of removals in FY2010, excluding the "lag" from FY2009, was 375,440. This number does not include 76,732 expedited removal cases which ICE closed on behalf of CBP in FY2010. Of those 76,732, 33,900 cases resulted from a joint CBP/ICE operation in Arizona. ICE spent $1,155,260 on those 33,900 cases. The number of removals in FY2011, excluding the "lag" from FY2010, was 385,145. The number of removals in FY2012, excluding the "lag" from FY2011, was 402,919. The number of removals in FY2013, excluding the "lag" from FY2012, was 363,144. The number of removals in FY2014, excluding the "lag" from FY2013, was 311,111.

The ICE Threat Levels reflect the priorities outlined in Director Morton's June 2010 Memorandum entitled ICE Civil Immigration Enforcement Priorities effective October 1, 2010. Since FY 2011, ICE has defined criminality as whether or not an alien has an ICE Threat Level (convicted criminal) or not (non-criminal immigration violator). For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel refer to the following offense levels: Level 1, Level 2, and Level 3 offenders. Level 1 offenders are those aliens convicted of "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act, or two (2) or more crimes each punishable by more than 1 year, commonly referred to as "felonies." Level 2 offenders are aliens convicted of any other felony or three (3) or more crimes each punishable by less than 1 year, commonly referred to as "misdemeanors." Level 3 offenders are aliens convicted of "misdemeanor" crime(s) punishable by less than 1 year. Prior to FY 2011, ICE used SC levels 1, 2, and 3 for prioritization purposes.

Starting in October 2010, ICE Threat Levels were implemented to fall in line with Director Morton's Civil Enforcement Priorities. For FY2013 through FY2015, ICE Threat Level is based on convictions for an individual up until the time of the removal.

FY Data Lag/Case Closure Lag is defined as the physical removal of an alien occurring in a given month; however, the case is not closed in EARM until a subsequent FY after the data is locked. Since the data from the previous FY is locked, the removal is recorded in the month the case was closed and reported in the next FY Removals. This will result in a higher number of recorded removals in an FY than actual departures.

Removals include Returns. Returns include Voluntary Returns, Voluntary Departures and Withdrawals under Docket Control.

ICE programs account for all of those under ERO and HSI. CBP includes Border Patrol and all Inspection types (Air, Land, Sea). Other entails all other programs neither under ICE nor CBP.

## III. Point in Time Comparison

FY2014 YTD data are updated through 04/05/2014 (IIDS v1.16 run date 04/07/2014 ; EID as of 04/05/2014 ).

## IV. Breakdown of Convicted Criminal At Large Arrests

See all footnotes from Section I.

Arrests reported in the Street Arrest comparison are reported by an Arrest Method of Located, Non-Custodial Arrest, and Probation and Parole.

Convicted Criminal At Large Arrest FY14 to FY15 comparison data is filtered for time period 10/01/2013 - 04/04/2014 and 10/01/2014 - 04/21/2015 respectively.

The Arrest AOR is related to the Current Program of the Officer who created the apprehension record. The Current Duty Site of the Officer, who is creating the arrest record, can sometimes not be linked to an actual AOR. This is a data quality issue. Therefore, some arrest records will not have an AOR assigned.

FOSC data are excluded from these results.

Mr. GOODLATTE. The Chair now is pleased to recognize the Chairman of the Immigration and Border Security Subcommittee, the gentleman from South Carolina, Mr. Gowdy, for his opening statement.

Mr. GOWDY. Thank you, Mr. Chairman.

As we approach this hearing, Mr. Chairman, we are wise to keep in mind the primary duty of government, at least to my judgment, is the security and protection of the American people. Immigration and Customs Enforcement is a key part of fulfilling that duty because we entrust them with the enforcement of our immigration laws. In fact, Mr. Chairman, on the ICE website, the mission reads, "U.S. Immigration and Customs Enforcement enforces Federal laws governing border control, customs, trade and immigration to promote homeland security and public safety."

Given the critically important mission entrusted to ICE, we take our oversight of that agency seriously and ICE's work has an immense impact on the people that we work for. But internally, as an agency, ICE has been plagued by low morale, tied for dead last for agency subcomponents in best places to work in the Federal Government. So one would have to ask himself or herself, even accepting the challenges of being in law enforcement generally, why is morale that low? Could it possibly be that women and men who signed up to enforce the law are now being asked not to?

We also know there is a deep deficit of trust among our fellow Americans with regard to the immigration system. For years, they have been promised an immigration system that works and a secure border and those promises have not been kept by either party. Decisions by Administrations from both parties to selectively enforce our immigration laws have had a negative effect on our system; such is the case any time one selectively enforces the law. And you would think we would have learned that lesson by now but, apparently, we have not.

Last year, President Obama declared unilaterally almost 5 million undocumented aliens would receive deferred action under some new fangled definition of prosecutorial discretion. Moreover, in addition to using prosecutorial discretion as a license to rewrite the law, he also conferred benefits on these same people.

So, Mr. Chairman, I want people to just understand this. The decision to avoid the application of consequences through a prosecutorial discretion is very different from the affirmative decisions to confer benefits on that same class or group. Those are two very different concepts. One, it can easily be argued is constitutionally rooted, albeit on a case-by-case basis; and the other, the conferring of benefits is a purely political calculation without much grounding if at all in the law.

Mr. Chairman, folks may like the President's policy, they may wish the policy were the law, but one person does not make law in a republic and we should take heed that those who benefit from the non-application of the law today will be crying out for the full application of the law tomorrow, because such is the nature of the law. Once it is eroded, you do not restore it without great consequence.

In fact, the President himself agreed with that and said, "The notion that I could just suspend deportation through executive orders

is just not the case." He told us time and time and time again. He also reminded us that he was not a king. His position may have changed but the Constitution has not. Prosecutorial discretion is real and constitutionally valid, but it is not a synonym for anarchy.

As U.S. District Court Judge Andrew Hanen wrote in his recent opinion, "DHS does have the discretion in the manner in which it chooses to fulfill the expressed will of Congress. It cannot, however, enact a program whereby it not only ignores the dictates of Congress, but actively moves to thwart them."

In effect, the Administration has asked ICE officers to stop enforcing entire categories of our immigration law. And not only that but, under the current Administration's new enforcement priorities, millions of aliens who are not even eligible to benefit from Administrative Amnesty can simply remain in the U.S. in violation of the law without fear of enforcement.

Now, Mr. Chairman, you have touched upon the detainer issue, and I look forward to going to that in more question. I would also like to say, and I do welcome the new director who is a former U.S. Attorney and I will hold anyone who has had that title in extremely high regard, but I am interested in hearing, because of her unique background, I want to hear her address the limitations on the doctrine of prosecutorial discretion. And I would like to hear the new director explain why the President was wrong the 22 different times he said he could not legally do what he just did. And I am eager to hear the new director discuss whether prosecutorial discretion can be applied in all categories of the law. And I am eager to hear her address the number of aliens who abscond and what is being done on the frontend to reduce the chances of that happening. And I am interested, Mr. Chairman, in hearing with particularity what she is going to do to restore morale and pride in the agency, because the folks I have talked to honestly, Mr. Chairman, would pick another agency or even another line of work.

With that, I will yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and is now pleased to recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte.

I want to add my welcome to Director Sarah Saldaña in her first appearance before the House Judiciary Committee.

We are advised of your great experience in Immigration and Customs Enforcement, as a U.S. Attorney for the northern District of Texas, and as Assistant U.S. Attorney for northern District of Texas and your prosecution of a number of criminal cases. You have also worked at the Equal Employment Opportunities Commission, the Department of Housing in Urban Development, and the Department of Labor. What a background. And I am confident that you will be an exceptional leader of the largest investigative agency within the Department of Homeland Security.

Now, this presents enormous challenges but also opportunities. And we are looking to hear from you on that account.

Now, the director comes to the agency at a time of renewed focus. Last March, President Obama directed the Secretary of Homeland Security, Jeh Johnson, to review our Immigration enforcement policies to ensure that we are carrying them out in the most humane

way possible. In November, the Secretary announced a series of commonsense reforms to not only ensure that our laws are enforced in a humane way but also that our limited resources are focused on enhancing the safety and the security of the country.

Secretary Johnson issued a memorandum identifying three categories of persons as department-wide priorities for enforcement. The top priority includes people who pose a threat to national security, border security, and public safety. Notably, these priorities mean the agency will focus resources on deporting felons before raiding kitchens and fields for bus boys and farm workers.

Focusing the limited agency resources on deporting criminals rather than families is simply good public policy. The memo also explains that enforcement always should be done in a sensible manner that takes into consideration the totality of the circumstances. In deciding whether to exercise prosecutorial discretion in a given case, immigration officials should consider factors such as the circumstances surrounding a conviction, the length of time that has passed since an offense was committed, and the deep ties that a person may have in this country.

This is a humane approach that ensures enforcement efforts are focused on the worse offenders in our society and not on individuals with strong community ties in compelling circumstances. I support this approach.

Director Saldaña comes to the agency at a time of some uncertainty. Two important initiatives have been preliminarily halted by a district court in Texas: deferred action for parents of Americans in lawful permanent residents and expansions to deferred action for childhood arrivals. But the court was clear that its decision had no effect on the memorandum to set enforcement priorities and provided prosecutorial discretion guidance. With so much uncertainty and distrust of the agency's swirling in immigrant communities it is important for ICE to communicate clearly that it still intends to use its prosecutorial discretion in a sensible manner and as directed by the secretary.

As always, actions ultimately speak louder than words.

And, finally, as I noted before, the Administration's use of prosecutorial discretion does not absolve the Congress of its responsibility to pass comprehensive immigration reform. Top to bottom, reform of our broken immigration system can only be accomplished through bold legislative action. It is time for us, the Congress, to start doing its job.

And I thank the Chairman.

Mr. GOODLATTE. Thank you, Mr. Conyers.

We welcome our distinguished witness today. And, if you would rise, I will begin by swearing you in.

Do you swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?

Ms. SALDAÑA. I do.

Mr. GOODLATTE. Thank you.

Let the record reflect that the witness responded in the affirmative.

Ms. Sarah R. Saldaña currently serves as Director of Immigration and Customs Enforcement where she is tasked with overseeing

the enforcement of more than 400 Federal statutes, preventing terrorism, and combating the illegal movement of people and trade. Prior to becoming Director of ICE, Director Saldaña served as the United States Attorney for the northern District of Texas. Before joining the Department of Justice, she worked in private practice and at the Equal Employment Opportunity Commission, Housing and Urban Development under the Department of Labor. Director Saldaña graduated summa cum laude from Texas A&I University and earned her JD degree from Southern Methodist University.

And, before you begin your testimony, I want to take a moment to thank you and your staff for the good work that has been done in helping us prepare for this hearing. The Homeland Security Investigations, the Enforcement and Removal Operations, the Office of Congressional Relations, and individuals in ICE's front office who communicated with the Committee ahead of this hearing and provided responsive information to some of our substantial requests. This type of communication and coordination is new in our experience with your agency in recent years, and I hope that it continues. And I thank you very much for your efforts.

When I met with you a few weeks ago, you committed to working closely with the Congress and you have fulfilled that in answering our request for preparation for the hearing.

Your written statement will be entered into the record in its entirety and I ask that you summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light on your table and, when the light switches from green to yellow, you have 1 minute to conclude your testimony.

Director Saldaña, welcome.

**TESTIMONY OF THE HONORABLE SARAH R. SALDAÑA, DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY**

Ms. SALDAÑA. Thank you so much, Chairman Goodlatte, Ranking Member Conyers, other esteemed Members of this Committee.

You are right, this is my first appearance before this Committee and also with respect to my prior service as the United States Attorney for the northern District Texas duty that I had undertook and I am very proud of.

In that period of time that I was the United States Attorney, I had the great privilege of working with both Homeland Security Investigations, HSI, agents, a couple of whom are here today, and with the Enforcement and Removal Operations folks with respect to removals and the need for Federal intervention in connection of some of those. During that time, I personally observed the dedication, commitment, hard work of the women and men of Immigration and Customs Enforcement all through the ranks; deportation officers, international and mission support staff attorneys. All of them working very hard to keep our homeland safe.

It's a great privilege to continue my law enforcement career in this capacity as the director of the agency. As was mentioned earlier, ICE does enforce over 400 laws. In my work as the United States Attorney, somebody stopped counting at 3,000 that United States Attorneys enforce. It's a difficult challenge to have so many

statutes, but we're up to that—did you refer to that as an opportunity?

Representative Conyers, I believe you did.

And I consider it a privilege. I appreciate the importance of this mission. I assure you. And I know, as you do, that having a productive and collaborative relationship with you and the other Committees of this Congress is essential to us working together to meet the responsibilities the American public expects.

My goals over the next 2 years are to enhance ICE's important cybersecurity and counterterrorism initiatives, to focus our removals on the highest priority individuals who threaten our communities, to improve morale within the workforce, as Representative Gowdy pointed out, and to improve communication between ICE and all of its partners.

For today's hearing, let me just provide an overview of what ICE does, a little bit of a highlight with respect to our accomplishments, and our challenges.

In ERO, Enforcement and Removal Operations, there are two parts to ICE principally. Besides the lawyers, we've got Enforcement and Removal and Homeland Security Investigations. In ERO, we have 6,000 very dedicated law enforcement officers who go about the business of removing, apprehending, and removing those people that present the greatest risk to the American public.

In carrying out this responsibility, they have a wide array of important and complex responsibilities including operating ICE's detention facilities, making arrangements for transportation across the world in removing individuals from the United States, and obtaining travel documents from other countries with all kinds of requirements connected to them. ERO works very closely with its sister agencies, Customs and Border Protection and with Citizenship and Immigration Services, all within Homeland.

HSI, on the other hand, focuses on criminal, international criminal investigations. And anything dealing with the illegal movement of people and things in and out and within the country for that matter. While ERO enforces civil litigation, HSI focuses on the criminal aspects. That is the area with which obviously I dealt mostly as United States Attorney and Assistant United States Attorney.

A couple of words on our successes. And this isn't the end of the story, this is the beginning of it. I look forward reporting even better results in the future. ERO removed nearly 316,000 individuals unlawfully present in the United States in 2014; more than 102,000 were apprehended in the interior of the United States; and, perhaps more importantly, 85 percent of those were immigrants previously convicted of a criminal offense. This demonstrates our renewed focus on the worse criminals: convicted felons, gang members, and other threats to our national security. That number, 85 percent of immigrants who were convicted of a criminal offense, is an 18 percent increase over prior years, 2011 in particular. HSI, the investigative arm, arrested more than 32,000 criminals and seized more than 1.3 million pounds of narcotics, 35,000 weapons, and $772 million in currency.

The challenges. You all know about last summer and the influx of, overwhelming and unexpected influx of families and unaccom-

panied children, which tax the resources of many Federal agencies, not just ICE, but certainly ICE. ICE, in fact, had to assign about 800 personnel to the Rio Grande Valley crisis and, obviously, that takes time away from the work that you do day-to-day.

Secondly, the dramatic increase in the number of jurisdictions that you all referred to earlier, with respect to our detainers. Last calendar year, almost 12,000 detainer requests from ICE were not honored by state and local jurisdictions. One of my priorities is to reverse that trend. To that end, we're implementing the Priority Enforcement Program, PEP as it's known and that you all have referred to, which clearly reflects DHS's new priorities.

And let me say, Chairman, I terribly regret if I had added to the confusion with respect to detainers. My principal interest is in public safety. It is not in quibbling with people over how we accomplish that goal. And I believe I want to be sure that everyone understands that I am committed to the Priority Enforcement Program that the secretary has directed us to enforce.

Finally, of course, is the change in the demographics of the migrant community. People coming from South America takes more resources, more time, more people. A greater challenge is in repatriating them to their countries rather than to Mexico or Canada.

My first months as director have been full. Not only in becoming familiar with these challenges and the accomplishments of the agencies I just described but in developing plans to address all of these challenges. Like so many of you, I left my family, my friends, the great state of Texas, of which I've lived all my life, to come to the District of Columbia to participate with you all in an effort to try to bring some rationality to this very important mission of ICE. That is the only reason I'm here. It's not for the glory and it's not for the big bucks. I will tell you that I need your help to accomplish that goal and to move the agency forward in that regard. So I ask for your help in doing so.

I welcome your questions.

[The prepared statement of Ms. Saldaña follows:]

# U.S. Immigration and Customs Enforcement

STATEMENT

OF

SARAH R. SALDAÑA

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

REGARDING A HEARING ON
*"OVERSIGHT OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT"*

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

April 14, 2015

2141 Rayburn House Office Building
Washington, D.C.

**INTRODUCTION**

Chairman Goodlatte, Ranking Member Conyers, and distinguished members of the Committee:

On behalf of Secretary Johnson, thank you for the opportunity to appear before you today to discuss the role of U.S. Immigration and Customs Enforcement (ICE) in promoting homeland security and public safety through the strategic and wide-ranging criminal and civil enforcement of hundreds of federal laws governing border control, customs, trade, and immigration. I was sworn in as the Director of ICE on December 23, 2014. I appreciated the opportunity to personally meet with the Chairman, Ranking Member, and several other members of this Committee to share my vision and learn more about your specific interests. I look forward to personally meeting with all members on the Committee in the coming weeks.

In my first months as Director, I have had numerous opportunities to meet with the men and women of ICE and discuss our key operational and resource issues. I have become familiar with our budgeting and management as well as our strong relationship with our interagency colleagues, international partners, and industry. I have taken some initial steps to enhance ICE's ability to achieve its primary goal of enforcing our nation's immigration laws and keeping our country safe by ensuring we focus our resources on individuals who pose the greatest threat to our national security and public safety. Having most recently served as the U.S. Attorney for the Northern District of Texas, I have a wealth of experience in enforcing the thousands of federal laws over which I had responsibility.

I have been able to participate in high-level discussions with Mexican government officials on working together to conduct joint investigations with a nexus to the United States, as well as discussing opportunities to more rapidly repatriate Mexican nationals who are in the

United States illegally. I have also met with government officials from Honduras, Guatemala and El Salvador. We each pledged to do our part to stem the tide of citizens of those countries trying to unlawfully enter the United States. Over the past year we have developed an interagency strategy – the U.S. Strategy for Engagement in Central America – that balances three interrelated and interdependent objectives. These objectives are prosperity, governance, and security. Without significant progress on all of these fronts, Central America will continue to face extreme violence and widespread poverty. These conditions may continue to compel tens of thousands of Central Americans to flee their homes each year. Conversely, a secure, democratic, and prosperous Central America should provide an environment in which citizens of these nations can thrive at home, instead of migrating elsewhere for safety and opportunity.

I fully appreciate the challenges we face in furthering our diverse mission and I relish the opportunity to take full advantage of the resources available to us, including the support of Congress and this Committee, in particular.

Today, in my first appearance before you, I am honored and pleased to provide an overview of our operational programs, and highlight ICE's recent successes and the challenges I believe we currently face.

I am very proud to lead ICE, the principal criminal investigative arm of DHS and one of its component agencies charged with enforcing and administering the Nation's immigration laws. Currently, ICE has nearly 19,000 employees in offices in all 50 states, as well as U.S. territories and 46 foreign countries and primarily consists of two operational programs: Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI).

**Enforcement and Removal Operations**

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

Pursuant to a memorandum issued by Secretary Johnson on November 20, 2014, Priority 1 aliens comprise threats to national security, border security, and public safety. Priority 2 aliens include certain misdemeanants and new immigration violators who entered the United States after January 1, 2014. The removal of these individuals from the United States is a national priority that is carried out by a team of just under 5,700 law enforcement officers operating in nearly every jurisdiction of the United States.

Earlier this month, ERO conducted Operation Cross Check VI, a five-day nationwide operation that resulted in the arrest of 2,058 convicted criminals. ERO works with ICE's Office of the Principal Legal Advisor (OPLA) to facilitate the processing of individuals in removal proceedings through Executive Office for Immigration Review (EOIR), the nation's immigration court system which is administered by the U.S. Department of Justice (DOJ). ERO also, coordinates their departure from the country, including obtaining necessary travel documents from their country of origin.

We are working hard to ensure that we provide appropriate care and protections for those in our facilities and have made progress on our standards to that end. ICE is currently compliant with all DHS Prison Rape Elimination Act (PREA) requirements applicable to the agency. This includes the ICE Directive on "Sexual Abuse and Assault Prevention and Intervention" (SAAPI), which was updated in May 2014 to incorporate all DHS PREA requirements. The directive established a zero-tolerance policy for sexual abuse and assault, and outlined the duties of agency employees for reporting, response, investigation, and monitoring for all allegations; established responsibilities for staff training, timely reporting, protection of victims, provision of medical and mental health care, and investigation protocols; and includes safeguards to prevent retaliation against those who report sexual abuse or who participate in a subsequent investigation, and it defines procedures for facilitating the provision of victim services to detainee victims. ICE also promulgated a new ERO Policy 11087.1 "Operations of ERO Holding Facilities" in September 2014, integrating PREA requirements specifically applicable to ICE holding facilities. While PREA's agency requirements are primarily addressed in these two policies, ICE has also made revisions to other policies and protocols as needed (such as medical policies and investigative protocols) in order to incorporate all applicable PREA mandates. The requirements of ICE's SAAPI Directive apply to ICE employees responding to any incident or allegation of sexual abuse or assault at the facility. This ensures that the agency provides timely and effective response and follow-up with respect to medical and mental health care, victim services, investigation, protection from retaliation, and other issues, consistent with the requirements of the PREA regulation.

As of January 2015, the sexual assault safeguards contained in PREA and ICE's 2011 Performance-Based National Detention Standards apply to approximately 79 percent of the

agency's average daily population (this is 94 percent of the agency's average daily population when excluding those detainees who are held in DOJ contracted facilities, which are covered by the DOJ PREA regulations). Pursuant to a commitment made in the preamble to the PREA regulations, ICE will also seek to implement PREA standards at all dedicated ICE detention facilities within 18 months of May 6, 2014, the effective date of the DHS PREA regulations. The PREA standards have already been incorporated into the contracts of a number of these dedicated facilities. Although not required by PREA, ICE will also proactively pursue opportunities for incorporating the PREA standards at a number of other non-dedicated detention facilities.

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

ICE's FY 2014 removal numbers illustrate the agency's continued commitment to focusing on identifying, arresting, and removing convicted criminals and other priority individuals in the interior of the United States, and the removal of individuals apprehended while attempting to unlawfully enter the United States. Ninety-eight percent of ICE's FY 2014 removals and returns fell into one or more of its civil immigration enforcement priorities at the

time. Seventy-six percent of the convicted criminals removed from the interior were convicted of several felony or misdemeanor offenses.

*Shifting Migration Patterns and Demographics*

A number of factors and new challenges had an impact on ICE's total removals in FY 2014. In FY 2014, ICE shifted resources to respond to the influx of Central American families and unaccompanied children illegally crossing into the United States in the Rio Grande Valley (RGV) area in South Texas. In coordination with other DHS components, ERO detailed and/or transferred almost 800 personnel and devoted additional resources to address the challenges posed by this unprecedented migration; transferred nearly 60,000 unaccompanied children to Department of Health and Human Services custody pursuant to obligations under federal law; and expanded its limited family detention capacity to help address the influx of family units. While unaccompanied children were not housed in ICE detention space like family units, they required ICE resources, including officer time, to support DHS's response to this urgent humanitarian situation.

The significant increase in illegal migration of family units also contributed to ICE's operational challenges. Like single adults, family units apprehended at the border may be placed into expedited removal proceedings. However, this process requires ICE to maintain an increased level of family detention space, which historically has been limited to fewer than 100 beds nationwide. As a result, ICE allocated substantial resources to add detention capacity for family units, and opened three additional facilities for this purpose. I personally inspected the new South Texas Family Residential Center in Dilley, Texas, to ensure that its expansion will be completed in a timely manner and that it is operating in accordance with both the law and ICE

family residential standards. The DHS PREA standards are also contractually binding and applicable at each of ICE's family residential facilities. DHS and its partners are working both domestically and internationally to take steps to reduce the likelihood of another such influx. Those efforts include Operation Coyote that targets the operations of transnational criminal organizations that move Central American migrants to the United States, whether along the border, the interior of the United States, or internationally, while simultaneously focusing on the illicit movement of proceeds derived from their criminal activity. ICE also increased the number of repatriation flights to Mexico and Central America, from 1,017 flights in FY 2013 to 1,206 flights in FY 2014.

In addition, between FY 2013 and FY 2014, ICE experienced a key demographic shift in the population detained and removed. Most notably, removals to Mexico decreased from 66 percent to 56 percent of the total ICE removals, while removals to Central America increased by 15 percent, which is consistent with changes in apprehension demographics at the border. Removals of nationals from non-contiguous countries require more ICE resources and take significantly more time than removals of Mexican nationals. In particular, these removals require not only additional detention capacity, but also greater efforts to secure travel documents from the countries of origin. For example, the total number of travel documents requested via ICE's Electronic Travel Documents (ETD) system increased approximately 18 percent from FY 2013 to FY 2014.

*Increasing Number of Jurisdictions Refusing to Cooperate with ICE*

Another significant factor impacting removal operations has been the increase in state and local jurisdictions that are limiting their partnership, or wholly refusing to cooperate with

ICE immigration enforcement efforts. While the reasons for this may vary, including state and local legislative restrictions and judicial findings of state and local liability, in certain circumstances we believe such a lack of cooperation may increase the risk that dangerous criminals are returned to the streets, putting the public and our officers at greater risk. Given ICE's public safety mission and limited resources, state and local cooperation is essential to our success. During calendar year 2014, state and local jurisdictions have declined more than 12,000 ICE detainer requests. There are more than 200 jurisdictions, including some of the largest in the country, that refuse to honor ICE detainers and some have also denied ICE access to their jails and prisons. As I will explain below, it is a priority of mine to implement the Secretary's Priority Enforcement Program (PEP) and to engage with state and local governments as well as their communities to build trust and stop this trend. PEP is designed to protect community trust so immigrants who are not afraid to cooperate with law enforcement officials investigating and prosecuting crimes.

*Reduced ICE Participation in the Alien Transfer Exit Program (ATEP)*

Key operational changes to the Alien Transfer Exit Program (ATEP) impacted ICE's operations and the removal of Mexican nationals. ATEP is a joint effort between ICE ERO and U.S Customs and Border Protection's (CBP) Border Patrol in which Mexican nationals apprehended in one sector of the southwest border are transported for removal to a different sector in order to disrupt the smuggling cycle by separating migrants from their smugglers. In 2013, ICE began reallocating limited resources away from ATEP to focus on the increasing number of Central American migrants flooding the southwest border and other priorities. In FY 2014, ICE continued to scale back ATEP and re-tasked ATEP-dedicated transportation resources

to effectively manage the influx of family units and unaccompanied children apprehended in the RGV. As a result, in FY 2014, the number of ATEP ICE removals dramatically decreased as compared to the 52,965 Mexican nationals removed through ATEP in FY 2013. This contributed to a reduction in total ICE removals in FY 2014. However, the Border Patrol supported ICE's reduction in ATEP transportation resources by removing or voluntarily returning those individuals who would have met the criteria for ATEP.

*Enhanced Oversight and Release Procedures*

I recently announced enhanced oversight and release procedures that ICE will implement with respect to custody determinations involving detainees with criminal convictions. The new procedures will enhance public safety and public confidence in ICE's enforcement and administration of immigration laws. ICE is committed to making certain that both discretionary releases and mandatory releases, including those required under the U.S. Supreme Court's 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 criminals, including senior 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 criminal release information to state law enforcement authorities in relevant jurisdictions.

*Legal Requirements*

ICE's interior enforcement operations and subsequent removals from the interior were also impacted by federal court rulings, including the decision of the U.S. Court of Appeals for the Ninth Circuit in *Rodriguez v. Robbins*, which expanded the availability of bond hearings for individuals detained for six months or longer, including those subject to mandatory detention. In many instances, individuals must be granted individual bond hearings within 180 days of the commencement of immigration detention, regardless of ICE's custody determination. If bond is granted by an immigration judge, and the individual posts bond, the individual's case is transferred from the detained docket to the non-detained docket where the immigration court process generally takes significantly longer. Rodriguez applies throughout the Ninth Circuit, the largest federal jurisdiction.

In addition, ICE relies on the cooperation of foreign governments to effectuate removal of their nationals. However, often ICE cannot repatriate individuals because certain countries fail to issue required travel documents in a timely manner, if at all. In these cases, and due to the *Zadvydas* decision, ICE is required to release individuals from custody under certain circumstances. While ICE continues to work with the Department of State to engage these countries regarding the timely repatriation of their nationals, we remain concerned by the operational, public safety, and national security impacts of the release of certain convicted criminals due to the *Zadvydas* decision.

**Homeland Security Investigations**

ICE's HSI office 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. While ERO enforces civil immigration laws, HSI, the investigative arm of ICE, principally conducts criminal investigations to protect the United States against terrorism and other criminal activity that threatens public safety and national security, and to bring to justice those seeking to violate our customs and immigration laws worldwide. 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.

In its investigative capacity, HSI enforces more than 400 federal laws and regulations, with jurisdiction over the investigation of crimes with a nexus to the U.S. borders. To accomplish its mission, HSI focuses its broad investigative authority on three operational priorities – border security, public safety and counterterrorism/national security. 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.

*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. ICE has had great success in this area in recent years. For example, an HSI New York

investigation into business wholesalers who were involved in the black market peso exchange resulted in the criminal forfeiture of $1.2 billion from HSBC Bank.

Last fall, our investigations in the Los Angeles Garment District resulted in seizures of more than $100 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 continually evaluates current threats across programmatic areas, and works collaboratively to adapt its efforts in order to stay 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 along with other online financial systems, internet technologies, and infrastructure 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.

*Counterterrorism*

HSI's counterterrorism work involves a multipronged approach. Counterterrorism and criminal exploitation efforts seek to prevent terrorists and other criminals from exploiting the nation's immigration system. HSI's overstay analysis efforts provide timely, relevant, and credible information on entry, exit, and immigration overstay status of visitors to the United

States in order to enhance security, facilitate legitimate trade and travel, and ensure the integrity of the immigration system, as well as to protect the privacy of visitors. Other than the Federal Bureau of Investigation (FBI), HSI is the largest contributor of federal agents to the FBI-led Joint Terrorism Task Forces (JTTFs). These JTTFs benefit from the investigative expertise and broad authorities of HSI agents to enforce over 400 federal laws and regulations dealing with illicit trade, travel, and finance.

*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. HSI is one of the principal federal agencies charged with enforcing U.S. laws related to human trafficking, and has developed a comprehensive, victim-centered approach to aggressively target human traffickers. 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 Lithuania, Colombia, Brazil, Dominican Republic, Hungary, El Salvador, Cambodia, Thailand, Uruguay, and Mexico. These training events focused on HSI's victim-centered investigative approach to combating human trafficking including: human trafficking indicators, victim identification, investigative methodologies, victim interviews, and best practices leading to successful prosecutions. Several of these training sessions were presented at the various International Law Enforcement Academies administered by the U.S. Department of State (DOS). Additionally, in FY 2014, HSI initiated 987 investigations with a nexus to human trafficking and recorded 1,770 arrests, 1,028 indictments, 828 convictions, and more than 440 victims were identified.

Momentum in ICE's anti-human smuggling efforts continue to build, particularly with the increased emphasis on activities along our border with Mexico. In response to the unaccompanied children crisis involving unprecedented numbers of Central American children attempting to illegally cross the southwest border last summer, HSI initiated Operation Coyote. The operation was designed to target and dismantle human smuggling organizations and to interdict the flow of money to these organizations. HSI deployed personnel as a force multiplier for the enhanced execution of human smuggling investigations and enforcement actions during the operational period. To build upon its early investigative accomplishments, HSI expanded the initiative across the country and worldwide to harness all HSI activity related to the smuggling of Central Americans into the United States.

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, a multi-faceted initiative that is built on the foundation of the preceding operational activity of Operation Coyote and enhances HSI's overall human smuggling strategy. Operation Coyote 2.0 includes specific lines of effort that reflect HSI's entire enforcement portfolio to focus on the mitigation of the most significant risks posed by human smuggling. Operational enhancements of Coyote 2.0 include increased targeting of the financial vulnerabilities exploited by HSOs; increased targeting of fraudulent

document vendors employed by smuggled individuals and the HSOs for the purposes of obtaining 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 (HSC) and the Joint Task Force-Investigations (JTF-I) as interagency platforms to coordinate and integration human smuggling intelligence and operations; and finally, enhanced leveraging of our international offices, Transnational Criminal Investigative Units (TCIUs), Customs and Border Protection and international partners to disrupt the pathways of illegal migrants.

HSI is also targeting TCOs involved in these activities through this large and comprehensive response using our existing resources. In December 2013, HSI and CBP established the National Targeting Center-Investigations Division (NTC-I) at the CBP National Targeting Center (NTC) to enhance unity of effort in furtherance of our shared border security mission. The establishment of the NTC-I provides 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.

*The Human Smuggling Cell*

As part of our overarching efforts to combat human smuggling, we also lead two interagency initiatives. The Human Smuggling Cell harnesses DHS's unique access to trade and financial data to develop information on individuals or organizations involved in human smuggling and serves as the coordination center for all HSI investigative efforts to combat human smuggling and the transnational criminal organizations that facilitate such activities. In

addition, the interagency Human Smuggling and Trafficking Center integrates U.S. Government efforts to combat human smuggling, trafficking in persons, and clandestine terrorist travel.

*Human Rights Violators*

As you may have seen, the work conducted by personnel in HSI's Human Rights Violators and War Crimes Center (HRVWCC), was recently featured on the front page of the New York Times. The HRVWCC, comprised of HSI and FBI agents, analysts, attorneys and historians as well as representatives from United States Citizenship and Immigration Services and DOS, 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. In January, in a case prosecuted by the Justice Department's Human Rights and Special Prosecutions Section and the U.S. Attorney's Office for the District of Vermont, a jury found Edin Sakoč, a Bosnian-born Burlington, Vermont man, guilty of obtaining his citizenship through fraud. The conviction was the result of a lengthy investigation by HSI and the FBI, which revealed that Sakoč had provided false information regarding human rights violations he committed during the conflict in Bosnia-Herzegovina including rape, kidnapping and persecution of Bosnian Serbs.

*Narcotics Smuggling*

HSI has a number of programs that target narcotics smuggling at the border, including thirty-five Border Enforcement Security Task Forces (BESTs), Tunnel Task Forces (TTFs), and the Shadow Wolves program. BEST Units incorporate personnel from HSI and other key federal, state, local, tribal, and foreign law enforcement agencies, including CBP's Office of

Field Operations and Office of Border Patrol, the U.S. Coast Guard, the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives, the FBI, and the U.S. Attorney's Offices.

In January 2006, DHS adopted ICE's BEST initiative as a DHS task force in order to align federal, state, local, tribal and international law enforcement and intelligence resources in an effort to identify, disrupt, and dismantle organizations that seek to exploit vulnerabilities along U.S. borders and threaten the overall safety and security of the public. The two Tunnel Task Forces are part of the BESTs in San Ysidro, CA, and Nogales, AZ, and there are five HSI offices actively engaged in counter-tunnel investigations. The TTFs identify, disrupt, and dismantle transnational criminal organizations which exploit the border by constructing illicit subterranean tunnels to transport contraband, more specifically narcotics, and include participation from CBP, DEA, FBI, and Mexican law enforcement agencies.

*Counter-Proliferation and Export Control*

HSI also contributes to the federal government's efforts to prevent foreign adversaries from illegally obtaining U.S. military products and sensitive technology, including weapons of mass destruction and their components. For instance, HSI's Counter-Proliferation Investigations (CPI) program oversees a broad range of investigations related to export law violations. CPI targets the trafficking and illegal export of conventional military equipment, firearms, controlled dual use equipment and technology and materials used to manufacture weapons of mass destruction, including chemical, biological, radiological, and nuclear materials. HSI enforces U.S. export laws involving military items and controlled dual-use goods, as well as products going to sanctioned or embargoed countries.

As part of these efforts, HSI leads the Export Enforcement Coordination Center (E2C2), a multi-agency center that serves as the primary government entity for the exchange of information and intelligence related to export enforcement. The E2C2 was created in November 2010 pursuant to the President's Export Control Reform Initiative, which was designed to improve law enforcement coordination to investigate violations of U.S. export control laws.

The E2C2 serves as a conduit between federal law enforcement agencies and the Intelligence Community. It is a primary point of contact between government entities engaged in export licensing, and coordinates law enforcement public outreach activities and will establish a government-wide statistical tracking capability for U.S. criminal and administrative export enforcement activity.

*Cybercrime*

In response to the evolving criminal threat on the Internet, the HSI Cyber Crimes Center (C3) has concentrated its cyber initiatives in the following areas: network intrusion and online theft of both intellectual property and export controlled data; cyber economic crimes (including the sale and conversion of stolen personally identifying information into criminal proceeds); cyber-enabled crimes (including child exploitation, illicit underground marketplaces, and identity theft); document fraud; and other crimes that have transitioned from the physical to the virtual world.

HSI continually looks forward to developing new investigative methods, tools, methodologies, and ways to combat crime. For instance, the Human Exploitation Rescue Operative Rescue Corps (HERO Corps) is a pilot program in which wounded warriors from the

U.S. Armed Forces are trained in computer forensics and in identifying and combatting child sexual exploitation, thereby arming them with the necessary skills to assist HSI in the fight to protect our nation's most valuable assets, our children.

HSI is also a leader in investigations involving the sexual exploitation of children and child sex tourism, as HSI employs the latest technology to collect evidence and track the activities of individuals and organized groups who sexually exploit children through the use of websites, chat rooms, newsgroups and peer-to-peer trading. C3 combats transnational cybercrime and the criminal exploitation of the internet by using state-of-the-art investigative techniques and computer forensic technology and by investigating large-scale cybercrime threats that potentially have national or international impact.

HSI demonstrated its ability to apply innovative approaches when it launched a smartphone application, the ICE Operation Predator App, which was designed to increase engagement with the public in understanding and reporting crimes against children by making it easier to report and identify suspected child exploitation from their smartphones. Through the app, users can: submit tips regarding suspected child exploitation; view child predator suspects currently pursued by HSI; review press releases; and obtain contact information for the partners we work with to fight child exploitation. Push notifications go out to users when a new predator is added or when a current predator is captured. This is the first time a smartphone app has been used by federal law enforcement to seek the public's help with fugitive and unknown suspect child predators, and it has been increasingly helpful in solving cases.

*Intellectual Property Rights Enforcement*

With regard to intellectual property theft, HSI leverages the collective resources and expertise of the 23 members of the National Intellectual Property Rights Coordination Center (IPR Center) to share information among its partners having particular enforcement or administrative equities and promote a coordinated U.S. Government response to combatting intellectual property rights (IPR) infringement. The IPR Center strengthens national security by ensuring a sound the U.S. economy where businesses are able to compete on an even playing field, and where consumers are confident that the products they purchase are safe and fit for their purpose. Two significant examples include Operation Chain Reaction, which combines the effort of 16 federal law enforcement agencies to target counterfeit items entering the supply chains of the Department of Defense and other U.S. Government agencies; and Operation Engine Newity, which targets the importation and distribution of counterfeit transportation products that may adversely impact the health and safety of consumers. Enforcement efforts by HSI, CBP, and the FBI have uncovered counterfeit bearings, airbags, and steering, braking, and seat belt components.

**Office of the Principal Legal Advisor**

ICE's Office of the Principal Legal Advisor is the largest legal program in DHS, providing critical legal advice and counsel to ICE leadership and agency personnel on all matters related to the investigation and enforcement of the nation's customs and immigration laws. OPLA represents the federal government in exclusion, deportation, bond, and removal proceedings before the nation's immigration courts, prioritizing litigation of those cases involving convicted criminals, terrorists, and human rights abusers. OPLA also provides critical

legal support to ICE components focusing on criminal prosecutions, worksite enforcement, ethics, employment law, tort claims, and administrative law issues. In addition, OPLA also provides attorneys to serve temporary details nationwide with the United States Attorney's Office to prosecute criminal immigration cases.

**The Office of Professional Responsibility**

ICE's Office of Professional Responsibility (OPR), working in close coordination with our partners in the DHS Office of the Inspector General and CBP, helps to ensure that a robust process is in place for investigating allegations of criminal and administrative employee misconduct, and ensuring the integrity of the DHS mission. In addition, OPR contains an inspection division that ensures ICE operates consistently with the high standards we promulgate to regulate our program offices and civil detention system and a security division responsible for the employee suitability and security clearance processes. This three-tiered approach is accomplished by preparing comprehensive reports of investigation in a thorough and impartial manner for judicial or management action, conducting inspections and reviews of ICE offices and detention facilities to assess adherence to Departmental policies and applicable standards, and managing a layered security program in order to protect ICE personnel, facilities and information from criminal and/or terrorist organizations.

**Executive Actions**

*Strengthen Border Security*

ICE is an active participant in DHS's efforts to implement the Southern Border and Approaches Campaign Strategy to fundamentally alter the way in which we marshal resources to the border. This new plan will employ DHS assets in a more strategic and coordinated way to provide effective enforcement of our laws and interdict individuals seeking to illegally enter the United States across land, sea, and air. To accomplish this, DHS is commissioning three task forces of various law enforcement agencies. ICE's HSI program will lead the investigative functional task force – the Joint Task Force-Investigations – as part of the campaign. HSI will provide further support through our efforts to disrupt and dismantle human smuggling and trafficking operations, export control initiatives (including those targeting weapons flow to the south), and general contraband smuggling investigations.

*Revise Enforcement Priorities*

As is true with virtually all law enforcement agencies, DHS must establish smart and clear enforcement priorities and exercise prosecutorial discretion in the enforcement of the law. As such, DHS has implemented a new department-wide enforcement and removal policy that places the top priority on national security threats, convicted felons, gang members, and illegal entrants apprehended at the border; the second-tier priority on those convicted of significant or multiple misdemeanors, those who cannot establish that they have been physically present in the U.S. continuously since January 1, 2014, and those who have significantly abused the visa or visa waiver programs; and the third priority on those who are not criminals but who have failed to abide by a final order of removal issued on or after January 1, 2014. This policy also provides

clear guidance on the exercise of prosecutorial discretion on a case-by-case basis to ensure that our use of limited resources is devoted to the pursuit of the Department's priorities.

*End Secure Communities and Replace it with a new Priority Enforcement Program*

The overarching goal of the now-ceased Secure Communities program – to effectively identify and facilitate the removal of convicted criminals – is a valid and important objective. But that program, which has been embroiled in litigation and has been rejected by an increasing number of jurisdictions, is no longer effective and has been discontinued. It has been replaced with the Priority Enforcement Program (PEP), which more clearly reflects DHS's new enforcement priorities. Under PEP, requests for notification prior to release from custody will be issued to state and local law enforcement agencies in certain cases in line with the enforcement priorities, and requests for detention will only be issued in limited circumstances. The program will continue to rely on fingerprint-based biometric data submitted during the booking process by state and local law enforcement agencies and we are clarifying for those agencies the specific criteria for which we will seek Priorities 1 and 2 convicted criminal individuals in their custody. We are engaging state and local governments in an effort to increase law enforcement agency participation in PEP, thereby enhancing our ability to arrest, detain, and remove individuals deemed threats to national security, or public safety, while support community policing efforts. State and local participation is vital because it allows for the controlled and secure transfer of convicted criminals directly into ICE's custody, creating a safer environment for both the public and our ICE officers. It is also less time- and resource-intensive than the alternative of having to deploy multi-person outfitted Fugitive Operations Teams to find and apprehend at-large priority individuals, which, in turn, reduces the number of convicted criminals ERO is able to apprehend

and remove with its limited resources. We also recognize that building community trust is critical to law enforcement efforts, both at the state and local level as well as for federal enforcement of immigration law. Immigrants who are victims or witnesses to crimes cannot be afraid to cooperate with law enforcement officials. That's why we are also developing plans to engage local communities so the public can better understand the critical role that PEP will play in focusing enforcement resources on true public safety and national security threats.

In addition, ICE is committed to issuing detailed and accessible statistical information on its apprehensions, detentions, and removals, creating a transparent process that will allow for more public accountability and trust. Enhancing cooperation between ICE and our state and local partners is a priority for me. In my first 30 days as Director, I met with the Major County Sheriffs' Association and the Major Cities Chiefs Association about the importance of collaborating with ICE to keep dangerous individuals off the streets. I will continue to communicate this directly to law enforcement leaders and look forward to strengthening our partnerships.

*Personnel Reform for ERO Officers*

I am very pleased to support job series realignment and other reforms for ICE's dedicated and hardworking ERO officers engaged in removal operations. These measures, which were brought about via close collaboration with our labor partners, are essential to bringing the pay of ERO officers in line with other law enforcement personnel.

## CONCLUSION

I believe that ICE will be successful in the deliberate and timely implementation of our objectives. I commit to exercising aggressive oversight of ICE's responsibility to maximize success, collaborate and engage with state and local governments and their local communities, and I look forward to working with Congress on comprehensive immigration reform.

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. I am confident that we will continue to build upon the momentum we have generated as a result of our considerable operational achievements.

You have my commitment to work with each Member of this Committee and its staff to forge a strong and productive relationship going forward. I would be pleased to answer any questions.

Mr. GOODLATTE. Well, thank you, Director Saldaña.

I will start. And I will start with some recent quotes; one by the President and one by you that I find disturbing. You just alluded to one a moment ago. Bur first, the President recently at a town hall stated, regarding the new DHS enforcement priorities that, "The bottom line is that if somebody is working for ICE and there is a policy and they don't follow the policy there are going to be consequences to it."

And he analogized it to the U.S. military in the requirement that you follow orders. ICE officers are required to enforce the laws that Congress enacts.

Do you agree with that?

Ms. SALDAÑA. Absolutely.

Mr. GOODLATTE. Please explain to the Committee the type of consequences that ICE officers may face if they do not execute the new policies, which in instances contradict those laws?

Don't you think an ICE officer hearing threats from the President would be scared to enforce the law?

Ms. SALDAÑA. I give them more credit than that, Mr. Chairman. I will tell you that, with respect to enforcement, any policy of the Department or Immigration and Customs Enforcement, new or old, certainly just as you do with your staff, we expect compliance with that policy.

Mr. GOODLATTE. If they detain somebody who doesn't meet those priorities but is in violation of a law enacted by the Congress, are they going to be punished for doing that?

Ms. SALDAÑA. The word is not punish, sir. It is enforcing the law and the policies that this Administration——

Mr. GOODLATTE. What's going to happen to an ICE agent who enforces the law that are contradictory to the President's policies, which says don't enforce the law, with regard to certain people?

Ms. SALDAÑA. That is not my view of the President's policies, sir. The executive action actually is——

Mr. GOODLATTE. He said it. Not me.

Ms. SALDAÑA. That is not my view of the President's policies. I believe they are actually directed in a very rational way. I mentioned earlier that——

Mr. GOODLATTE. Right.

But the point is, though, that the law encompasses far more illegal activity than simply those that are set forth in the President's policies. And I want to know what happens to an ICE agent, may have been working for the agency for years, following the law, upholding the law, who detains somebody who is not covered under that policy. What is going to happen to that ICE agent under those circumstances?

Ms. SALDAÑA. Let me tell you, sir, you mentioned something about the full extent of the law, and the Constitution does require us to faithfully execute it. Part of that, in my view and as in my experience as United States Attorney, I mentioned 3,000 laws when we stopped counting, I could not enforce every one of those laws as the main prosecutor for the United States. But I could actually make priorities within my office and did.

Mr. GOODLATTE. Well, you are not answering my question so let me go on to one that involves a statement made by you.

You testified before the Oversight and Government Reform Committee on March 19 expressing your support for mandatory detainers. The very next day, you retracted that statement made under oath and called mandatory detainers highly counterproductive. In 2014, local jurisdictions declined to honor approximately 12,000 detainers. So far in 2015, there have been approximately 3,000 detainer denials. There are now more than 200 jurisdictions that refuse to honor ICE detainers, effectively releasing criminal aliens out onto our streets.

While you flip-flop before Congress and the American people, ICE officers go out into the community and conduct at large operations in order to apprehend released criminal aliens. It makes their job much, much harder. Right? Instead of just going to the jail and getting the detained alien to put him through the deportation process, they had to go out, find them, apprehend them, sometimes under very dangerous circumstances. This puts their lives at risk, threatens public safety, and expends limited Federal resources.

If a detainer was issued, a simple and cost-effective custodial transfer would have occurred. This is a problem. And your solution, the Administration's solution, is a failure. Politely asking for cooperation from recalcitrant jurisdiction's so-called "Sanctuary Cities" is a fool's errand. Isn't the clear answer to this problem a requirement for everyone to honor ICE's detainer authority; an authority that keeps our communities and our law enforcement officers safe?

Ms. SALDAÑA. That authority is being challenged in court, sir. There is a morass of lawsuits across the country on that very issue. I will tell you——

Mr. GOODLATTE. Why hasn't your agency and the Department of Justice and the Department of Homeland Security defended those lawsuits against these detainers?

Why haven't you taken affirmative, aggressive position to say, "Yes, the detainers need to be honored?"

Ms. SALDAÑA. I will tell you that I have the same concern you do, sir. Public safety of our officers is paramount, in my estimate.

I went on Operation Cross Check back in February wearing a bulletproof vest, there to watch the operation in-practice where we are actually trying to reach out and find criminal undocumented immigrants. I am very concerned about the risk they face. But, I will tell you that I believe that the PEP program, if we give it a chance—and, again, I do regret that confusion I caused with respect to my statement. And the only reason for the statement the following day was because I had been asked whether it would help law enforcement. And let me tell you, sir, my reaction was focused on that: What helps law enforcement?

But I am committed to PEP. I am committed to asking communities to assist us. I am committed to persuade them that the best thing for the safety of their own communities is to cooperate with United States in its effort to enforce the immigration laws in accordance with the President's priorities.

Mr. GOODLATTE. Thank you, Madam Director.

My time is expired. The Chair recognizes the gentleman from Michigan, Mr. Conyers, for his questions.

Mr. CONYERS. Thank you, Chairman Goodlatte.

Director Saldaña, you make me feel more comfortable now that we have read and listened to your performance here before the House Judiciary Committee.

The three things that I wanted to bring to your attention and get your comments on. One is the idea that the memorandum was not affected by the court's ruling and that ICE intends to fully implement the Secretary's memorandum.

Could you comment on that?

Ms. SALDAÑA. I believe what you are referring to, Congressman, is the fact that there is a ruling that stops, calls to a halt, expanded DACA and the new DAPA program. And we are obviously, all the agencies to my knowledge, CIS, CBP and ICE, are complying with that ruling. And it will make its way through the appellate courts. But it did not effect, it did not effect the November 20 enunciation of our priorities by the Secretary in which we clearly implemented to our people.

We have actually put out in the field substantial training on this, sir. And every officer uses one of these cards, which clearly outlines those priorities. They carry it with them. Quite frankly, I carry it myself and try to make sure that each of these priorities, both respect to the first—the first one is outlined in the front. The second and third priorities on the back. Again, trying to make an effort to clarify for law enforcement where our priorities should be.

So that is what is meant by that. The only thing that was affected by the injunction was the expansion of DACA and the new initiation of the DAPA program.

Mr. CONYERS. Very good.

Now, what steps is ICE taking to ensure the persons who are not a priority for removal are not targeted for enforcement actions or are not inadvertently swept up in enforcement actions?

Ms. SALDAÑA. Well, one of the steps, sir, is the training. And it was substantial and we just completed it in January, which was the initiation kickoff of the executive actions; and that includes those priorities. I have met with every one of the field office directors in the entire country by video. I have directed them that if they have any questions they are to raise it up their chain and ultimately to me who bears the ultimate responsibility with respect to the appropriate enforcement of those priorities. Our training doesn't stop with that, that was completed initially; it is continuing, kind of, a spectrum.

And I have also met with our lawyers. There are about 900 of them across the country who has worked with the immigration courts in order to ensure in their review of the priorities and the people who have been targeted for enforcement that we are complying with those priorities.

Mr. CONYERS. Very good.

Let me ask this question about some reports that have come to our attention about mothers and children in family detention. There was a memo drafted by the secretary explaining field officers and directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness. In light of this memo, how, if you know, does ICE justify detaining

mothers and children with such serious physical or mental illnesses?

Ms. SALDAÑA. I think you are also aware, Representative, of the injunction that was imposed by the Washington, D.C. court with respect to the detention of families and not to use deterrents as a factor. Every one of those families, just like others, is afforded the opportunities provided by law with respect to seeking asylum, seeking some relief from the United States with respect to their presence here.

I will say I have met with the secretary many times discussing this very same subject. I just met on Thursday of last week with religious leaders from all sectors of the religious community who have expressed very serious concerns about the detention of families and children. And we are doing our best right now.

I know the secretary has considered it. I know that we have released, with respect to that injunction, quite a few of these families. Some of them continued because they cannot meet a detention bond, but it is something that has been well considered by the Secretary. And, for now, we are going to hold, with respect to particularly new entrants, sir, which is part of our priorities, that line.

Mr. CONYERS. Madam Director, I thank you for your candid responses.

Thank you, Mr. Chairman.

Mr. GOODLATTE. The Chair recognizes the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Director, a recent public opinion poll apparently shows that the American people repudiate President Obama's immigration policies. This was a Rasmussen Reports national survey just a few days ago that found that 62 percent of the American people believe the Administration is not doing enough to deport illegal immigrants. This is up ten points from just a year ago. I think this is the American people's response to the President's executive amnesty orders.

Contrary to what the American people want, it appears that deportations are down again this year. I think there were only about 100,000 from the interior. You said a while ago that about 85 percent are those who had been convicted of crimes. But that means that only about one out of 300 other illegal immigrants are going to be removed from our country. In my opinion, that is not enforcing immigration laws. In fact, it is ignoring immigration laws.

Furthermore, the Administration, as you also mentioned, released about 30,000 convicted illegal immigrants and allowed them to be returned to our communities. One quarter of these 30,000 criminal aliens had been convicted of Level 1 crimes, such as murder, rape, and sexual abuse of a minor. Of those 30,000, only 8 percent were Zadvydas cases. Thousands could have been deported.

Why did the Administration intentionally endanger the lives of innocent Americans by releasing thousands of criminal aliens into our neighborhoods?

Ms. SALDAÑA. Representative, this is an area of great concern for me when I first started in January.

Mr. SMITH. If it is of great concern, why did you do it?

Ms. SALDAÑA. I would like to explain——

Mr. SMITH. Sure.

Ms. SALDAÑA [continuing]. Why we are moving forward as we are.

We do not have a policy—our decisions, whether they are detention decisions, bond decisions, release decisions, are governed by several things and often involve the courts. As you know, and I think that the Chairman noted, about half in 2014 of the releases were as a result of Zadvydas and which requires us to release people after a certain time——

Mr. SMITH. Okay. My statement was, and you haven't contradicted it, that the Administration is intentionally releasing thousands of individuals. These are convicted individuals of serious crimes, back into our neighborhoods and communities. It actually increased over the last year from the year before. Why are you doing this to the American people? You know their recidivism rate is high. You know these individuals are going to be convicted of other crimes. Why are doing this to the American people?

Ms. SALDAÑA. If I may answer, sir? If I may complete my answer. What I am saying is; again, let's make sure we are comparing apples to apples. We are talking about about 55 percent of those having been ICE discretionary decisions which I think is the heart of concern.

Mr. SMITH. I am willing to concede several thousand are in that category.

Ms. SALDAÑA. Yes.

Mr. SMITH. I am also willing to concede that 8 percentage of Zadvydas. That still leaves thousands of people that should be deported, in my opinion, that are not being deported that are endangering innocent Americans. Again, why are you doing this? Why aren't you——

Ms. SALDAÑA. Because the Congress lays out due process, sir, for every person that is detained.

Mr. SMITH. Are you disagreeing? Are you saying that you could not deport these individuals, thousands of these individuals?

Ms. SALDAÑA. I cannot deport any individual without an order from the court, either an immigration court or a Federal court.

Mr. SMITH. Right. And if you sought that order, you could deport thousands of these individuals and you are not trying to do it. Again, why not?

Ms. SALDAÑA. We only make decisions with respect to—you know, the criminal justice system releases murderers, rapists, sexual assaulters every day when a Federal judge decides, you know, this person does not present a flight risk or a danger to the community. That is the same considerations the law and the regulations prescribe from us.

Mr. SMITH. Yes. The law allows you to deport these individuals if you want to.

Director, you are not giving the American people a good answer. I hope you will come back with a better answer in the future. And let me go to the next subject, which is Secure Communities.

You said in your testimony that one of the reasons that the Administration terminated Secure Communities is because local jurisdictions refused to comply with it. Well, this is interesting that you don't feel that if local jurisdictions want to comply with Federal

laws, they don't need to or you are going to not force them to do so. But, have you ever challenged any of these local jurisdictions to comply with the current Federal law?

And let me read you that Federal law real quickly. It says, "If 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——"

Ms. SALDAÑA. Sir, I am sorry. I am having difficulty——

Mr. SMITH. "The Immigration and Naturalization's service information regarding the citizenship of immigration status lawful or unlawful——"

Ms. SALDAÑA. Representative Smith, I am having difficulty hearing you. I am sorry.

Mr. SMITH. Okay. Just take my word. The current law says that local communities should be able to work together with local and Federal officials to remove individuals. And you yourself had said one reason you are not enforcing laws is because local communities failed to comply with it. Why aren't you trying to enforce it? In what ways have you tried to force local communities to follow Federal law?

Ms. SALDAÑA. Again, that is a subject of litigation you yourself just said should cooperate.

Mr. SMITH. What has the Administration done to try to enforce current law in regard to Secure Communities?

Ms. SALDAÑA. We have met the secretary——

Mr. SMITH. You haven't filed any lawsuit against any entity.

Ms. SALDAÑA. I have not filed any lawsuit, sir.

Mr. SMITH. And that is my point. Why didn't you try to force——

Ms. SALDAÑA. There are plenty lawsuits out there——

Mr. SMITH [continuing]. To comply with Federal law?

Ms. SALDAÑA. Excuse me. I am sorry, Representative.

There are plenty of lawsuits out there that are still in the middle of litigation. I am not going to opine or get in the middle of those.

Mr. SMITH. No, no.

Ms. SALDAÑA. What I am trying to tell you is——

Mr. SMITH. I am not asking you to.

The Administration has not done anything to try to enforce the current Secure Communities law. Do you have any evidence that——

Ms. SALDAÑA. That comes as a surprise to me because I personally have been engaged in meeting with representatives——

Mr. SMITH. The Administration has done the opposite. They have said you don't need to comply.

Ms. SALDAÑA. May answer the question, please?

Mr. SMITH. Sure.

Ms. SALDAÑA. I really do want the American public to understand that I am not sitting on my hands. I actually have gotten out to meet with the major city police chiefs, the major county sheriffs, the California corps of sheriffs when they were in town a couple of months ago, and other jurisdictions to personally advise them of what the parameters of the law are, what we are trying to do to work with them to get——

Mr. SMITH. But you said in your own testimony——

Mr. GOODLATTE. The time of the gentleman has expired.

Mr. SMITH [continuing]. You weren't going to enforce the law because they——

I will yield back, Mr. Chairman, but I am so sorry that the American people aren't getting good answers today.

Mr. GOODLATTE. The Chair recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Mr. Chairman, I would just like to say I think it is disappointing that the witness, the Director, was not really given an opportunity to answer the questions. And I don't want to use all my time on Mr. Smith's questions, but I will say that so far as I know, and you can say yes or no, the fingerprints that are taken in county detention facilities are still being received by the Federal Government and ICE.

Ms. SALDAÑA. Yes, that hasn't changed.

Ms. LOFGREN. That has not changed. What has changed is the litigation, and I will use the State of California as an example. The State of California passed a law called the Trust Act that says that counties are not to deliver people who have committed no offense or a minor traffic offense of that sort. Why is that?

I mean in my own county, the Board of Supervisors and Sheriff decided that they will turnover individuals or hold them if they are indemnified. Why? Because they can't lawfully hold somebody without probable cause that a crime has been committed. So what you have done is to try and fix that.

Ms. SALDAÑA. And I have offered to you during our meeting earlier—I am sorry.

Ms. LOFGREN. I am sorry. I am getting a cough drop here.

Ms. SALDAÑA. I have got cough drops here.

Ms. LOFGREN. I do too.

Ms. SALDAÑA. And I have offered during our meeting——

Ms. LOFGREN. Right.

Ms. SALDAÑA [continuing]. Come and visit with your local officials and——

Ms. LOFGREN. But the point is you are being asked to violate court orders and you can't do that.

That is correct?

Ms. SALDAÑA. I am here to enforce the law.

Ms. LOFGREN. That is correct.

I want to talk about a family detention. And I know that you mentioned the meeting that you had, but I am concerned. Our policy that was adopted in November basically says that we should prioritize felons not families. However, we have now increasing numbers of families not felons being held in detention centers, and I am concerned about the contractor that is in charge of much of this.

I understand that there were women who were either on a hunger strike or a religious fast—I don't know how you want to—at the Karnes County Residential Center. We had staff down there over the Easter break who observed and discussed with some of the women that they had been put in medical isolation. Some of these women have been held for six, seven, 8 months with their children.

We have, and I would ask unanimous consent to put into the record, an affidavit from Luis Zayas, the Dean of the School of Social Work at the University of Texas in Austin. And in his declara-

tion, the Dean explains that he has interviewed several families at the Karnes Detention Center and found that "detention has had serious and long lasting impacts on the health and well-being of the families I interviewed at Karnes."

So I am just concerned. We don't have a pediatrician on site at Karnes nor at the facility in Berks, Pennsylvania. We have over a hundred children being detained. We have some evidence of lasting and serious adverse impacts on the well being of the children that are being held in jail. I want to know what process we are going to use to review that. Obviously, the court in D.C. issued an injunction, which I know that you are complying with, but the problem is that the bonds have been set so high. If you are, you know, basically an asylee from Central America, being held in prison for six, seven, 8 months with your children, you don't have $10,000 to get out.

So are we taking a look at the alternatives to detention for people whose cases, whose credible fear findings have already been made?

Ms. SALDAÑA. We certainly are looking at alternatives for detention. As you may well know, we have quite a few families on the ATD program. It is essentially release but with some increased supervision, and we have enjoyed some success with that program.

I will say that every decision, Congresswoman, that our officers make, and they use their best judgment, they are trained, they are seasoned, to try to determine what the appropriate bond is once they say, "Okay, you should be released but we need some—"

Ms. LOFGREN. Well, I would like to follow up with you because we are hearing something quite different——

Ms. SALDAÑA. I would be happy to.

Ms. LOFGREN [continuing]. In the advocacy community. And, you know, we will get to the bottom of it later.

I would like to use the remainder of my time to let you answer Mr. Smith's question about who you are releasing, the Zadvydas decision, and the other circumstances that require you to release.

Ms. SALDAÑA. As I said, the Congress, not this particular Congress but the Congress, has laid forth due process for any individual whether they have come into our country illegally or not with respect to their claims for relief from deportation. So often, they go through these proceedings and we comply with those requirements. The considerations that the statute and the regulations themselves contemplate, contemplate the release of criminals because it says, as one of the factors to consider in determining, is the person's criminal history. How long ago was it? What was the severity of it? How extensive is it? Those kinds of considerations.

So even the Congress has contemplated that some people were released and it is certainly part of the criminal justice system.

Ms. LOFGREN. So you are saying——

Mr. GOODLATTE. The time of the gentlewoman has expired.

Ms. LOFGREN. But if I may please have 30 seconds additional? If the judge——

Mr. GOODLATTE. Without objection.

Ms. LOFGREN [continuing]. An immigration judge, orders an individual released, do you comply with that order?

Ms. SALDAÑA. I do.

Ms. LOFGREN. Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Thank you, Madam Director, for being here this morning.

ICE released, as we have heard before, over 36,000 criminal aliens in 2013 and nearly 31,000 in 2014. Many of us are really shocked and consider this to be a quite appalling policy. You mentioned in your testimony that one of the new policies addressing this problem is a "Senior Manager Review of discretionary release decisions for individuals convicted of crimes of violence."

How is this an improvement? Instead of allowing people in the field to make decisions, you have a bureaucratic headquarters. And, let's face it, there are oftentimes the folks out in the field are already micromanaged by folks at the headquarters on decisions that agents oftentimes have to make in the field when they are facing a situation; which it is hard to know back at headquarters what they are actually dealing out there in real-life situations. And then, ultimately, approving the release of a violent criminal alien.

Shouldn't the policy response to ICE releasing violent criminal aliens be not to release violent criminal aliens?

Ms. SALDAÑA. I have mentioned the due process requirements. I talked about it earlier. But, sir, the policy that I initiated is a response to this Committee and every Member of Congress, I believe, to the release of criminal aliens. I myself have a concern. Are we making the proper decisions? Do we have a process in place to review those decisions?

And that is what exactly I announced last month in March. That is you will have a local supervisor including the field office director, the top person in the field, reviewing the decision. You will also have a group, a small group, of very well seasoned managers who will review these decisions. I want to be sure that the process is followed to ensure that we are not putting, we are not as an institution putting dangerous criminals on the streets. So that is why I have asked for this additional review to satisfy myself and you all.

Mr. CHABOT. Thank you.

To the extent possible, I would encourage you to allow the experienced men and women that are actually on the street and dealing with these life and death decisions sometimes to make those decisions, if at all possible.

Let me move on to another area. While I appreciate that the use of new technologies are potentially useful law enforcement tools, I do have some concerns with the Department of Homeland Security's recent announcement that it is offering up a contract for companies to monitor people's license plates. In particular, I am concerned that government programs, which track citizen's movements, capture images, and collect data of, oftentimes, innocent Americans, raises serious privacy concerns.

Just a year ago, DHS and your agency cancelled similar plans for access to a national license plate tracking system. Your agency's more recent request comes at a time when your agency has failed to enforce current laws that have resulted in an 18 percent decrease in criminal alien removals and the release of over 36,000

criminals, as we have already discussed to some degree. Why are we to believe that your agency will properly use this new license plate data and technology when your agency has a track record of not enforcing U.S. immigration laws and the collection of a person's location while in public and collected over time is sensitive information and should be treated as such?

What assurances can you give that the personal information of, for the most part, innocent people, because that is who will usually be tracked is people that have done nothing wrong and that are citizens? How can we ensure that their rights are going to be protected and their civil liberties maintained?

Ms. SALDAÑA. Well, obviously, that is of great concern to the American public and to myself, sir, given recent revelations. But that is the very reason. I wasn't here at the time that the decision was made to withdraw the bid but it is my understanding that that is the very reason it was withdrawn; so that it can be given greater study, make sure that there were safety measures in place, that the information is handled properly, that privacy concerns by paramount.

But I will tell you, again, as an Assistant United States Attorney, prosecuting cases with agents, FBI, Homeland Security, Education, agents from all Federal agencies, that the more information you have with respect to a person who is actually in the middle of an investigation not the innocents but in the middle of an investigation, it is helpful to the investigation to have that.

So we are going to be balancing both the investigative utility as well as the privacy concerns of individuals on information we have gathered and possess.

Mr. CHABOT. Thank you. My time is about to expire. Let me just conclude by stating there is obviously a lot of skepticism about the way the law is being enforced and the fact that it is actually not being enforced by this Administration and we certainly hope that the Administration will reconsider the way it has been enforcing the law.

I yield back.

Mr. GOODLATTE. The Chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, to the the Ranking Member.

And thank you very much, Director Saldaña and particularly for your service to the Nation and being an outside Texan. We are all very proud of you, delighted to see you sitting before us today. And know that you bring a sense of knowledge and passion to this position. Let me first of all indicate my appreciation for ICE. I have worked with them over the years, if I might say, and find them to be commendable and to be concerned about the security of this Nation. I think that is very important.

You will find, as you come to Congress, that there are the First Amendment rights of members allow them to have different perspectives and views, and also representing their constituents. And that is what this House represents, this Committee represents, and democracy represents. But we also have an order of the three branches of government and the responsibilities of the President.

And your responsibility in the compliance with the guidelines of the Administration.

And so, my first question to you is do accept the concept of prosecutorial discretion?

Ms. SALDAÑA. I do and I have——

Ms. JACKSON LEE. The mike, please?

Ms. SALDAÑA. I do and I have for the last several years as an Assistant United States Attorney and the United States Attorney; it is vital. I do know that there were aspects of the proposed executive action, which my former department, the Department of Justice, opined about and carefully studied with respect to the entire scope of the request. And they made recommendations regarding parts of it that were not appropriate, which were honored——

Ms. JACKSON LEE. But ultimately——

Ms. SALDAÑA [continuing]. And parts that were.

As I said earlier, I could not, as a United States Attorney, enforce every law in the books. It makes total sense. It is rational to say we need to focus our resources.

Ms. JACKSON LEE. Thank you.

My time is short so I am going to have to go on. With that premise then, I think it should be very clear that the present court proceedings deal with the President's executive actions. Is that your understanding; the state?

Ms. SALDAÑA. The ones in South Texas have to do with DAPA and DACA.

Ms. JACKSON LEE. That is correct.

And so, they do not deal with the overall order or action regarding the use of prosecutorial discretion that ICE can utilize. I understand.

Ms. SALDAÑA. That is true, and I made that very clear to the field.

Ms. JACKSON LEE. I think that is a very important point because I ask that you make that point over and over again.

As I understand, I would like to read into the record priority one under the Humane Enforcement Policy; deals with suspected terrorists, national security threats, persons apprehended at the border for enumerated felons. Priority for ICE, two, would be persons convicted of three or more misdemeanors other than traffic offenses and state or local offenses predicated on immigration status. I am reading very quickly but—priority three would be persons issued a final order of removal after January 1, 2014.

Does that comply with the sense that you have?

Ms. SALDAÑA. Absolutely.

Ms. JACKSON LEE. Well then, let me ask these two questions. First of all, I had a gentleman, by the name of Mr. Alvarado, who was not an enforcement priority yet he was detained in October 2014 and removed to Honduras in February 2015. He lived in Houston. He had lived here since 2005. He had a voluntary return in 2005 to Honduras but came back. He had no deportation order, to my understanding. He was being driven by his wife when his car was pulled over. He was put into custody. He is married to a legal permanent resident; he has a citizen child, stepchild, but he was deported.

I think there is a disconnect between here, in Washington, and the appropriate procedures that our ICE officers need to use. Tell me what you are doing to make sure that they are fully educated.

My second question is can you tell me what you are doing to ensure that detention centers, one I know in the San Antonio area in Texas, are hospitable and humane to our families and children? And I would appreciate your answers on those questions.

Ms. SALDAÑA. Yes.

Let me start with the latter. I personally went to visit the Dilley Facility outside of San Antonio in Dilley, Texas. I have not made it to Karnes or Berks yet but I intend to. I observed for myself, and that is the only way I satisfy myself that things are as they should be, that our requirements and safety measures and humane treatment of folks is satisfied there.

With respect to fully educating——

Ms. JACKSON LEE. And Mr. Alvarado's case, but go ahead.

Ms. SALDAÑA. And I cannot comment on a specific case.

Ms. JACKSON LEE. I understand. Your staff can take it down.

Ms. SALDAÑA. But I continue to train. I continue to meet personally, either by VTC or personally, with field office directors to make sure that these priorities are being enforced equally and properly.

And by the way, on our website we do have a complaint process. That, if somebody has, even a detainee, has some concern, that they have got a process to go through; even up to, I don't encourage this every day, but with respect to concerns that can't be satisfied, that they start locally and work themselves up.

Ms. JACKSON LEE. Lawyers can then adhere to the fact that the executive discretion, prosecutorial discretion, does exist and they can raise this with the ICE officers or their clients.

Ms. SALDAÑA. Yes, that is correct. And I have met with the Chief Counsel to make that clear.

Ms. JACKSON LEE. I yield back. I thank the gentlelady for her service to the Nation.

Ms. SALDAÑA. Thank you.

Mr. GOODLATTE. The Chair thanks the gentlewoman.

The Chair recognizes the gentleman from Virginia, Mr. Forbes, for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman.

Madam Director, thank you for being here. As my colleague, Mr. Gowdy, said, we hold you in high esteem for your expertise for serving in the U.S. Attorney's Office. And this Committee works a lot on policy in trying to get policy correct.

So let me ask you this question: If I have an individual that is speeding on our highways, should they be apprehended and charged differently if they have lived in the country longer than someone else, or if they go to school here, or if they have a job, or if they are pregnant, or if they have a serious health problem?

Ms. SALDAÑA. Should they be treated differently? No. That officer has discretion to give a ticket or not give a ticket.

Mr. FORBES. But should they be apprehended and charged the same whether they have those conditions or not?

Ms. SALDAÑA. That should not be a distinction with respect to an officer pursuing and issuing——

Mr. FORBES. He should charge him and apprehend him the same way?

Ms. SALDAÑA. Recognizing, sir, their discretion. Officers, police officers have discretion whether to give a ticket or not. I have never been the benefit——

Mr. FORBES. But they have the discretion based upon whether or not someone is pregnant to give them a ticket or not? Should they not give a ticket if that person is pregnant?

Ms. SALDAÑA. No one should be treated differently in that——

Mr. FORBES. No one should be treated differently. And is that a basic theory of law?

Ms. SALDAÑA. Yes. We try to be fair and consistent.

Mr. FORBES. Then tell me why that is different when you would suggest that you have prosecutorial discretion? That I could enter a blanket order or regulation that would say that anyone who was in the country longer or went to school here or had a job or were pregnant or had a serious health problem would be treated differently if they were speeding on a highway. And I think you would object to that but let me go to another point.

We have had testimony before this Committee that, as in some of our violent criminal gangs, as many as 85 percent of the members are here illegally. Would you agree that if somebody was here illegally in this country and they were a member of a violent criminal gang that they should be apprehended and deported?

Ms. SALDAÑA. Yes, sir. And that is actually part of priority one.

Mr. FORBES. So you would agree with that.

Then, with all of the individuals the criminal aliens that were released in 2013 and 2014, can you tell me how many of those were members of violent criminal gangs or members of criminal gangs at all?

Ms. SALDAÑA. I can't off the top of my head but I am certain——

Mr. FORBES. Do you have that record? Do you have that information?

Ms. SALDAÑA. I am not sure, sir, but I will——

Mr. FORBES. But you were just telling me, as the Director of ICE, that it is a priority to get violent criminal gang members out of the country. That is one of your top priorities. And yet, you are telling me you don't even know whether we have records of how many we released or did not release.

Ms. SALDAÑA. There may be a way to do it manually, sir. I can't——

Mr. FORBES. But now that is not what I am asking, Madam Director. You are coming in here today telling us that one of the top priorities you have is getting criminal gang members out of the country who are here illegally.

Ms. SALDAÑA. That is correct.

Mr. FORBES. But, yet, you can't even tell this Committee that you have the data to tell how many of them you released back then.

Ms. SALDAÑA. I can't give you that number. I suspect, manually, one can make that search and give you the answer.

Mr. FORBES. But you don't know whether you can do it.

Ms. SALDAÑA. Off the top of my head, I can't tell you what the number is, sir.

Mr. FORBES. Madam Director, I am not asking for the number. I am asking do you have any way of even telling which of the individuals you released in 2013, 2014, are you releasing currently, are members of criminal gangs.

Ms. SALDAÑA. I believe so but it may require a manual search and a little time to come up with that number.

Mr. FORBES. But right now, you can't testify before this Committee that, as the Director of ICE, you know of whether you have a process of determining the criminal gang members that are being released by ICE back into the streets of the United States of America?

Ms. SALDAÑA. I believe that is the case, except I believe it would require a manual search. We don't necessarily have that but we can pull up.

Mr. FORBES. If you did the manual search, what would you search? How would you find——

Ms. SALDAÑA. The files.

Mr. FORBES. The files would necessarily be conflicted——

Ms. SALDAÑA. If I may finish my answer, sir?

Mr. FORBES. Sure. Please.

Ms. SALDAÑA. The files in which the, we refer to them as an A-file, that has all the information, immigration information, of a particular undocumented immigrant.

Mr. FORBES. But you are looking back at a criminal record that may not show that they were convicted under being a criminal gang member. Do you have anything where you are asking these criminal aliens before they are being released if they were members of a criminal gang?

Ms. SALDAÑA. We don't just rely on the answer of a particular undocumented immigrant.

Mr. FORBES. But do you even ask?

Ms. SALDAÑA. We may ask and we will rely on our investigative resources to find that out, sir. It is not just accepting the word of a person.

Mr. FORBES. But can you tell this Committee that you are at least asking?

Ms. SALDAÑA. Again, I can't tell you in every case——

Mr. FORBES. But, Madam Director, my time has run up. It bothers me tremendously when as the Director of ICE you come in here and tell us one of your number one priorities, you basically don't have a clue whether you can do it, you are doing it, or how many you are releasing. And that is something that frightens all of us.

Ms. SALDAÑA. I believe I answered otherwise, sir.

Mr. FORBES. I think the record will show differently.

Mr. Chairman, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, recognizes the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you.

Ma'am, the Karnes County Residential Center is actually a privately run, for-profit detention center. Is that correct?

Ms. SALDAÑA. I believe so.

Mr. JOHNSON. And so, it is actually the Karnes County Detention Center not the Karnes County Residential Center, which sounds a whole lot nicer. But the Karnes County Detention Center has been

accused of being a place where countless women have been raped by male guards. Are you aware of those reports?

Ms. SALDAÑA. I am aware of those allegations and I am aware of the——

Mr. JOHNSON. And also, as a residential center, families are held in detention. And when I say families, I basically mean women and their minor children. That is who is housed at Karnes Detention Center; correct?

Ms. SALDAÑA. Yes. I would like to provide to you, sir——

Mr. JOHNSON. I will let you come back in just a second.

Ms. SALDAÑA. Okay.

Mr. JOHNSON. When a mother is put in a medical isolation room, the child or her children are assigned to that room with her. Isn't that a fact?

Ms. SALDAÑA. Are you talking about a particular case? I am not aware of that. I am not aware of that. I am not aware of that.

Mr. JOHNSON. Generally, when a woman is assigned to a medical isolation room, her child would be assigned to that room as per the reports that I will put into the record at this point. The mothers and children are allegedly locked in a dark room for protesting detention conditions and also that is a ThinkProgress article. And also, for the record, I would like to tender a New York Times magazine article entitled "A Federal Judge and a Hunger Strike Take on the Government's Immigration Detention Facility."

Mr. FORBES [presiding]. Without objection.

[The information referred to follows:]

# Mothers And Children Allegedly Locked In A Dark Room For Protesting Detention Conditions

BY **ESTHER YU-HSI LEE** POSTED ON APRIL 5, 2015 AT 11:25 AM




*Protesters gather at the Karnes immigrant detention center in January 2015.*

CREDIT: USED WITH PERMISSION FROM ULTRAVIOLET

Detention officers allegedly locked migrant mothers and children in a dark room, took away internet access, and threatened to take their children away from them after some

went on a hunger strike to protest conditions at a Texas immigration detention center, according to lawyers and advocates. In a five-day strike that ended Saturday, about 78 women went on a hunger and work strike or acted in solidarity to demand better food and medical care, as well as their release from the Karnes Detention Center.

Immigration and Customs Enforcement (ICE) officers took away internet access and email privileges, threatened mothers with deportation, or told them that they could lose custody of their children, three individuals advocating on behalf of two separate detainees told ThinkProgress. Three mothers, and their children between the ages of two and 11, were also placed in the "medical infirmary" on the first day of the hunger strike, advocates said. Mohammad Abdollahi, the advocacy director at the immigration rights group Refugee and Immigrant Center for Education and Legal Services (RAICES), explained that the infirmary reportedly acted as a solitary confinement cell for the three families.

*The lights would only turn on when they were getting fed.*

"They were placed in a dark room," Abdollahi said. "The lights would only turn on when they were getting fed. One woman cupped her hands, asking, 'You can do this to me, but why are you doing this to my child?'"

Abdollahi added, "There was sensory deprivation involved, preceded with the threat that they would lose custody of their children. Other women emailed us frantically that [the three families] were being sent to a medical infirmary. They went to the medical section [at the detention center] where ICE was interrogating them to protest, so they were able to get the woman with her two-year-old released."

Though ICE has denied that a hunger strike took place, advocates told McClatchy over the weekend that "investigators from the Department of Homeland Security's Office for Civil Rights and Civil Liberties are expected to talk to the mothers about their allegation that they and their children were assigned to the facility's medical clinic to punish them for the hunger protest."

In a section dedicated to hunger strikes, a 2011 ICE handbook stated, "Any detainee who does not eat for 72 hours shall be referred to the medical department for evaluation and possible treatment by medical and mental health personnel. Prior to 72 hours, staff may refer a detainee for medical evaluation, and when clinically indicated, medical staff may refer the detainee to a hospital." The handbook also stated that hunger striking

detainees could be kept in isolation.

"In terms of conditions within the [Karnes] facility, one of the biggest issues has to do with medical conditions and the lack of appropriate food," Christina Fialho, the co-founder of the immigration advocacy group Community Initiatives for Visiting Immigrants in Confinement (CIVIC), said. CIVIC has affiliated visitation programs at 39 detention centers nationwide. Fialho has not visited Karnes, but is advocating on behalf of a detainee named Sonia.

Because Karnes County, Texas sits on one of the most active drilling sites used for fracking, the water at the detention center has to be heavily chlorinated, which often causes stomach issues for detainees. The food provided was previously described as "inedible" by other detention center visitors.

Lynette [last name withheld by request], a detention visitor told ThinkProgress, has known Sonia and her children for 15 years. Lynette hadn't known that Sonia attempted to cross the border with her children until immigration officials caught them at the border last year. They are keeping in contact through email. Since the hunger protest, email access at Karnes was reportedly cut off for at least one day. Lynette, who went on a two-day solidarity hunger strike for Sonia, said "they all had lost weight since I've seen them in June. Her [nine-year-old] son was given clothes when they first arrived and the pair of pants he was given now falls off of him, so clearly he's lost a significant amount of weight."



*Sonia, an immigrant detainee, holds her son in a 2006 photo.*

CREDIT: LYNETTE

"What [Sonia] and other women are doing is not going to cafeteria, but instead purchasing food for their children from the commissary," Lynette said. Women are paid $3 a day for working at the center, but a bottle of water reportedly costs $2.50. "Countless mothers, like Sonia, are watching their children deteriorate because they don't want to eat the food. Mothers are watching their own children waste away in front of them. They're saying 'free me. Free my children.'"

Between 25 and 30 women who went on strike have been in detention between six and ten months. Abdollahi, who's advocating on behalf of a 26-year-old female Honduran detainee named Kenia and her two-year-old daughter, said that women who were caught in the past trying to cross the border, have been denied bond to secure their release. Advocates said that the women on strike have all passed a credible fear interview, a preliminary step in the asylum process to determine whether they would face persecution or death if they were sent back to their countries.

Under the 1997 Flores vs. Meese settlement, which calls for children to be released on bond to appropriate family custody, the children have been granted bond. But because children have to be released to a parent or point of contact — in this case, their mothers — Fialho said that those children cannot leave the detention center. "ICE refuses to release them from their mothers, even when the mothers appoint a guardian on the outside" she said.

An influx of 68,445 Latin American adults with children crossed the southern border last year. In response, the Obama administration adopted an "aggressive deterrence strategy" to lock up women and their children in detention under a "no release" policy as a way to deter future migrants from making the trek. Across various immigration detention centers, many are denied bond based on a 2003 ruling in which former Attorney General John Ashcroft argued against granting bond to a Haitian immigrant because it would encourage future illegal entries.

GIRL

The New York Times Magazine

# A Federal Judge and a Hunger Strike Take on the Government's Immigrant Detention Facilities

Since a surge of asylum seekers from Central America began to cross the U.S. border last spring, the Obama administration has adopted a policy to house thousands of them in detention centers. This includes the construction of new facilities specifically for women and children, who have been forced to live for months at a time in conditions that closely resemble prison, in some cases surrounded by high fencing and barbed wire, under the supervision of armed guards. They work for as little as $1 a day, with restricted access to the outside world.

Last week, after prolonged confinement, 78 young women at a facility in Karnes County, Tex., took the drastic final measure of prisoners everywhere: They announced a "hunger strike" and declared their refusal to work or "use any service in this place" until conditions improve. "We include mothers who have been locked up in this place for 10 months," the declaration began, in Spanish. "We have come to this country with our children in search of help and shelter, and are being treated as criminals — which we are not, much less are we a danger to this country."

I was among the reporters who wrote about facilities like Karnes; our Feb. 8 cover story described the horrific conditions in Central America that led many of these women and children to flee. In recent years, Honduras, El Salvador and Guatemala have been plunged into chaos by the rise of criminal gangs that in some cases rival the state in their power. American law offers a pathway for those who are seeking asylum from this sort of mayhem. To qualify, an applicant must typically present herself to border officials, demonstrate a "credible fear" of returning home and proceed through a formal asylum hearing, during which an immigration judge can assess the merits of the claim.

The first few steps of this process can be completed in days, but the final hearing may take months to schedule, so officials have traditionally allowed asylum applicants to live with family and friends while they await a final decision. Since June of last year, the Obama administration has upended that tradition. Rather than release the families on bond to await a hearing, officials place virtually all women with children into the new detention facilities.

The administration has defended this approach as a means of discouraging future asylum seekers from coming to the United States. "The decision to establish family detention facilities was in large part driven by the need to create a deterrent effect," Esther Olavarria, the senior counselor for immigration issues for the Department of Homeland Security, told me in January. When I asked Olavarria to explain the legal philosophy that permits the D.H.S. to punish one group of people — today's migrants — merely to send a message to others, Olavarria declined. "I'm not going to opine on my philosophic views," she said.

Two weeks after the magazine's article appeared, a federal judge opined on precisely that question.

Responding to a lawsuit filed on behalf of women and children placed in detention, Judge James E. Boasberg of the United States District Court for the District of Columbia granted a preliminary injunction to stop the deterrence policy. "The Government," Boasberg wrote, "maintains that one particular individual may be civilly detained for the sake of sending a message of deterrence to other Central American individuals who may be considering immigration. This appears out of line with analogous Supreme Court decisions."

In his decision, Boasberg cited our article as evidence of the damage inflicted by the policy. Under the terms of a 1997 settlement in the case of Flores v. Meese, children in the custody of immigration officials are entitled to certain protections. First, they must be granted a "general policy favoring release," and when there is specific reason to detain them, they must be housed separately from adult strangers, in a nonsecure facility with access to regular medical care, schooling and exercise. But in my reporting, I found that hundreds of children, many of them under age 6, had been subject to a general policy favoring detention. At a facility in Artesia, N.M. — since closed — they reported sleeping eight to a room with little access to education or outdoor exercise.

Visitors to that compound, including lawyers, faith-based groups and elected officials, described an environment of rampant disease, where children lost weight rapidly under the strain of confinement. In his decision, Boasberg concluded that the conditions described in our article were a source of "irreparable harm to mothers and children."

The decision is rather limited. Because the injunction arose from a case involving women who had not previously been detained in the United States, the decision applies to only similar families. Any women and children who have been deported in the past will continue to fall under the blanket detention policy while their cases are litigated separately. Many of those families have already spent months in legal limbo and could remain there for many months to come. Most of the women on the hunger strike fall into this uncertain category. But for cases in which D.H.S. officials are bound by the injunction and must offer bond to the detainees, advocates say they have consistently set the payment amount at a level that few asylum seekers can afford. Stephen Manning, a pro bono attorney with the American Immigration Lawyers Association, told me that some of the recent bonds have been as high as $15,000. Most are set around $7,500.

What results is a policy that technically follows Boasberg's injunction but, in practice, changes very little. For a family that has fled the violence and instability in Central America and traveled 1,500 miles or more — much of the journey on foot — to reach the United States, Manning said, "$7,500 is like a million."

Attorneys like Manning have challenged the bond amounts in court with some success, but officials continue to set new bonds at the same high levels. In early March, a young mother in a facility in Dilley, Tex., who had been in custody since December, attempted suicide after receiving a $5,000 bond that she could not afford to pay. The woman's attorney, Bryan Johnson, told me that officials responded to her suicide attempt by moving the woman to a psychiatric hospital and placing her 4-year-old daughter in a program for unaccompanied minors.

The woman has since been released, but her daughter was already assigned to a foster family, she told me on Wednesday. "Now I can only speak with her two times a week," the mother said. "She gets sad and cries and tells me to come get her. I miss her so much, but I have to remember to have faith and patience." Officials at D.H.S. declined to comment on the case, citing privacy concerns. Corrections Corporation of America, which manages the Dilley facility, also declined to comment.

Immigration attorneys say that officials reacted to the hunger strike in a similar fashion. "They told the women en masse that if they undertook the fast, their children would be taken from them," says Jonathan

Ryan, the executive director of the Refugee and Immigrant Center for Education and Legal Services. According to Ryan, officials warned the protesters that if they refused to eat, "they would have reduced brain functioning, and if they had reduced brain functioning, they would be declared unfit guardians of the children, and the children would be taken."

When asked about this, Marsha Catron, a D.H.S. spokeswoman, replied by email on behalf of Immigration and Customs Enforcement: "ICE has been in constant communication with the residents at the facility. This communication has included discussing the negative health effects of not eating and how the decision of parents to stop eating may affect the care of their children."

By the end of last week, many of the women had resumed eating and working. But Ryan says they are preparing for a second hunger strike. "They're stopping for 10 days," he said. "They will resume next week." In the letter announcing their strike, the women wrote: "We will not stop until we achieve our goal. This strike will continue until every one of us is released into freedom."

Officials are preparing for a new surge of migrants to arrive with the spring, and they are working on a significant expansion to the detention program. Plans are currently in place to double the capacity of the Karnes camp, and construction is underway at the Dilley facility, which will soon become the largest ICE detention center in the country, with room for 2,400 women and children. Perhaps the only thing officials and immigration activists share is the belief that soon, those beds will be full.

***Correction: April 20, 2015***

*An earlier version of this article referred incompletely to the facility at Karnes. While the conditions at these detention centers closely resemble prison, the facility at Karnes does not have the barbed wire or armed guards found at some of the other centers.*

Wil S. Hylton is the author of "Vanished: The Sixty-Year Search for the Missing Men of World War II."

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Mr. JOHNSON. And you are aware of those reports of the hunger strike and the woman with the 11-year-old child that was placed into a medical isolation unit?

Ms. SALDAÑA. And the insertion in the New York Times article that there is barbed wire at our family facilities, which is not the case.

Mr. JOHNSON. But in those medical isolation units, those units are, or the unit that this woman who had the 11-year-old child that was assigned to the room with her, is a cell with a bed bolted to the wall and an open shower and an open toilet in that room, and is basically a detention jail cell. Isn't that correct?

Ms. SALDAÑA. I am not aware of that incident, sir.

Mr. JOHNSON. You are not aware of that?

Ms. SALDAÑA. I am not aware of that.

Mr. JOHNSON. Would it trouble you to know that women and children, because the mother participated in what is called a fast, others called it a hunger strike but she participated in it, and was assigned as a punitive measure to that medical isolation unit?

Ms. SALDAÑA. Is that something you also got out of that New York Times article, sir?

Mr. JOHNSON. Well, I have received the information from Republican as well as Democratic staff who actually took a visit within the last 2 weeks to that facility and spoke with the woman and the 11-year-old son.

Ms. SALDAÑA. Congressman, if that is a fact, that disturbs me greatly. And I am happy to visit with you regarding a specific instance. I cannot, on the record, go into the specific facts of individual cases.

Mr. JOHNSON. Well, ma'am, you have taken an oath and I would like to ask you, pursuant to that oath, that would you supply me with the quarterly reports compiled by the detention monitoring council's subcommittee per 7.5, subsection 7, of the directive titled Review of the Use of Segregation for ICE Detainees that was issued on September 4, 2013; as well as a list of all facilities designated for heightened review under Section 7.5, Subsection 5 of that directive? And also, all surveys, audits, reviews, memos, or other reports by ICE OPR, ICE ODO, ICE ODPP, DHS, OIG, or DHS CRCL regarding, one, the use of segregation in ICE facilities; and, two, the use of medical isolation cells in ICE facilities, and also the full contents of the Segregation Review Management system, the database created by ICE to monitor use of segregation following implementation of the directive? Would you be willing to supply my office with those copies? And I will send you a written request because I want——

Ms. SALDAÑA. Thank you very much, sir, because I stopped writing. I couldn't quite keep up. And included in that IG report, I just wanted to mention to you, Congressman——

Mr. JOHNSON. You will supply me with those?

Ms. SALDAÑA. To the extent that they exist. I couldn't keep up with the entire list but, if you provide it in writing, I will certainly try to run them down.

Mr. JOHNSON. Okay.

Ms. SALDAÑA. And included in that, what I wanted to mention to you was the IG report on those Karnes sexual allegations that

made an investigation and decided that there was not sufficient evidence to support those allegations.

Mr. JOHNSON. Well, I have heard——

Ms. SALDAÑA. But I will include——

Mr. FORBES. The gentleman's time has expired.

The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

Thank you, Director, for you testimony and I appreciate especially the Chairman's remarks about cooperating with the Committee prior to this hearing. And I understand that you are in a difficult position in this job. I would note the irony that one side is angry when you enforce the law, the other side is angry when you don't enforce the law. And so, I happen to be on the side of the latter.

But I am curious about a few things here, and one of them is I noticed in your written testimony that you have participated in high level discussions with Mexican government officials discussing opportunities to more rapidly repatriate Mexican nationals. And then, it goes on into the interesting part: "I have also met with government officials from Honduras, Guatemala and El Salvador where each pledged to do our part to stem the tide of citizens of those countries."

Okay. I think we understand in this Committee what all that means. And I am curious on what you learned because we have passed legislation here in the House, I think a couple of times, that would require those kind of negotiations to establish, I think I will use a term, an expedited return for those unaccompanied alien juveniles to the non-contiguous countries that I have mentioned are in your testimony.

Did you see a level of cooperation there that do you think it would be possible to negotiate those terms of return for the unaccompanied alien juveniles to those countries?

Ms. SALDAÑA. Well, and actually, I think I mentioned in my written statement, if I didn't I was remiss in overlooking it, that we have actually in Guatemala and in Honduras initiatives, pilot initiatives, in which we have representatives of those countries here in order to expedite removal of people from those countries.

Mr. KING. Is there anything in statute that prohibits us from doing that right now if we can reach that agreement? We don't have to wait for Congress to do that, do we?

Ms. SALDAÑA. I am not waiting on it. We are discussing this, as I said. That is one of the things I did early on was to go through——

Mr. KING. Whose decision would it be then? Could Secretary Johnson then issue a directive that we complete those negotiations and begin to return those unaccompanied alien juveniles to their home countries?

Ms. SALDAÑA. We are actually doing that now. We are negotiating. We are talking. We are working hard with them.

Mr. KING. Does he have the authority to issue such an order?

Ms. SALDAÑA. Legal authority, sir? I just haven't studied that question.

Mr. KING. Okay.

Then, are you aware of agreement between Guatemala and Mexico to provide for expedited transit for Guatemalans who are on their way to illegally enter the United States and to grant, in Mexico, that 72-hour transit permit?

Ms. SALDAÑA. I believe there were discussions when I met with those countries in February to that effect. Yes.

Mr. KING. And I recall a press release from a press conference held between the President of Mexico and the President of Guatemala who announced this agreement, and I recall the President of Mexico saying they hope to be able to complete such agreements also with El Salvador and Honduras. Has that come to your attention?

Ms. SALDAÑA. It has, yes.

Mr. KING. Then, I would ask how do we consider them to be cooperative countries if they are cooperating with each other to expedite the removal of their own citizens across, through Mexico, and illegally enter the United States?

Ms. SALDAÑA. Well, sir, actually the Mexican authority stopping Central Americans from coming benefits the United States greatly. I see that——

Mr. KING. I agree with that but if they are giving permits for Guatemalans to have 72 hours as long as they are in transit to McAllen Texas, I don't call that cooperating with our policy. I call that contravening. So are they talking out of both sides of their mouths or is there something I am missing through the translation in the agreement?

Ms. SALDAÑA. I can't say that. I can't say that they are talking. What I saw in Guatemala, Honduras, and El Salvador were sincere efforts to try to help get their people back. The First Lady of Guatemala looked at me very closely and said, "Please, until we do, take care of our children."

I took that to heart because I think it was a sincere comment. And that is what we try to do.

Mr. KING. Of course. We are taking care of their children. We are flying them to places like Guatemala City into the United States now, completing the human trafficking. I find it ironic that just a year and half ago, December 2013, when Judge Hanen wrote an opinion that there was a coyote who had smuggled a 10 year-old girl into the United States. They were interdicted. They prosecuted the coyote for human trafficking and ICE delivered the 10 year-old girl to her birth mother in Virginia. And to quote from the opinion of Judge Hanen, "thus completing the crime of human trafficking by ICE."

Now, we are doing it hundreds and thousands of times and buying plane tickets to do that. That is a bit breathtaking to me and I think it has got to be very difficult to take an oath to uphold this Constitution and support the rule of law when you are watching above you at being subverted in the fashion that it is. And I will give you an opportunity to correct me on my analysis.

Ms. SALDAÑA. Sir, we also have a humane approach to the law in the United States, unlike many countries. That is why I am so proud to be a member of this country. And, as part of that, if there is a situation, I am not particularly familiar with this one that you are talking about, where a family is reunited who doesn't present

a risk to public safety or a risk of flight, than I agree with that approach.

Mr. KING. I will just say our policy reunites them in their home country. Thank you and I yield back.

Mr. FORBES. The gentleman's time has expired.

The gentleman from Puerto Rico is recognized for 5 minutes.

Mr. PIERLUISI. Thank you, Chairman.

Good morning, Director Saldaña. Welcome to the Committee.

Ms. SALDAÑA. I like the way you say that.

Mr. PIERLUISI. I am sorry?

Ms. SALDAÑA. Saldaña. I like the way you say that.

Mr. PIERLUISI. Saldaña, yes. [Laughter.]

Understandably, a lot of the questions so far in this hearing have involved ICE's mission to enforce our Nation's immigration laws. I want to discuss ICE's equally important mission to disrupt and dismantle drug trafficking organizations. As part of this mission, I know that ICE works in partnership with other DHS component agencies like CBP and the Coast Guard, DOJ component agencies like the FBI and DEA, and state and local law enforcement. You are an important player in a whole of government effort to combat drug trafficking and the violence associated with it.

In January 2012, I met with your predecessor John Morton. Puerto Rico had just experienced the most violent year in the U.S. territory's history. In 2011, there were 1,136 homicides in Puerto Rico. That is the equivalent of over three murders a day every day. It was roughly the same number of annual homicides as Texas, which has a population seven times greater than Puerto Rico's.

As my colleagues can attest, having heard me question senior official after senior official who have appeared as witnesses before this Committee, I have been on a campaign since 2009 to persuade Federal law enforcement agencies to increase the level of attention and resources that they dedicate to Puerto Rico, so that these resources are commensurate with the threat. The reality was that the level of attention and resources from the Federal Government was, and I emphasize the word "was," clearly deficient. And too often, my constituents were paying the price with their lives.

Starting in late 2012, however, the tide began to turn. Under the leadership of Secretary Napolitano, DHS component agencies began to substantially increase the resources they assign to Puerto Rico. For example, the Coast Guard has dramatically increased the number of hours its planes and cutters spend conducting counter-drug operations around Puerto Rico, and will completely replace its current fleet of cutters with faster, more modern vessels by mid-2016.

Moreover, in 2013, you agency, ICE, sent 30 additional agents to Puerto Rico where they arrested about 900 violent criminals and seized a great deal of illegal narcotics and weapons. In addition, DHS assigned to San Juan a Border Enforcement Security Task Force; a multi-agency team of Federal and local officials designed to dismantle criminal organizations.

Furthermore, CBP repaired the counter-drug radar system in southern Puerto Rico, which had been destroyed in 2011. Along with Congressman Mike McCaul of Texas, I led the successful effort in Congress to save the aerostat program from elimination and to transfer the program from DOD to DHS. Moreover, TSA has en-

hanced searches of luggage, parcels, and cargo transported on flights between Rico and the U.S. mainland for illegal narcotics and weapons.

Finally, this year, the Office of National Drug Control Policy within the White House published the first-ever Caribbean Border Counternarcotics Strategy as required by Congress.

Collectively, these efforts have produced remarkable results. In 2014, there were 681 homicides in Puerto Rico. That is 40 percent lower than in 2011, 30 percent lower than in 2012, and nearly 25 percent lower than in 2013. You and your colleagues at DHS should feel very proud of this accomplishment, because you played a major role.

Nevertheless, as I am sure you would be the first one to say, we cannot relent. Rather, we must sustain and build upon this hard-earned success. Puerto Rico still has a murder rate that is far higher than any U.S. state or the District of Columbia, with an average of roughly two homicides each day.

So, I would like to give you an opportunity to tell the Committee what ICE is currently doing to fight drug trafficking and related violence in Puerto Rico, our Nation's Caribbean border, and what plans ICE has for the future.

Ms. SALDAÑA. Well, you have identified, I think I mentioned earlier, some of the HSI successes in this regard including 32,000 criminals and 1.3 million pounds of narcotics. A substantial part of what we do in HSI, because we are focused on transnational criminal investigations, is in the drug area. I don't have the specifics with respect to Puerto Rico, I can certainly share those with you, but those outlying posts are of great concern to me because obviously it is harder to manage.

But under the Secretary's Unity of Effort Initiative, you have mentioned the Coast Guard, you mentioned ICE, HSI in particular, obviously Border Patrol, all of these people and Customs and Border Protection, all of us work together pursuant to the secretary's direction to try to make sure that these transnational drug-smuggling gangs are not successful. And we have had a number of operations in that regard; Operation Coyote, Operation Identity Crisis. All of these operations that go to focus on these of kinds of smuggling operations of people and things.

Mr. LABRADOR [presiding]. Thank you. The gentleman's time has expired, and I recognize the gentleman from Arizona.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And thank you, Director Saldaña, for coming to be with us this day. I know that your job is a difficult one and one that I would find formidable beyond words.

I also know that a lot of they focus of the hearing has been the constitutional questions of the President's actions. And for a moment, if you could—and I understand that you have suggested that perhaps his actions were within the constitutional purview. So for a moment, let us put that aside.

You took an oath to uphold the constitution. That was part of your oath. If there were a situation from this Administration or from any other Administration that you found yourself serving and there was an executive order that you were convinced in your heart was clearly unconstitutional, which would hold your commitment?

Would it be your oath of office to uphold the constitution or would it be to subordinate the constitution to that executive order given that the President would be essentially your boss? How would you deal with that subject if it were circumstances where it was clear in your mind that the directive from the President was unconstitutional?

Ms. SALDAÑA. Well, that is not a difficult question. I mean I have always, in both my U.S. Attorney, my Assistant U.S. Attorney, and my director oath, have sworn to uphold the law, and if it were a matter as clearly as you say, that something was clearly unconstitutional, I can't be apart of that. If you are implying that that is part of executive action, which I think you set aside, I don't agree that that is unconstitutional but with respect to your general question, of course I would.

Mr. FRANKS. Well, I appreciate your answer to that and I think that is an honorable answer. And I hope I would have answered the same way in your circumstance. And I know that there is the disagreement, you know, given and that is the issue at hand. But you understand that some of us, given that the President said 22 times himself that what he was doing was unconstitutional, I think he has put you in a very difficult position. And I say that sincerely. I think he has, if I were in your place, I would feel in an uncomfortable position. Article 1, Section 8 calls for the Constitution specifically, specifically bestows on Congress the duty to create immigration law. And this president has rewritten that and I think that it puts you in a very awkward position. And just for your sake, I am not going to ask you to even respond to that because I don't know what I would do if I were you. But it seems clear to me that he has put you in an awkward position. Awkwardness being a very significant understatement.

The President also said, and I know this question was proffered earlier, but if somebody is working for ICE and they don't follow this policy, there is going to be consequences for it. Have you enforced that? I mean are there consequences for not following that policy?

Ms. SALDAÑA. There are consequences for not following the rules of an employee's status with the agency. I have a whole manual on this.

Mr. FRANKS. What would the consequences be if someone in the position that was required to follow through with the President's directives? And, again, we will set the constitutional issue aside for a moment. Certainly, if the President has done that, I guess we could do that. What would be the consequences for doing that?

Ms. SALDAÑA. Well, whether it is that directive or assaulting an employee in the office or not abiding by some other rule or policy, the range of punishment can range from anything to a verbal meeting where you counsel that person to ultimately what is available to any employer, and that is termination.

Mr. FRANKS. So, in other words, there are employees that work with you that are potentially subjected to termination for not following the President's directive in this particular case?

Ms. SALDAÑA. For not following any policy or directive or rule of employment——

Mr. FRANKS. Yes, which includes the President's directive. All right. I understand.

The difficulty of your position becomes even more apparent, I think. Is it true that under the Administration's new guidelines that aliens, unlawful aliens, I should say, has to be convicted three times for three separate incidents in order to be deemed a priority for removal?

Ms. SALDAÑA. They are all categories. It can be one serious offense; it can be three misdemeanors if that is what you are talking about. That is one of the elements in this card.

Mr. FRANKS. In this case, you are saying that potentially it is not true. In other words, if they are convicted of a serious issue, that could be basis in and of itself to be required or deemed a priority for removal?

Ms. SALDAÑA. Yes, sir.

Mr. FRANKS. Okay.

Ms. SALDAÑA. The offenses are listed in here.

Mr. FRANKS. Okay.

Is it also true that border crossers, who came to the United States after January 1, 2014, illegally, or those who overstayed the terms of their visas and fugitives from that law are not required to be processed for removal through the program?

Mr. LABRADOR. The gentleman's time has expired, if you could just answer the question.

Mr. FRANKS. Quickly.

Ms. SALDAÑA. 2C addresses recent border crosses, sir. 2C, would you like me to read it?

Mr. FRANKS. Please.

Ms. SALDAÑA. Aliens apprehended anywhere in the U.S. after unlawfully reentering or entering the United States and who cannot establish the satisfaction of an immigration officer that they have been physically present in the United States continually since January 1, 2014. And I also want to remind this Committee that there is a general provision with respect to these priorities that give an officer flexibility in making a decision, whether someone fits within the priorities and should not be removed, should not be put in removal proceedings, or does not fit and should be because of their public safety concerns.

Mr. FRANKS. Thank you, Mr. Chairman.

Thank you.

Mr. LABRADOR. Thank you.

I will now recognize the gentlelady from California, Ms. Chu.

Ms. CHU. Thank you.

Director Saldaña, the recent expansion of family detention for approximately 80 detention beds to now more than 2,400 beds at the new Dilley Detention Center is truly alarming. A vast majority of these women and children escaping the northern triangle region are fleeing domestic and/or gang violence and abuse. In 2011, El Salvador had the highest rate of gender-motivated killing of women in the world followed by Guatemala and the Honduras. These women are escaping some of the most dangerous countries in the world to seek protection in the U.S. and, instead, they and their children face prolonged detention while they fight their asylum claims.

In my view, there is no way to detain families humanely. When I first learned that the average age of a child in family detention is 6 years old and that there are even babies and toddlers being detained, I was truly shocked. As a psychologist, I know the mental health concerns that children and families in detention face.

Detention in jail-like facilities re-traumatizes victims of violence, and children in particular. Reports show that children in detention experience weight loss, gastrointestinal problems, and suicidal thoughts. In fact, Doctor Luis Zayas, Dean of Social Work at the University of Texas Austin, interviewed several families at the Karnes Residential Center and found that mothers and children showed high levels of anxiety, especially separation anxiety for the children, systems of depression, and feelings of despair. Children showed signs that detention had caused developmental regression such as reversion to breast feeding and major psychiatric disorders including suicidal ideation.

Dr. Zayas further states in his affidavit that ongoing stress, despair, and uncertainty of detention significantly compromises the child's intellectual and cognitive development and contributes to the development of chronic illnesses in ways that may be irreversible. These very serious psychological concerns combined with the many due process concerns, like prohibitively high bonds and difficulty accessing lawyers, makes family detention a truly, truly troubling institution.

In fact, it runs contrary to the 1997 Florida Settlement Agreement regarding, at that time, INS's detention of children. The agreement said that juveniles should be held in the least restrictive setting appropriate to their age and special needs, and generally in a non-secure facility licensed to care for dependent minors. And it said that detaining children in prison-like facilities that are both secure and unlicensed runs contrary to the very heart of the Flores Agreement. In fact, as we speak, Flores Class Council petitioned the court to reinforce the agreement in light of the expansion on family detention.

Director Saldaña, given the concern regarding the mental and physical health effects on children in prolong detention, I urge you to adopt a family detention policy that minimizes the lengthy detention of children, and use more humane alternatives like alternatives to detention. I also want say that my staff attended a live bond proceeding for a mother and her 5-year-old child who had been sexually assaulted. The child was suffering from severe psychological distress while being detained at Artesia including nightmares and bed-wetting. The family had already been detained 3 months before the bond hearing and yet the 2014 priorities memo from DHS states that field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness.

So how do you reconcile detainee mothers and children with such serious physical and mental health illnesses in light of the directives in the priorities memo?

So if you could answer these two questions of the lengthy detention of children as well as the detention of children with mental illness.

Ms. SALDAÑA. Well, I am not going to comment on the litigation but there are two separate issues. One is unaccompanied children, which who we do not detain, and those that are coming over with families.

I said earlier that I wanted to satisfy myself that our detention facilities for families were operating securely, safely, and humanely. So that is why I visited Dilley back in February just a month after I came onboard. And I found that to be the case. In fact, I was very impressed with two teachers I met for these children who are there in the facility and the openness of the facility. And these teachers who I visited with whose commitment and love, and mind you I was a school teacher at one time, whose commitment and love for their children, the children that they were educating, was very evident.

The facility was wonderful and, actually, the technology they had for these kids was incredible. I am not sure I could operate some of the interactive items that they have. But that is an issue of great concern to us, ma'am. Under that order that we are under with respect to family detention, we have reviewed all of those people that are members of that class, a number of those families have been released.

You know, one of our problems is the immigration courts in trying to get a resolution and a decision based on credible fear or whatever there is to move on with respect to these families and have them know what is going to happen with them. And that is a matter of—I think the last number I saw was something like 480,000 backlog cases in the immigration courts that are under the Department of Justice. And so I urge this Committee, to the extent there is anything you can do to help those courts, to get more judges that would help us with our disposition and our request for 2016 for more lawyers to assist us to get these people through the process so they don't have to be waiting or be detained.

Mr. LABRADOR. Thank you. The gentlelady's time has expired.

I now recognize the gentleman from South Carolina and Chairman of the Subcommittee on Immigration.

Mr. GOWDY. Thank you, Mr. Chairman.

Madam Director, I want to thank you for your service as a prosecutor and as a schoolteacher. I am biased toward both. So I hope that our questioning does not reflect that bias but I do thank you for doing a very—both of those jobs are incredibly hard. I thank you for your service.

You have cited the Zadvydas case and that explains 8 percent of the releases. How about the other 92 percent?

Ms. SALDAÑA. I am sorry, sir. Eight percent of any releases?

Mr. GOWDY. Eight percent of the 30,558 convicted criminal alien releases were under the holding of Zadvydas.

Ms. SALDAÑA. That is in 2014.

Mr. GOWDY. Right.

Ms. SALDAÑA. Yes, sir.

Mr. GOWDY. So there are 92 percent were not.

Ms. SALDAÑA. No, another 10,000 or 35 percent were under orders from the immigration courts that we have to comply with.

Mr. GOWDY. All right.

I want to back up and ask you to put on your oval hat. Prosecutorial discretion, what are the limits of prosecutorial discretion?

Ms. SALDAÑA. On a situational basis, sir, I think you are very familiar with the process where you kind of have to decide can you take a fraud case with a million-dollar loss which is substantial to many victims or do you have to limit it to cases above 5 million: It depends on resources and the safety issues in your specific community.

Mr. GOWDY. Right, and there would be declination levels based on the amount of loss, and there would be declination levels based on drug amounts, and bank robberies could either go state or Federal; usually depending on how good the case was. But immigration cases can't go state or Federal. They can only go Federal.

So you mentioned in your testimony that you counted 3,000 statutes that you were responsible for enforcing as the United States Attorney. How many of those 3,000 did you announce ahead of time that you were not going to prosecute anyone under that particular statute?

Ms. SALDAÑA. Announce it to the general public?

Mr. GOWDY. Ahead of time.

Ms. SALDAÑA. No, I didn't do that.

Mr. GOWDY. Right.

Ms. SALDAÑA. I think many people knew what they were somehow. You know, you can't limit everybody. We shared those priorities with the Federal agencies that we work with.

Mr. GOWDY. Sure, but again, you always have the recourse of going through the state. The state can vindicate its—I mean Texas has narcotic statutes. Texas has fraud statutes, bad checks statutes, so there is always a safety net if it didn't meet your declination level, the state could step in.

Ms. SALDAÑA. That is correct.

Mr. GOWDY. And I am stunned, and I am sure you may be too. I don't want to put words in your mouth. You worked with state and local law enforcement as a prosecutor. Right?

Ms. SALDAÑA. Yes, sir.

Mr. GOWDY. And you would have worked with them in the full range of cases from child pornography to OCDETF cases; you name it. There is a state and local officer at the table with Federal officers. Right?

Ms. SALDAÑA. That is absolutely correct.

Mr. GOWDY. So why are my colleagues on the other side of the aisle so resistant to giving state and local law enforcement officers any role at all in immigration?

Ms. SALDAÑA. To the extent they are here, I guess you could ask them. I am not sure I can answer for anybody else.

Mr. GOWDY. Well, in their defense, I will give you the excuses that I get. That the statute is too complicated. That you can't possibly expect state and local law enforcement officers to understand the complexities of our immigration law, as if DUI laws are not also complex or RICO.

Ms. SALDAÑA. I can't speak to that.

Mr. GOWDY. Well, the state and local law enforcement officers you work with, did you think that they were capable of understanding the complexities of immigration law?

Ms. SALDAÑA. I am sorry. No, that someone on the other side of the aisle has that view; I don't know that.

Mr. GOWDY. Well, they do.

Let me ask you this. Prosecutorial discretion, does it apply in all categories of law? You know, some laws require you to do something like register for selective service, some forbid you from doing something like possession of narcotics, and some laws, for instance, Congress could make you issue us a report. Are you able to exercise prosecutorial discretion in all three of those categories of law?

Ms. SALDAÑA. Well, I certainly can with respect to the first one.

Mr. GOWDY. Right.

Ms. SALDAÑA. I know you would be on my case if I did with respect to the third one. So I would say no. And I can't remember what your second one was.

Mr. GOWDY. The laws that force you to do something; register for selective service.

Ms. SALDAÑA. I mean, I don't enforce that law, registration for selective service.

Mr. GOWDY. I know. You are a smart lawyer and you have a broad background. I really, all politics aside, I think it is important that our fellow citizens understand whether there are any limits to this doctrine of prosecutorial discretion because—my time is up and I know that the gentleman from Idaho is going to gavel me in just a second.

But there is a big difference between you exercising your discretion not to do a $20,000 fraud case in Texas and your decision to confer benefits on that same group. Those are two entirely separate legal concepts. And regardless of who is in the White House and regardless of what job you and I have, I do think it is important that we have some bright lines so people understand what the limits of this thing we call prosecutorial discretion is.

And with that, I would yield to the gentleman from Idaho.

Mr. LABRADOR. Thank you very much.

And I now recognize the gentlelady from Washington.

Ms. DELBENE. Thank you, Mr. Chair.

And thank you, Director Saldaña, for being here with us today.

Many of my colleagues have talked about the terrible conditions in family detention camps and in detention centers. We have a detention center in my region in Washington State, the Northwest Detention Center in Tacoma. I understand that currently in the middle of negotiating the terms of a contract, and it has had to be extended. The negotiations have had to be extended twice now. The firm deadline to wrap up is now the 23rd of this month. That is my understanding. There has been very little transparency in these negotiations according to some estimates. American taxpayers are on the hook for $300 a day per detainee with all that money going to private prison companies.

So why is there so little transparency in the negotiations like this that are taking place across the country? And are you doing anything to open up the process so we can see what is happening?

Ms. SALDAÑA. I am not familiar exactly with that. I can certainly give you some more background after this hearing with respect to that particular negotiation. But no, we do want to have transparency.

You know there are parties to a negotiation and usually it is up to those parties to come up with the final terms. But I will tell you that we do seek, through all our meetings with all of our stakeholders, whether they are in law enforcement or non-governmental organizations or others, their views on how things can be improved. And I certainly am intending to—I hope I can get out there but I want to get out to more facilities to make sure, and I think we have communicated pretty clearly to folks that are doing those negotiation, to make sure that we are doing them in a way that ensures security but also humane treatment of individuals; whether they are documented or not.

Ms. DELBENE. If you have other information that you are able to give me, I would greatly appreciate it. And if you are able to come out to Washington State and visit the facility, we would appreciate that too.

Ms. SALDAÑA. Thank you.

Ms. DELBENE. So that you can have that direct experience.

Ms. SALDAÑA. I would actually like to do that.

Ms. DELBENE. As a follow-up, there was an October 2014 GAO report that I requested, with a number of colleagues, identified three areas where ICE is falling short in tracking and managing detention costs and expenditures. The three areas were, one, collecting and maintaining data; two, ensuring cost is considered in placing aliens in detention facilities; and three, preventing improper payments to two detention facilities operators.

So do you agree that there are improvements that can be made in this area? And if so, what steps are being taken to improve?

Ms. SALDAÑA. I always think that we can be more efficient. I have preached that since I have joined the agency. That we need to look for efficiencies because as we well know funds are not guaranteed from year-to-year as we have experienced first-hand at the department. But know we are looking at all of those things. We are looking to make sure that costs are allocated properly, we have got staffed that has been trained in order to look for that specifically, and we do periodic audits of those contracts.

And I am not familiar with the report you are speaking of. I would like to read it, also to make sure that we have addressed those areas you have identified.

Ms. DELBENE. Okay. And if we could follow-up on that too, I would also appreciate that.

And, you know, there are a number of counties in my state of Washington including King County, our largest county, that have firmly adopted policies to ignore certain ICE detainer requests. And so, I know you have talked about this a bit before, but I was wondering if you could explain your views regarding whether states and localities should be forced to comply with ICE detainers.

Ms. SALDAÑA. We are in the middle, as you know and as I indicated earlier, of a cross-country tour of those jurisdictions that have refused to work with us. We are trying to assure people, we are looking at priority enforcement not just general undocumented immigrant enforcement. We are looking at requests. We are not asking anyone to detain someone, as we did before, beyond the term of their local jurisdiction sentence. We are working to identify the areas we can all agree on; murderers, you know, the sexual

assaulters, those folks that present a danger to the community based on all of the facts and circumstances pertaining to a case.

It is a challenging job, presents opportunities for us to visit with our local and state officials. And not only them, but non-governmental organizations to help us allay their fears and assure them that PEP is different. PEP is different, and we are trying to work with communities to do it in the best way for that specific community.

Mr. LABRADOR. The gentlelady's time has expired.

Ms. DELBENE. Thank you.

Thank you, Mr. Chair.

Mr. LABRADOR. Thank you and I will recognize myself.

Director Saldaña, it is great to have you here today. I understand how hard you work and the work that you have is very important. I was an immigration lawyer before I came to Congress and I actually worked representing aliens who are in the United States without documentation. So I worked a lot with your agents.

How many agents does your agency have?

Ms. SALDAÑA. On the ERO side, about 6,000. About another five on the HSI side, I believe.

Mr. LABRADOR. So about 11,000 total.

Ms. SALDAÑA. Agents.

Mr. LABRADOR. Agents.

Ms. SALDAÑA. Yes.

Mr. LABRADOR. Okay.

Ms. SALDAÑA. Our officers.

Mr. LABRADOR. Now you are saying that you are here to enforce the law. Is that correct?

Ms. SALDAÑA. Yes, sir.

Mr. LABRADOR. Yet, you spend most of your time explaining to us why you don't need to enforce all of the laws, which seems really interesting to me. You go to the analogy of fraud cases. When you were U.S. Attorney, you would have decided that maybe a one million-dollar fraud case is not a good thing to pursue because of your resources but a five million-dollar fraud case would be something that would be worth wild pursuing. Is that correct?

Ms. SALDAÑA. That is one example.

Mr. LABRADOR. That is one example so let us use that example. What would have happened to the crime in your area if you would have announced that anything between zero and $5 million in fraud you would not be enforcing as a Federal agent, as a Federal officer?

Ms. SALDAÑA. And again, I use that as an example.

Mr. LABRADOR. But it is a great example.

Ms. SALDAÑA. Well, we would work to try to find a local jurisdiction that might take the case, but they are strapped as well.

Mr. LABRADOR. But what if you had the sole authority as a U.S. Attorney to enforce the law regarding fraud? We know that is not the case but if that was the case, that as a U.S. Attorney, you had the sole authority to enforce the law in that area and that region that you are covering, what would happen to the fraud rate in that region if you announced publicly, that between zero and $5 million in fraud, you are no longer enforcing?

Ms. SALDAÑA. I presume there might be more activity in that regard.

Mr. LABRADOR. You would presume or doesn't your experience tell you that it will be a fact? That there would be more activity in the commission of fraud between zero and $5 million.

Ms. SALDAÑA. Using that analogy, I would say so.

And let me just correct something. I am sorry. It is very hard for me to let things like that go by. I have not spent my time expounding on the reasons why executive action is a good thing or not a good thing. I can respond to your questions. That is all I am doing here.

Mr. LABRADOR. That is fine but that is what you have spent most of your time doing. And my concern is that that is exactly what this Administration has done. They have told the people from other countries that there is a limit. There is a threshold that they are not going to enforce the law. In fact, you just showed us a card. Can you show me that card again?

Ms. SALDAÑA. Sure.

Mr. LABRADOR. That card is what you use. Can you imagine if you had a law enforcement agent in your area that decided to have a card like that about fraud? And on that card about fraud it would say that no case below $5 million would be enforced in that area, and that every time they arrested somebody with fraud, they were taking that fraud card out, that card out, showing that these crimes are no longer going to be enforced by the law. You know what would happen in that area. The number of fraud cases would go up. The number of people that are committing fraud would go up. The number of people who would think that they can get away with fraud would go up. Would you not agree with that?

Ms. SALDAÑA. Yes, except you are talking about criminal activity in fraud and you are talking about a civil enforcement system in the immigration laws.

Mr. LABRADOR. But what if fraud was just a civil activity, would the number of civil activities go up? A civil violation is still a violation of the law, whether it is a criminal activity or not, it is still a violation of the law.

Ms. SALDAÑA. That is true but I am worried about the impact on public safety. A civil violation is not the same as a criminal violation.

Mr. LABRADOR. So you are saying that the United States is now safer because we are allowing more people to come into the United States illegally. Is that what you are saying?

Ms. SALDAÑA. I disagree with the premise.

Mr. LABRADOR. But that is what you just said. You just said that you are worried about the safety of the community. I am worried about the safety of the community.

One last point. You have said several times that Congress has extended due process to the people that are here without documentation. Is that correct?

Ms. SALDAÑA. Yes.

Mr. LABRADOR. And you are aware that the INA Sections 235, 238, and 241 explicitly state when we should have expedited removal of people that are here without documentation. Are you not aware of that?

Ms. SALDAÑA. Yes.

Mr. LABRADOR. So that is what you should be doing.

And one last question. It is really important. I keep hearing about all these stories about what is happening in all these detention facilities. Would you not agree that if we did expedited removal, if we actually took care of the law, if we actually were enforcing the law, that these families would not be held in detention for a long time? We would be able to expedite their cases; we would be able to figure out who should be here, who shouldn't be here, and they could go back to their home countries and actually live in a better environment than in a detention facility. Would you not agree with that?

Ms. SALDAÑA. I agree that we need to prioritize and that the families are not, in general, going to create a public safety risk.

Mr. LABRADOR. Not in general.

Ms. SALDAÑA. No.

Mr. LABRADOR. So we should allow, then, any fraud under $5 million. Thank you very much.

Ms. SALDAÑA. Our decisions are on a case-by-case basis, Congressman.

Mr. LABRADOR. I don't believe that they are. They are not on a case-by-case basis. You just showed me the card and that is not a case-by-case basis. You are deciding where a whole class of people should stay in the United States and, frankly, the people who work under you are not happy about that decision. They are not happy with what the President decided to do and it is unfortunate that a law enforcement officer would come here and testify before this Committee to say that it is okay to allow people to violate the law whether it is civil or criminal. And I am done with my time.

Thank you very much.

Ms. SALDAÑA. That is a misrepresentation of my testimony.

Mr. LABRADOR. We now recognize the gentleman from Illinois, Mr. Gutierrez.

Mr. GUTIERREZ. Thank you very much.

Welcome, Director Saldaña, and I thank you. I have been listening to the testimony up in my office that you presented here today.

And I guess I am very interested in this DHS civil immigration enforcement priorities, this card. So you say you carry this card with you?

Ms. SALDAÑA. Yes.

Mr. GUTIERREZ. Has it been entered into the record? The card?

I would like to officially enter the card. And who has this card with them?

Ms. SALDAÑA. All our officers that are out there making these decisions.

Mr. GUTIERREZ. All of your officers. So all of your ICE agents have this card with them?

Ms. SALDAÑA. Generally.

Mr. GUTIERREZ. And it states the priorities of the Administration.

Let me ask you something. Does the lawsuit in the Fifth Circuit have any implication in terms of your ability to carry out these enforcement priorities?

Ms. SALDAÑA. The one in south Texas deals only with expanded DACA and the initiation of DAPA.

Mr. GUTIERREZ. It only has an impact on expanded DACA and DAPA.

Ms. SALDAÑA. And that is my sister agency, Citizenship and Immigration Services.

Mr. GUTIERREZ. And that is your sister. So it doesn't have any impact on these priorities.

Ms. SALDAÑA. Not on enforcement.

Mr. GUTIERREZ. And these are the priorities that were issued by the Secretary of Homeland Security on November 20 of last year?

Ms. SALDAÑA. Yes, sir.

Mr. GUTIERREZ. So those are still in place?

Ms. SALDAÑA. Yes, sir.

Mr. GUTIERREZ. And you are carrying them out.

So a couple of things. Number one, there is concern among those of us that have advocated for a changing of the priorities and then thankful for the changing of the priorities. In terms of making sure that there is a clear line between ICE and immigration and local police departments. We understand that you have a new program that you have yet to unveil. PEP, I think you are calling it. We look forward to that program.

I just want to state for the record: I think if somebody is selling drugs, somebody is gang-banging, somebody is out there murdering, somebody is doing harm, somebody is creating or committing a serious felony, I think we should just lock them up, give them a fair trial. But, if he is found guilty, sentence him, jail him, and, as soon as he has finished his jail time, deport him immediately from the United States of America.

Now that is very different than if I am driving my children to school, I have been here on extended period of time, they are American citizens, and had a tail light out; which unfortunately Secure Communities and many local law enforcement departments were using. They were using Secure Communities as simply another way of going out and taking their immigration policies locally and saying, "Well, we are going to arrest everybody that we know lives at this trailer park that probably is undocumented and works in this community."

And then, hand them over to you without any discretion.

So I am happy to hear the clarifications you made before and the clarifications you have made today in terms of making sure that there is a difference and that local jurisdiction—because, many of my colleagues on the other side of the aisle will always say that the experiments of democracies are always best conducted at the local level of government.

Well, at local level of government in Chicago and throughout jurisdictions in the United States of America, we do not want immigration policy carried out by our local police department. We think that that creates a division between the population and their safety and their security and the police department's ability to be able to carry out. When they say serve and protect, we want them to know that it is to serve and protect.

So I am very happy to see that you brought this list of priorities that each of the agents, because a group of us last week put out

this Family Defender Toolkit that we are issuing. People can download it from my website and from the websites of other Members of Congress. And at the bottom, it says, and you can tear this out, it says, "Do not deport me because I am eligible for DACA or DAPA."

And then we put, and we give all of the things that people should put together just in case, because I think this is wonderful. You take the Gutierrez Toolkit on the one hand and you put the birth certificates of your American citizen children, for example, and you put your work history and you put your VISA or your ID from your country, and if you get stopped by one of the agents, he looks at this. You have got the information, you have put them together, and you are not a priority for deportation.

I think that is the kind of discretion we should be using. Now, again, just so that we don't get confused, if you are driving your car and you are drunk, you go to jail and you get deported. If there is a tail light out and you are taking your children to the emergency room because they are sick, then you should be able to proceed if you can prove that you are not a threat to this society and not a threat.

I will just end with this and I thank the gentlewoman for being——

Look, Director Saldaña, you have got a tough job. You have got to keep the criminals at bay but, at the same time, you have to have an immigration policy that protects American families from the devastating effects of our broken immigration system. And I thank you for your testimony and for your incredible service to our Nation as a U.S. Attorney and, today, as the Director of ICE.

Mr. LABRADOR. Thank you. The gentleman's time has expired.

I recognize the gentleman from Florida.

Oh, sorry, Mr. Gohmert.

Mr. GOHMERT. Thank you.

Thank you, Director, for being here.

On November 20, Judge Andrew Hanen, I know you are familiar with the case and the order, but he said, "This temporary injunction enjoins the implementation of the DAPA program and to the three expansion's additions to the DACA program, also contained in the DAPA memorandum." He said, "It does not enjoin the previously instituted 2012 DACA program except for the expansions created in the November 20, 2014 DAPA memorandum."

There was an advisory, a DHS advisory, that said, and is dated March 3, specifically between November 24, 2014 and the issuance of the court's order USCIS granted 3-year periods of deferred action to approximately 100,000. We now know that was 108,081 individuals who had requested deferred action under the original 2012 DACA guidelines and were otherwise determined to warrant such relief including the issuance of 3-year EADs for those 2012 DACA recipients who were eligible for renewal.

These pre-injunction grants of 3-year periods of deferred action to those already eligible for 2012 DACA were consistent with the terms of the November guidance. Do you know who issued that November guidance that basically indicated that it would be okay to issue 3-year benefits?

Ms. SALDAÑA. No, sir. You know, ICE does not have responsibility over the DACA and DAPA. That is our sister agency, Citizenship and Immigration Services.

Mr. GOHMERT. Okay.

So you don't care who issues the orders or the benefits that say you can't do your job and deport people who are here illegally? You don't care? You don't look to see who is responsible for benefits that are violating a court order? You just say, "Oh, well, they have got the benefits even though it violated a court order. I don't care if they are illegitimate?"

You don't care who issued those, the guidance or the illegal order or the illegal benefits in opposition to the court's order?

Ms. SALDAÑA. I care about violations of court orders, sir, but that is not something that I was directed to do. That is those who confer the benefit, which is Citizenship and Immigration Services.

Mr. GOHMERT. Yes, but if someone has benefits that are fraudulent or illegal, do you say, "Oh, well, I guess we can't deport these people because, even though they are fraudulent or illegal, I am going to recognize them because I never look beyond the face of the benefits that people that are illegally here have."

Surely, you don't accept fraudulent or illegal benefits or visas, allowing people to stay, do you?

Ms. SALDAÑA. No. I don't like fraud.

Mr. GOHMERT. Well, I wouldn't think so. So I come back to the original question. Your job is, in part, to deport people who are illegally here. Correct?

Ms. SALDAÑA. Yes, sir.

Mr. GOHMERT. So let me just ask you, or don't ever ask a why question, I want to know why you didn't deport people who got 3-year benefits when those 3-year benefits were illegal.

Ms. SALDAÑA. I am not aware of that being the fact. I have not seen anything that says that someone that was granted status or unlawful presence under the 108,000 has anything to do with me. We are enforcing the priorities. That is how we are going about our business.

Mr. GOHMERT. Well, Judge Hanen made clear that, if this court had ruled according to government's request as scheduled, it would rule without the court or the states knowing that the government had granted 108,081 applications despite its multiple representations to the contrary. Yet they, the government, stood silent. Even worse, they urged this court to rule before disclosing that the government had already issued 108,081 3-year renewals despite their statement to the contrary.

If you don't like fraud, does it bother you that your Homeland Security department that you work for has actually instigated a fraud upon the United States District Court for the southern district of Texas?

Ms. SALDAÑA. Representative Gohmert, with all due respect, I would appreciate you not yelling. I will answer your question as well as I can but I would tell you that——

Mr. GOHMERT.—Dilatory answer but I would like an answer.

Ms. SALDAÑA. If I may?

That whole issue of the 108,000, as you said, is in the middle of litigation. I cannot comment on that. I don't represent the entire

panoply of Federal agencies coming within the United States of America. I can only speak to questions regarding ICE, and I am glad to do so if you have got one that connects the subject to ICE.

Mr. LABRADOR. Thank you. The gentleman's time has expired.

Mr. GOHMERT. And I asked the question but, Mr. Chairman, I would like to ask unanimous consent to give her one more chance?

You are telling us in this hearing you have no idea where the November guidance came from that authorized 3-year benefits?

Ms. SALDAÑA. As they say in Federal court, "asked and answered."

Mr. LABRADOR. Yes. The gentleman's time has expired.

Thank you very much.

Mr. GOHMERT. I just want to make sure, because I don't believe that.

Mr. LABRADOR. Ms. Saldaña, just really quickly to correct the record. We heard from Mr. Gutierrez, who was very eloquent on this issue and is very good at making statements here in our proceedings. We heard that we are deporting a lot of people here that are with traffic offense but, yet, we should be deporting people with DUIs.

Are you aware that over 13,000 people were released out of custody last year because of DUIs? In the previous year, it was 15,000 people. So between the 2 years we have had close to 30,000 people being released into the United States because of the orders of this president with DUI convictions.

Ms. SALDAÑA. Well, I don't know specifically the numbers you are talking about but I will tell you that, I explained earlier, that a good portion of those are court ordered releases. The others are made on a case-by-case basis depending on an individuals——

Mr. LABRADOR. But you are aware that this close to 30,000 people have been released from ICE custody with DUI convictions order?

Ms. SALDAÑA. I presume you are looking at something we provided you.

Mr. LABRADOR. All right, thank you very much.

And now, I yield the time to the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

Hi, Director. Thank you for coming.

November 20, Secretary Johnson issued the memorandum establishing priorities for apprehension, detention and removal of illegal aliens. My first question is, if an alien was illegally present in the United States but did not fall within the enforcement priorities, would that alien still be subject to removal?

Ms. SALDAÑA. It could be, because, as I pointed out earlier, there is a provision in here that says even if someone doesn't meet the priorities but you believe they are threat to public safety, you are permitted to go forward with that to speak to your supervisor and see if a different decision should be made in that instance.

That is a case-by-case basis.

Mr. DESANTIS. So if somebody is not in one of the criteria, you obviously would need some affirmative evidence that they were a threat to public safety. I mean there are people who are threats that we just may not have evidence for. So the absence of evidence

doesn't mean they are not a threat, but in that situation, if there is no evidence, then under these enforcement priorities there would be no action whatsoever against that individual who was here illegally. Correct?

Ms. SALDAÑA. If there is no evidence of a threat, that is correct.

Mr. DESANTIS. Okay.

How many aliens who did not fall within the priorities have been arrested, detained, and removed from the United States since Secretary Johnson announced those policies on November 20?

Ms. SALDAÑA. Well, as I said earlier, they did not go into, at least with the apprehension and removal guidance did not go into effect until January 5.

Mr. DESANTIS. Okay.

So do you know since January 5, do you have a number or is it something you could get for us?

Ms. SALDAÑA. I think I can get it for you, sir.

Mr. DESANTIS. If you could do that and get it for us, we would appreciate that.

Ms. SALDAÑA. I would be glad to.

Mr. DESANTIS. Has anyone in DHS determined how many removable aliens fall within the priorities for removal set forth in the November 20 memo?

Ms. SALDAÑA. At large? In general?

Mr. DESANTIS. That is correct.

Ms. SALDAÑA. The estimated 11 million?

Mr. DESANTIS. Right. What percentage of that would fall in the enforcement priorities?

Ms. SALDAÑA. I am not aware of a study in that regard. I can find that, but I am not aware of one.

Mr. DESANTIS. And is it your opinion that you really couldn't determine that?

Ms. SALDAÑA. On 11 million?

It would take a long time.

Mr. DESANTIS. What do you think? I mean, what would be the ballpark? Could you get us into the ballpark just so we know the numbers we are dealing with?

Ms. SALDAÑA. I think we are now in the area of pure speculation, sir. I am sorry.

Mr. DESANTIS. Okay.

So if you can just give us whatever, I mean, if there has been anything done with that, that would be great.

Is ICE going to do anything to remove aliens who receive a final order of removal before January 4, 2014?

Ms. SALDAÑA. Do anything?

Again, as I said, if that person doesn't meet the priorities, as in someone who was here before January 1, 2014, if they are a public safety threat, yes. We can act on that to put them into removal procedures. But generally speaking, they don't fit one of the priorities. And unless we have some, as I said earlier——

Mr. DESANTIS. So that should have even if so somebody has already received a final order of removal, say December 2013, it has gone through the system, the law has been enforced, you then would say, unless there is additional evidence, that the person

could propose a threat to society, that order of removal is essentially rescinded.

Ms. SALDAÑA. Well, keep in mind that there is always a process through the immigration courts that someone can even go and contest that order.

Mr. DESANTIS. Right, but let us put that aside. So from the enforcement perspective, anything before January 1, 2014, it is final order of removal if not accompanied by evidence of a threat to public safety, that would mean that ICE would simply move on.

Ms. SALDAÑA. Or national security. That is correct.

Mr. DESANTIS. Okay. I will yield back the balance of my time.

Mr. LABRADOR. All right, thank you.

Well, thank you very much, Madam, for your time and for your service to the Nation. And I know you have been getting it from both sides here so it has been an interesting hearing.

This concludes today's hearing.

Thanks to our witness for attending. Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

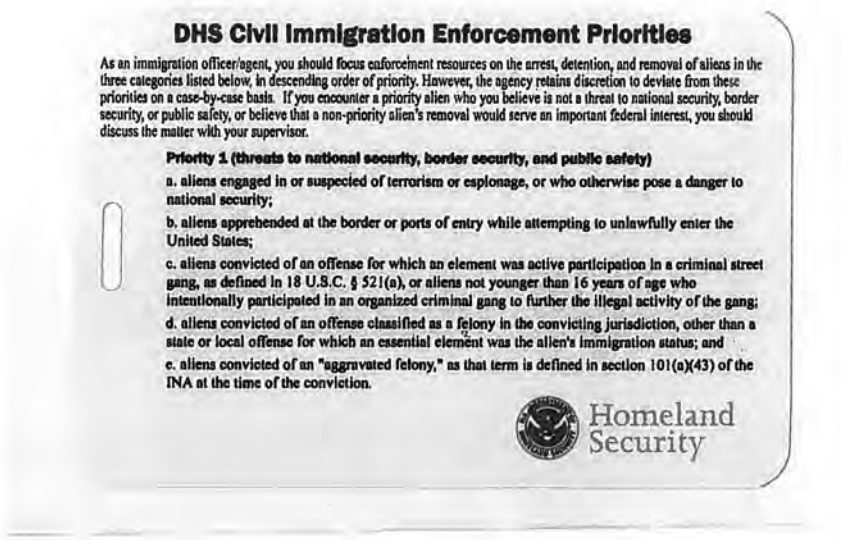
The hearing is now adjourned.

[Whereupon, at 12:39 p.m., the Committee was adjourned.]

# APPENDIX

## Material Submitted for the Hearing Record

**Material submitted by the Honorable Luis V. Gutierrez, a Representative in Congress from the State of Illinois, and Member, Committee on the Judiciary**



## DHS Civil Immigration Enforcement Priorities

As an immigration officer/agent, you should focus enforcement resources on the arrest, detention, and removal of aliens in the three categories listed below, in descending order of priority. However, the agency retains discretion to deviate from these priorities on a case-by-case basis. If you encounter a priority alien who you believe is not a threat to national security, border security, or public safety, or believe that a non-priority alien's removal would serve an important federal interest, you should discuss the matter with your supervisor.

**Priority 1 (threats to national security, border security, and public safety)**

a. aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

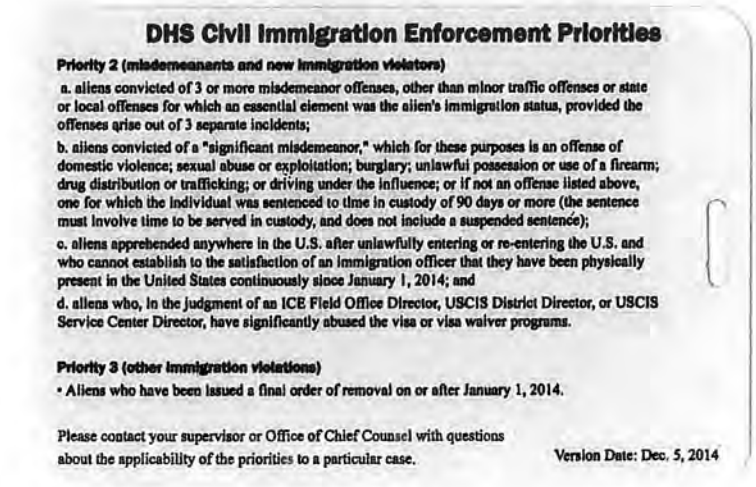
b. aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;

c. aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;

d. aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and

e. aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the INA at the time of the conviction.

Homeland Security



## DHS Civil Immigration Enforcement Priorities

**Priority 2 (misdemeanants and new immigration violators)**

a. aliens convicted of 3 or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element was the alien's immigration status, provided the offenses arise out of 3 separate incidents;

b. aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence);

c. aliens apprehended anywhere in the U.S. after unlawfully entering or re-entering the U.S. and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014; and

d. aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

**Priority 3 (other immigration violations)**

• Aliens who have been issued a final order of removal on or after January 1, 2014.

Please contact your supervisor or Office of Chief Counsel with questions about the applicability of the priorities to a particular case.

Version Date: Dec. 5, 2014

**Response to Questions for the Record from the Honorable Sarah R. Saldaña, Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security**

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|---|---|
| **Question#:** | 1 |
| **Topic:** | license plate number |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** What level of suspicion must be met before a person's license plate number is run against the database?

Who establishes the standard, and does it adequately preserve privacy rights?

How easily can the standard be changed?

How does DHS ensure that personnel effectively meet the standard when conducting a query?

What - if anything - will be the penalty for improper action?

**Response:** License plate reader (LPR) data may be accessed and retained by U.S. Immigration and Customs Enforcement (ICE) when necessary to carry out its law enforcement missions. The Privacy Impact Assessment (PIA) titled DHS/ICE/PIA-039 Acquisition and Use of License Plate Reader Data from a Commercial Service comprehensively details the standards for access and use of this data, as well as training requirements, retention timeframes, and other safeguards that address and mitigate risks to privacy and civil liberties.

ICE, through a framework of privacy and civil liberties protections and existing DHS policies, fosters the proper use of LPR data. For example, ICE implements internal policies and training emphasizing the requirement to query and use LPR data only when in support of a criminal investigation or to locate a priority alien. In addition, all personnel are required to enter a case number, querying personnel identifier, and log a reason for the query.

ICE ensures that only those who need LPR data for their mission-related purposes are able to query the commercial data source. Before being granted access to a vendor's LPR data, authorized ICE personnel must complete training that describes all the policy requirements and associated privacy, civil rights, and civil liberties safeguards, supplementing existing mandatory training required of all ICE personnel on data security, data privacy, integrity awareness, and records management.

Each time ICE personnel log into the LPR database system, they see a banner or splash screen specifying the rules of use, and have to agree to abide by the rules before being granted access.

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| **Question#:** | 1 |
| **Topic:** | license plate number |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

ICE policy requires that only LPR data that is considered relevant or useful to the investigation or law enforcement activity underway is retained in ICE recordkeeping systems. ICE personnel who have access to commercial LPR data are trained on this requirement. The ICE law enforcement officer conducting the query retains only the subset of results that are relevant in the appropriate ICE investigative or immigration case file for the length of time prescribed by the applicable records schedule for that file. The full LPR query results are retained only for audit purposes and only in the vendor's IT system.

ICE personnel are prohibited by policy from taking enforcement action predicated solely on LPR data. Training emphasizes these requirements. ICE employees are required to review and validate each item on an alert list on a regular basis and to update the alert lists as needed. The vendor interface is able to link a query of a license plate number and link it to a specific ICE enforcement matter. An immutable audit trail captures sufficient usage data to allow the identification of ICE personnel who do not comply with these policies. The audit log is designed to deter and discover any abuse or misuse of LPR technology or data. The use of this system outside of mission-related purposes may subject personnel to administrative and/or criminal penalties.

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| **Question#:** | 2 |
| **Topic:** | ALPR database |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** How often does ICE intend to use the ALPR database? (an estimate of number of plate searches per year)

**Response:** U.S. Immigration and Customs Enforcement Homeland Security Investigations cannot quantify a future intended use as each investigation may or may not need the usage of a license plate reader (LPR) database or other investigative tools. However, special agents may utilize the database as often as necessary to further numerous criminal investigations, locate persons wanted for criminal warrants, identify contraband storage locations, and/or track movements of national security targets.

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| **Question#:** | 3 |
| **Topic:** | Alert List 1 |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** ICE is seeking "Alert List" services, in which the ALPR vendor will provide real time updates on certain plates pre-identified by the agency.

Under what circumstances will ICE add a license plate to an alert list?

Who has the authority to add license plates to an alert list?

Under what circumstances are vehicles removed from alert list?

Can a person seek to have their vehicle removed from an alert list? (For example, a person's car was stolen, then recovered. Or due to an ALPR misread, their plate has inappropriately been added to an alert list.)

**Response:** A license plate is added to the alert list when the Department of Homeland Security (DHS) and/or U.S. Immigration and Customs Enforcement (ICE) has specific actionable information that the vehicle will be used, or has been used, for some sort of illicit criminal purpose. All DHS/ICE Agents, intelligence research specialists, Title 19 cross-designated task force officers, and certain authorized Enforcement and Removal Operations officers with a need to access the database in the performance of their official job duties, have the authority to request the input of an alert.

Once the aforementioned personnel determine an alert is no longer required, whether for criminal investigative purposes or for civil immigration enforcement matters, the alert is removed. DHS/ICE employees only use the alert when a vehicle is suspected of being involved in illicit criminal activity related to crimes that DHS/ICE investigates or being suspected of being linked to an investigation of a priority alien. Once the investigation is completed or it is determined during the course of an investigation that a lead is no longer viable, the alert is deleted.

Individuals will generally not know their vehicle is in the alert list. However, if it is determined through the course of the investigation that a lead is not viable (i.e., a person's car was stolen, the operator is not involved in the investigation, etc.) there would no longer be an investigative purpose to maintain the information and it would be removed. Additionally, if a plate number is discovered to have been erroneously entered it is immediately removed.

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| **Question#:** | 4 |
| **Topic:** | Alert List 2 |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** If someone's plate appears on an alert list, will that vehicle be subjected to enhanced scrutiny as a result?

Will other agencies be able to view ICE's alert lists?

**Response:** A U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations alert merely indicates that the vehicle may be involved, or was involved, in illicit criminal activity. Any subsequent investigative actions would comport with the protections provided by the Fourth Amendment. ICE Office of Enforcement and Removal Operations will only add a vehicle to an alert list when there is evidence that the vehicle in question is linked to a priority target.

ICE alert list access is generally restricted to ICE employees that have been manually added to the alert distribution and to certain cross-designated task force officers assigned to an ICE task force. In a joint investigation, it may be necessary for ICE agents and officers to include other agencies on the distribution of an alert. Consistent with federal law and agency policy, the designated ICE agency manager of the license plate reader system has the ability to allow other law enforcement agencies utilizing the same vendor database to see an ICE alert. Additional scenarios may arise where license plate information would be shared with outside law enforcement agencies. For example, where ICE identifies an imminent threat to public safety or national security, they may share alert information with other appropriate agencies.

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| **Question#:** | 5 |
| **Topic:** | ALPR systems |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** ICE currently has its own ALPR systems. Can you please explain how these currently operate and how they would be connected to a commercial system?

**Response:** U.S. Immigration and Customs Enforcement (ICE) does not currently own or maintain a license plate reader system. ICE Homeland Security Investigations (HSI) does use cameras that have license plate recognition technology; however, these are used on a mission-by-mission basis and are not networked, nor is the data captured aggregated within a database or data store. Access to a commercial system is obtained through a subscription.

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| **Question#:** | 6 |
| **Topic:** | ALPR service |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** Will the commercial ALPR service change or broaden its collection patterns in order to better provide useful data to ICE?

**Response:** Currently, the commercial license plate reader service providers will not change or broaden their collection patterns in order to better provide useful data to U.S. Immigration and Customs Enforcement (ICE) at ICE's request. However, ICE will provide feedback to these providers, if requested, on how services could be enhanced to meet our needs in the future. ICE will ensure that all feedback is consistent with privacy and civil liberties requirements and that any enhancements are subject to analysis for compliance with those requirements prior to implementation.

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| **Question#:** | 7 |
| **Topic:** | ALPR data |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** At least two field offices have subscription to commercial ALPR data. Has ICE signed any agreement with these vendors that either a) prohibit staff from speaking to the media about the technology without vendor approval or b) prohibited staff from speaking critically of the technology in other public capacities? Would ICE sign such an agreement moving forward?

**Response:** Neither office in question, nor U.S. Immigration and Customs Enforcement (ICE) overall, has signed an agreement with current vendors that a) prohibits staff from speaking to the media about the technology without vendor approval or b) prohibits staff from speaking critically of the technology in other public capacities. As with all Department of Homeland Security (DHS)/ICE law enforcement government controlled and subscription databases, DHS/ICE personnel are prohibited from discussing details about sensitive law enforcement databases with anyone that does not have a need to know. Title 19 cross-designated task force officers assigned to DHS/ICE taskforces are also prohibited from discussing sensitive law enforcement databases with anyone.

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| **Question#:** | 8 |
| **Topic:** | drivers licenses |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Steve Chabot |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** What mechanism does ICE intend to use to connect drivers licenses with individual people?

**Response:** U.S. Immigration and Customs Enforcement is currently unaware of any license plate reader (LPR) system provider having any driver's license information.

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| **Question#:** | 9 |
| **Topic:** | ICE officers 1 |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Louie Gohmert |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** What are your instructions to ICE officers as to whether to apprehend and detain an individual who was granted a three-year period of deferred action under the November 20, 2014 Department of Homeland Security deferred action memorandum.

**Response:** On February 16, 2015, a federal district court issued an order preliminarily enjoining the Department of Homeland Security's (DHS) expansion of Deferred Action for Childhood Arrivals (DACA) as announced by Secretary Johnson on November 20, 2014 (as well as the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA). *See Texas v. United States*, No. 14-cv-254 (S.D. Tex. slip op. Feb. 16, 2015).

On February 18, 2015, U.S. Immigration and Customs Enforcement (ICE) instructed all its employees that due to the preliminary injunction, "[u]nless and until further guidance is given, [ICE] officers, agents, and attorneys should not consider the new DAPA and expanded DACA guidelines as the basis for exercising prosecutorial discretion. Officers, agents, and attorneys should also not use these guidelines to determine whether individuals may request deferred action nor to refer individuals to U.S. Citizenship and Immigration Services. The court's decision did not enjoin nor impact the Secretary's overall arrest and removal prioritization of DHS enforcement resources or the existing 2012 DACA policy. Agents, officers, and attorneys should continue to process individuals and litigate removal cases consistent with the enforcement priorities noted in the Secretary's memorandum dated November 20, 2014, entitled Policies for the Apprehension, Detention and Removal of Undocumented Immigrants, as well as the 2012 DACA policy."

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| **Question#:** | 10 |
| **Topic:** | ICE officers 2 |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Louie Gohmert |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** Did your agency provide any instructions to ICE officers as to the treatment of any individual who was granted a three-year period of deferred action under the November 20, 2014 Department of Homeland Security deferred action memorandum.

**Response:** On February 16, 2015, a federal district court issued an order preliminarily enjoining the Department of Homeland Security's (DHS) expansion of Deferred Action for Childhood Arrivals (DACA) as announced by Secretary Johnson on November 20, 2014 (as well as the implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA). *See Texas v. United States*, No. 14-cv-254 (S.D. Tex. slip op. Feb. 16, 2015).

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| **Question#:** | 11 |
| **Topic:** | deferred action |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Louie Gohmert |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** Did USCIS communicate with ICE that certain aliens were granted a three-year period of deferred action under the November 20, 2014 Department of Homeland Security deferred action memorandum and that those individuals should not be subject to detention or removal.

**Response:** With regard to detention and removal policies, ICE follows Secretary Johnson's memorandum titled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," which was also issued on November 20, 2014.

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| **Question#:** | 12 |
| **Topic:** | bond |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Trey Gowdy |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** DHS stated that many of the aliens released in 2013 were released based on an immigration judge's decision. But isn't it true that ICE decides whether to offer bond, set the amount of the bond, and defend the bond amount [though immigration judges have the power to modify these decisions]? So, isn't it true that DHS could have detained most of these criminal aliens but simply chose not to do so?

Furthermore, doesn't the Executive Office of Immigration Review have its own priorities for removal? So to what extent pursuant to this administration's policies, are both the judges and ICE in agreement (collusion) to release removable aliens?

**Response:** It is true that ICE initially makes bond determinations. It is not true that "DHS could have detained" most of the criminal aliens who were released based on an immigration judge's decision "but simply chose not to do so." Rather, ICE did detain these individuals until an immigration judge revised the bond that ICE had set or otherwise ruled in a manner that led to release.

In the immigration enforcement context, prosecutorial discretion is within the purview of the Department of Homeland Security (DHS), rather than the immigration courts. While the Executive Office for Immigration Review (EOIR) does often prioritize the completion of detained or other priority cases, the immigration enforcement priorities set by DHS do not bind EOIR's immigration judges, who must instead apply the law to the facts of individual cases.

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| **Question#:** | 13 |
| **Topic:** | immigration enforcement |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Doug Collins |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** Despite the fact that I have serious concerns about what is going on with immigration enforcement at ICE, I do want to commend ICE for the work of the Intellectual Property Rights Coordination Center. The Center serves as an important example of the coordination that needs to take place across law enforcement and the private sector to protect the 5.5 million Americans that work in the core copyright industries. The Center has shown other parts of the government how to fight piracy by seizing counterfeit hard goods and domain names through actions like Operation in Our Sites. I want to make sure this important work continues and does not drop off under new leadership. How have you committed yourself and the agency to the success of the Center and the success of the America's creative industries?

**Response:** The investigative efforts of U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) in the areas of intellectual property theft and commercial trade fraud enhance national security by protecting the health and safety of the American public by investigating the importation of hazardous materials; protect members of the U.S. Armed Forces by securing the military and federal supply chains; and identify and investigate illegal and unfair trade practices that threaten U.S. economic viability in the global economy. ICE remains committed to leveraging the collective resources and expertise of the Intellectual Property Rights (IPR) Center's 23 members, including sharing information among its partners having particular enforcement or administrative equities, and promoting a coordinated U.S. Government response to combatting intellectual property rights infringement.

The IPR Center also supports criminal and civil investigations of illicit trade fraud in collaboration with U.S. Customs and Border Protection (CBP) to establish Trade Enforcement Coordination Centers (TECCs) in ports around the nation. TECCs merge ICE and CBP disciplines and resources to promote seamless information sharing and tactical trade enforcement. ICE and CBP together have developed training to foster communication between the Department of Homeland Security, the Department of Justice, and industry, and have established several initiatives with the import community, the domestic industry, and the public to ensure aggressive enforcement of U.S. trade laws.

In fiscal year 2014, ICE reported 805 criminal arrests, 591 indictments, and 595 convictions for trafficking in counterfeit goods. There were 23,140 intellectual property rights seizures, with an estimated manufacturer's suggested retail price of $1.2 billion.

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| **Question#:** | 13 |
| **Topic:** | immigration enforcement |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Doug Collins |
| **Committee:** | JUDICIARY (HOUSE) |

The IPR Center oversees successful operations that illustrate the value of interagency and international cooperation when combating transnational crime; these efforts strengthen national security by ensuring a sound U.S. economy and educate consumers about the harms resulting from one's purchase and consumption of counterfeit goods.

Because criminal organizations continue to develop new methods of exploiting the Internet, Operation In Our Sites has evolved from a strategy focused on domain name seizure operations to developing investigations that identify targets, assets, and financial schemes used in operating the infringing websites domestically and internationally.

As an additional layer to this strategy, the IPR Center, in collaboration with industry, recently created a new Anti-Counterfeiting and Piracy (ACP) banner, which can be used by rights holders when they shutdown a domain utilizing the civil and/or administrative process. As has been the case with the criminal seizure banners, the ACP banner is expected to be an effective method of educating the public about the serious problem of IP theft.

Other successful operations include Operation Chain Reaction, which combines the efforts of 16 federal law enforcement agencies to target counterfeit items entering the supply chains of the Department of Defense and other U.S. Government agencies, and Operation Engine Newity, which targets the importation and distribution of counterfeit transportation products that may adversely impact the health and safety of consumers.

The IPR Center continues to bolster public awareness and engage the private industry about IP crime by offering training on the IPR Center's website. The training program will help companies secure their supply chains from counterfeit goods. By learning how to spot counterfeit goods and knowing what to do when these goods enter the supply chain, companies will better protect their consumers and ensure that the products they provide meet their standards. This acquisition training is a valuable tool for companies, state and local government officials, and anyone involved in the acquisition process.

The IPR Center frequently collaborates with IP stakeholders and trade associations to raise the level of public awareness of IP theft.

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| **Question#:** | 14 |
| **Topic:** | enforcement |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Doug Collins |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** Do you believe that one factor behind the erosion of enforcement has been a steady stream of predatory lawsuits aimed at obstructing ICE from doing its job? Hasn't the Administration contributed to the success of these lawsuits by declining to challenge them; offering prompt settlements; withholding assistance from local law enforcement partners; and issuing controversial policy statements that can be used by plaintiffs hostile to the government's mission?

**Response:** U.S. Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) work closely with the Department of Justice (DOJ) in determining how best to approach litigation in each ongoing matter. DOJ, DHS, and ICE all consider a variety of options and factors when determining the most appropriate course of action. ICE believes that it has worked zealously to defend its legal authorities, but otherwise does not comment on any pending litigation.

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| **Question#:** | 15 |
| **Topic:** | criminal alien removal |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Doug Collins |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** You claim that criminal alien removal is ICE's highest priority. If that is the case, why are you not approving 287(g) applications so that state and local law enforcement officials can help enforce federal immigration laws against criminal aliens?

**Response:** U.S. Immigration and Customs Enforcement's (ICE) 287(g) program acts as a force-multiplier by expanding ICE's presence to initiate immigration enforcement actions against priority aliens, while reducing the strain on existing ICE resources. The 287(g) program, which uses the Jail Enforcement Model to accomplish its mission, authorizes participating law enforcement agency (LEA) personnel to identify and process—under ICE supervision—priority aliens arrested and booked into the participating LEA's jail facilities. There are currently 32 partnering agencies in 16 states that operate under a signed 287(g) memorandum of agreement with ICE. In fiscal year 2014, 32,657 criminal and other priority aliens were encountered through the 287(g) program.

Furthermore, the Department of Homeland Security is pursuing robust engagement with state and local jurisdictions on the issue of cooperation, in order to further public and officer safety. A cornerstone of such engagement is the Priority Enforcement Program (PEP), the mechanism through which ICE will seek the transfer of individuals from state and local law enforcement custody. PEP will be implemented in a way that supports community policing and public safety, and attempts to increase law enforcement agency cooperation with ICE enforcement initiatives.

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| **Question#:** | 16 |
| **Topic:** | 287(g) program |
| **Hearing:** | Oversight of U.S. Immigration and Customs Enforcement |
| **Primary:** | The Honorable Doug Collins |
| **Committee:** | JUDICIARY (HOUSE) |

**Question:** It seems to me like this Administration is committed to basically dismantling the 287(g) program rather than using it as a tool to help enforce our laws. What will you do to get the 287(g) program back on track?

**Response:** There is no plan to phase out the 287(g) program. U.S. Immigration and Customs Enforcement's (ICE) 287(g) program acts as a force-multiplier by expanding ICE's presence to initiate immigration enforcement actions against priority aliens, while reducing the strain on existing ICE resources. The 287(g) program, which uses the Jail Enforcement Model to accomplish its mission, authorizes participating state or local law enforcement agency (LEA) personnel to identify and process, under ICE supervision, priority aliens arrested and booked into the participating LEA's jail facilities. There are currently 32 partnering LEAs in 16 states that operate under a signed 287(g) memorandum of agreement with ICE. In fiscal year 2014, 32,657 criminal and other priority aliens were processed through the 287(g) program.

In addition, the Department of Homeland Security is pursuing robust engagement with state and local jurisdictions on the issue of cooperation, in order to further public and officer safety. A cornerstone of such engagement is the Priority Enforcement Program (PEP), the mechanism through which ICE will seek the transfer of individuals from state and local law enforcement custody. PEP will be implemented in a way that supports community policing and public safety, and attempts to increase law enforcement agency cooperation with ICE enforcement initiatives.

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