



U.S. Immigration and Customs Enforcement

**STATEMENT
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**REGARDING A HEARING
“HOLIDAY ON ICE: THE U.S. DEPARTMENT OF HOMELAND SECURITY’S NEW
IMMIGRATION DETENTION STANDARDS”**

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT**

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INTRODUCTION

Chairman Gallegly, Ranking Member Lofgren, and distinguished Members of the Subcommittee, on behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to highlight the ongoing efforts of U.S. Immigration and Customs Enforcement (ICE) to reform our nation's immigration detention system.

REFORMING OUR NATION'S IMMIGRATION DETENTION SYSTEM

ICE is the principal investigative arm of the U.S. Department of Homeland Security (DHS) and the second largest investigative agency in the Federal Government. Created in 2003, through a merger of the U.S. Customs Service and the U.S. Immigration and Naturalization Service, ICE now has more than 20,000 employees in all 50 States and 47 foreign countries.

ICE identifies, apprehends, and removes criminal and other removable aliens from the United States and dismantles terrorist and criminal organizations that exploit our borders by: (1) preventing terrorism and enhancing security; (2) securing and managing our borders; and (3) enforcing and administering our immigration laws.

At ICE, Enforcement and Removal Operations (ERO) is the principal component for enforcing the nation's immigration laws in a fair and effective manner. ERO enforces the Nation's immigration laws by identifying and apprehending removable aliens, detaining these individuals when necessary, and removing them from the United States. To protect public safety and national security, ICE prioritizes the removal of criminal aliens, repeat immigration law violators, recent illegal entrants, and immigration fugitives.

The nation's immigration detention system has changed significantly in the last 15 years – growing from an average daily population of less than 7,500 detainees in Fiscal Year 1995 to over

33,000 in FY 2011. This growth has presented challenges for ICE, both in terms of ensuring the safety of the individuals in our custody and also in protecting local communities from those individuals who may present risks.

In August 2009, Director John Morton announced that ICE would begin reforming ICE's detention system. ICE made this effort a top priority for our agency. We envisioned an improved detention system that housed criminal and non-criminal aliens in different environments, in circumstances commensurate to their level of risk. We wanted to use fewer facilities, located closer to the location of apprehension, to reduce the number of people transferred away from their families, communities, and attorneys. We wanted to develop facilities more appropriate for the agency's detained population and to improve conditions at facilities. We wanted to be fiscally prudent by improving efficiency. Therefore, we have adopted the following principles to guide our reforms:

- ICE detains aliens in settings commensurate with the risk of flight and danger they present.
- ICE ensures detainees receive adequate medical and mental health care.
- ICE ensures that detention facilities receive necessary federal oversight.
- ICE prioritizes efficiency throughout the removal process in order to reduce detention costs, minimize the length of stays and ensure fair proceedings.
- ICE is fiscally prudent when carrying out detention reform.

The reforms have produced concrete changes. ICE has improved medical care, custodial conditions, oversight of the immigration detention system, and substantially reduced transfers. Our reforms have addressed many of the concerns raised about the immigration detention system, while also allowing ICE to operate essential detention facilities to complete its mission and achieve greater operational efficiency.

HIGHLIGHTS OF ACCOMPLISHMENTS

Establishment of an Office Dedicated to Reform and Outreach on Detention Issues

In August 2009, ICE established the Office of Detention Policy and Planning (ODPP) to help coordinate the agency's overall detention reform effort. ODPP develops these initiatives in close collaboration with ERO, other ICE components, and ICE field offices. ODPP meets on a regular basis with two advisory groups of local and national organizations interested in, and working towards, detention reform. These groups provide feedback and input to ICE, focusing on general policies and practices as well as detainee health care. In the course of our work we have seen a genuine commitment to detention reform at every level of the organization.

Launch of Online Detainee Locator System (ODLS)

In July 2010, ICE launched the Online Detainee Locator System (ODLS) (<http://www.ice.gov/locator>), a public, web-based tool designed to assist family members and attorneys in locating detained aliens in ICE custody. The ODLS is available in multiple languages, including English, Spanish, Portuguese, French, Arabic, Vietnamese, Chinese, Somali and Russian. Once an individual is located, the system provides users information about where the person is being held and additional information such as the address, phone number and visiting hours for the facility. More than 100,000 people use the ODLS each month. This allows family members and attorneys to access information on-line, and enables ICE employees to focus on carrying out the core mission of the agency.

Enhancement of Federal Detention Oversight and Accountability

In 2009, ICE created the Office of Detention Oversight (ODO) to conduct targeted inspections at detention facilities, where complaints or deficiencies have been reported. Housed within ICE's

Office of Professional Responsibility (OPR), ODO also conducts thorough investigations of all detainee deaths that occur while individuals are in ICE custody.

ICE also established the On-Site Detention Compliance Oversight Program within the Detention Management Division (DMD) of ERO. This program comprises a corps of more than 40 new federal detention site monitors who are based at large detention facilities to inspect and monitor their compliance with ICE detention standards, respond to and report any problems found, and work with local ICE field offices to address concerns. As of January 2012, the program covers 52 facilities representing approximately 84 percent of ICE's average daily population of detainees. ICE ensures compliance with standards at the remaining facilities through annual inspections and weekly visits by ICE staff. ICE is in the process of adding 18 more staff, which will reach approximately 90% of the detained population. The creation of these federal positions allowed ICE to end costly facility compliance monitoring visits and compliance reviews contracts, saving ICE more than \$14 million in just one year. In addition, replacement of contractors with detention site monitors allowed for more immediate oversight, reporting and corrective action.

The on-site monitors provide ICE headquarters with a weekly report that documents problems identified within the facilities. In many cases, problems are remedied immediately. In other instances, DMD will implement a remedial plan. DMD also ensures corrective actions are taken to address deficiencies identified by: ODO, contract inspectors that conduct annual evaluations of facilities; and by other oversight entities such as the DHS Office of Civil Rights and Civil Liberties and the DHS Office of the Inspector General. Having on-site monitors also strengthens ICE's ability to ensure that plans to correct deficiencies are properly implemented and understood by facility operators.

In addition, ICE has created a Detention Monitoring Council, which is chaired by the Executive Associate Director of ERO, and whose membership includes the leadership of OPR, the ICE Office of the Principal Legal Advisor, the ICE Office of Acquisition Management, and ODPP. The Council meets regularly to review issues found by the agency's oversight entities and discuss policy

implications, including immediately after any detainee death or other critical incident. In cases where more serious problems have been identified, ICE leadership can determine whether ICE will discontinue using particular facilities or impose monetary sanctions. A key part of ICE detention reform efforts includes ensuring that the agency takes appropriate action with contractors when services do not meet contract requirements.

Finally, ICE has worked to centralize detention facility contracts under ICE headquarters supervision to ensure more uniform contracting processes. ICE has developed a new Intergovernmental Service Agreement template to standardize detention services contracts and to improve compliance with contract terms by clearly identifying sanctions associated with non-compliance. This also allows for a nationwide analysis of which contracts are in the agency's financial interest and those that are unfavorable from both an operational and financial perspective.

Reduction in Transfers

ICE has made great strides in reducing long distance transfers of detainees by increasing detention capacity where it is most needed. ICE used forecasting models that aligned detention capacity with arrest activity to determine the locations of new facilities. This makes it more likely that detainees will remain close to their families and attorneys. It also helps reduce disruptions to ongoing immigration proceedings that may lengthen an alien's detention. ICE has also determined that eliminating pre-final order transfers can also reduce an alien's length of stay in detention.

Reductions in transfers from one area of responsibility (AOR) to another are most evident in Los Angeles and the northeast. As of January 2012, transfers of detainees prior to their final orders of removal from the Los Angeles AOR had virtually ceased, and transfers from the New York City AOR had decreased by more than 80 percent from FY 2010.

Transfer Directive

The ICE Transfer Directive, signed by Director Morton on January 4, 2012, ensures that decisions regarding the long-distance transfer of detainees will be made only after careful consideration of the individual circumstances of each detainee. The Transfer Directive builds on the successful reduction of long-distance transfers, by ensuring that transfers are made only when necessary and prioritized appropriately. Under the Directive, unless a transfer is deemed necessary by a Field Office Director or his or her designee, ICE will not transfer a detainee to another AOR if:

- the detainee has immediate family within the AOR;
- the detainee has an attorney of record within the AOR;
- the detainee has pending or on-going removal proceedings; or
- the detainee has been granted bond or scheduled for a bond hearing.

The Transfer Directive also establishes procedures for filing a notice to appear (NTA) in immigration court. As a general matter, NTAs will be submitted to the relevant immigration court within five workdays of the NTA being served on the alien, or upon the alien entering ICE custody, whichever is later. This filing deadline will ensure that the venue of a detainee's proceedings is established quickly to expedite his or her case in the area where the alien was initially apprehended, if possible.

Development of Risk Classification Assessment

ICE has designed a new risk classification assessment tool (RCA) that will improve transparency and uniformity in detention custody and classification decisions while promoting the prioritization of detention resources. The RCA will be a component of the automated custody management system ICE officers use every time an individual is apprehended. It contains objective

criteria related to public safety, flight risk and other relevant factors, and a general scoring system to guide the decision-making of ICE officers and their supervisors regarding:

- whether an alien should be detained or released;
- if released, the alien's appropriate level of community supervision; and
- if detained, the alien's appropriate custody classification level.

The RCA incorporates factors that reflect the agency's civil enforcement priorities and criteria established in the prosecutorial discretion memoranda issued by ICE Director Morton. The RCA, for instance, helps ensure criminal aliens are prioritized for detention. It will also permit both supervisors in the field and ICE headquarters staff to monitor the entire decision making process in individual cases and on a system-wide basis. The agency continues to test a pilot of the RCA in paper form and plans to begin deployment of the RCA in electronic form in the summer of 2012.

Development of New Civil Detention Facilities

ICE is opening new civil detention facilities that, for the first time, incorporate civil detention principles and the needs and characteristics of ICE's diverse detainee population. Earlier this month, ICE opened the Karnes County Civil Detention Center (Karnes), outside of San Antonio. Karnes is the first facility designed and built from the ground up with ICE's civil detention reform standards in mind. The facility will house a minimum security population, such as asylum-seekers, those without criminal convictions, and other low-risk individuals. It was built uniquely to offer the least restrictive environment permissible to manage persons in administrative custody. Similar facilities, also restricted to minimum security detainees, have been opened in the Newark and Los Angeles AORs. Among other things, these new facilities offer:

- greater freedom of movement;
- contact visitation; and

- greater access to legal services.

ICE plans to continue opening similar new, dedicated civil facilities in regions where they are most needed, including in the Chicago and Miami AORs. ICE has consolidated the number of facilities from 340 to approximately 250, and discontinued the use of three high-cost ICE-owned Service Processing Centers in Aguadilla, Puerto Rico, Varick Street, New York City, and San Pedro, California. The closures of the Varick Street and Aguadilla facilities and the transformation of the T. Don Hutto Residential Center from a family residential facility into a female-only detention facility have saved and are projected to save ICE many millions of dollars. ICE's plans to further consolidate the detained population in new or improved facilities. These facilities are expected to be budget neutral, or in some cases, to result in operational efficiencies and cost savings, for instance, because the new facilities will be located closer to ICE Field Offices.

Development of Revised Detention Standards

ICE has recently promulgated the 2011 Performance-Based National Detention Standards. In developing the revised standards, ICE incorporated the input of many agency employees and stakeholders, including the perspective of Congress, nongovernmental organizations and ICE field offices. The ICE detention standards have been revised to better address the needs of ICE's unique detainee population. The standards:

- improve medical and mental health care services;
- reinforce protections against sexual abuse and assault;
- maximize access to counsel and legal resources;
- expand access to religious services and opportunities;
- improve communication assistance services for detainees with limited English proficiency or disabilities; and

- enhance procedures for reviewing and responding to detainee grievances.

ICE will implement these standards throughout 2012 on a rolling basis. Contract modifications are expected to be completed by April 15, 2012 at the six federally owned Service Processing Centers, to be followed within three months by implementation at all remaining dedicated detention facilities. ICE will also require adoption of the new standards in other facilities housing ICE detainees, such as county jails, beginning with those facilities that have the largest population of ICE detainees.

Medical Care

ICE has recently reformed the way medical services are authorized to improve timely access to treatment for detainees who have serious medical needs. In addition, the ICE Health Service Corps (IHSC) has designated regional Clinical Directors to provide medical oversight and Field Medical Coordinators have been assigned to field offices in each of the ICE AORs. These individuals will provide enhanced communication and reporting and expeditious and ongoing case management to monitor and track serious medical cases across the country.

IHSC has also begun a program of site visits to facilities housing ICE detainees to establish a stronger relationship with the health care providers there. These visits are being conducted by the IHSC Field Medical Coordinator responsible for that particular AOR. There are several activities during these site visits, which include:

- meeting the health care providers and introducing the IHSC Field Medical Coordinator program to establish stronger communications with the facility;
- surveying the facility's and the surrounding community's health care resources to learn more about the health systems capabilities available to the facility;
- assessing the facility's chronic health care load and needs; and
- initiating a quality of care audit program based on detention standards requirements.

Parole Policy

In January 2010, DHS revised ICE policy for granting parole to asylum seekers determined by DHS to have a credible fear of persecution. Prior policy required asylum seekers to initiate a request for parole in writing. As a result, asylum seekers who might have qualified for parole remained in detention during often lengthy litigation, at great expense to the federal government. The new policy mandates that all arriving aliens who are found by DHS to have a credible fear of persecution automatically be considered for parole. Such asylum seekers can be eligible for parole if they establish their identities, pose neither a flight risk nor a danger to the community, and have no additional factors weighing against their release.

CONCLUSION

In closing, I would like to thank ICE employees, the Congress, and our stakeholders who continue to provide significant collaboration and support in this important mission - reforming the immigration detention system.

Thank you again for the opportunity to testify today and for your continued support of ICE and its law enforcement mission.

I would be pleased to answer any questions at this time.