



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

*“A REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY POLICIES
AND PROCEDURES FOR THE APPREHENSION, DETENTION, AND RELEASE
OF NON-CITIZENS UNLAWFULLY PRESENT IN THE UNITED STATES”*

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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INTRODUCTION

Chairmen Chaffetz, Ranking Member Cummings, and distinguished members of the Committee.

On behalf of Secretary Johnson, thank you for the opportunity to appear before you today to discuss the policies and procedures related to Enforcement and Removal Operations (ERO) within U.S. Immigration and Customs Enforcement (ICE). As you know, I was sworn in on December 23, 2014. In these first 90 days or so as Director, I have had the opportunity to meet with the men and women of ICE to discuss the issues that are important to them. I have begun the process of familiarizing myself with our budget and management, as well as our strong relationship with our interagency colleagues, international partners, industry, and communities. 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 that 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. Enforcing the laws within ICE's jurisdiction is my priority.

Since arriving at ICE, I have participated in high-level discussions with Mexican government officials regarding working together to conduct joint human smuggling and money laundering investigations with a nexus to the United States, as well as discussing opportunities to more rapidly and humanly return Mexican nationals. 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 foreign nationals trying to unlawfully enter the United States. I fully appreciate the challenges we face in furthering our diverse mission, and welcome the opportunity to take full advantage of the resources available to us, including the support of this Committee.

I am very proud to lead ICE, the principal criminal investigative arm of DHS and one of three 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. Today, in my first appearance before you, I am pleased to provide an overview of ICE's operational programs and explain the role that the dedicated men and women of ICE play in the apprehension, detention, and removal of non-citizens unlawfully present in the United States. I would also like to take this opportunity to highlight ICE's recent successes and the challenges I believe we currently face.

Enforcement and Removal Operations

Guided by DHS's enforcement priorities, the approximately 7,300 personnel of the ICE ERO office identify and apprehend convicted criminals and other removable aliens; detain aliens 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 civil immigration laws in a manner designed to best promote national security, public safety, and border security. To protect public safety and national security, ICE places highest priority on the removal of recent border crossers, convicted criminals, and those who otherwise pose a threat to our communities.

Priority 1 aliens comprise threats to national security, border security, and public safety. Priority 2 aliens include misdemeanants, and new immigration violators entering the U.S. after January 1, 2014. Priority 3 aliens are those who have been issued a final order of removal on or

after January 1, 2014. The removal of these individuals from the United States is a national priority that is carried out by a team of just under 5,700 law enforcement officers operating in nearly every jurisdiction of the United States. Earlier this month, ERO conducted Operation Cross Check, a five-day nationwide operation targeting convicted criminal aliens that resulted in the arrest of 2,059 convicted criminals. ERO works with ICE's Office of the Principal Legal Advisor (OPLA) to facilitate the processing of individuals in removal proceedings through the immigration court system, the Executive Office for Immigration Review (EOIR), administered by the Department of Justice, (DOJ) and coordinates their departure from the country, including obtaining necessary travel documents to the country to which they are returning.

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 seventy-nine percent of the agency's average daily population (this is ninety-four 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 PREA's effective date of May 6, 2014. This list currently includes five ICE Service Processing Centers, eight Contract Detention Facilities, and seven Dedicated Intergovernmental Service Agreement 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. To date, there has been no increased cost for facilities where ICE has implemented PREA.

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 of individuals previously convicted of a

criminal offense, reflecting a significant increase in the removal of individuals with convictions, from sixty-seven percent in FY 2011 and thirty-eight percent in FY 2008. This is no accident. The increasing number of convicted criminals removed from our country is the result of change in ICE's strategic focus, which revised policies and newer initiatives help us achieve.

ICE's FY 2014 removal numbers illustrate the agency's continued commitment to focusing on identifying, arresting, and removing criminal aliens and other priority aliens 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 an ICE Level 1 or Level 2 offense.

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 was required to shift resources to respond to the influx of Central American families and unaccompanied children illegally crossing into the United States in the Rio Grande Valley area in South Texas. In coordination with other DHS agencies, ERO detailed and/or transferred almost 800 personnel and devoted additional resources to address the challenges posed by this unprecedented migration. ERO 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 did not occupy 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 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 because the demand for such housing was so low. As a result, ICE allocated substantial resources to add detention capacity for family units, and opened three additional facilities for this purpose. These efforts required ERO officer time, support personnel, and funding. DHS and its partners are working both domestically and internationally to mitigate another such influx. Those efforts include Operation Coyote that targets the operations of organized criminal networks in the RGV, 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 South American. Those flights increased from FY13 to FY14 from 2,030 flights to 2,104 flights. Of note, flights to Mexico more than doubled in FY14, largely due to the Interior Repatriation Initiative (IRI) program between ICE and the Government of Mexico. And 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 standards for family residential facilities.

In addition, between FY 2013 and FY 2014, ICE experienced a key demographic shift in the population it detained and removed. Most notably, removals to Mexico decreased from 66 percent to 56 percent of the total ICE removals, while removals to Central America increased by 15 percent, which is consistent with changes in apprehension demographics at the border.

Removals of nationals from non-contiguous countries require more ICE resources and take significantly more time than removals of Mexican nationals. In particular, these removals require not only additional detention capacity, but also greater efforts to secure travel documents electronically from the country of origin. The total number of travel documents requested via ICE's Electronic Travel Documents (ETD) system increased approximately 18 percent from FY13 to FY14.

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 less 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 limited resources, state and local cooperation is essential to our public safety mission. Since January 1, 2014, state and local jurisdictions have declined more than 12,000 ICE detainer requests. There are over 200 jurisdictions, including some of the largest in the country, that refuse to honor ICE detainers, while 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 and reverse this trend.

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 CBP Border Patrol in which Mexican nationals apprehended in one sector of the southwest border are transported for removal through 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 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 on their records. 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 mandatory and discretionary 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 criminal aliens, 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 alien release information to state law enforcement authorities in relevant jurisdictions.

Legal Requirements

ICE's interior operations were further 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.

In addition, ICE relies on the cooperation of foreign governments to effectuate removal of their nationals. However, ICE often cannot repatriate individuals because certain countries fail to issue required travel documents in a timely manner. In these cases, and due to the *Zadvydas* decision, ICE is required by law to release individuals from custody under certain circumstances. While ICE continues to engage these countries regarding the timely repatriation of their nationals, we remain concerned by the operational, public safety, and national security impacts of the release of certain aliens due to the *Zadvydas* decision. Bolstering ICE's ability to obtain travel documents from recalcitrant countries is an important priority. I plan to work closely with the Department of State to seek to achieve better compliance from countries in accepting the return of their nationals.

Executive Action

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

Strengthen Border Security

ICE will be 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 Homeland Security Investigations (HSI) 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 Removal 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 and those who are not apprehended at the border, but who entered or reentered this country unlawfully after January 1, 2014; 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. Under this revised policy, those who entered illegally prior to January 1, 2014, never disobeyed a prior order of removal, do not pose a threat to national security, and were never convicted of a serious offense will generally not be priorities for removal. 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. To ensure clarity throughout the agency, I have instructed our leaders to do everything within our legal authority to detain individuals who pose a threat to public safety, wherever they may fall within the priority framework set forth above.

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 criminal aliens – 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 reflect DHS's new enforcement priorities. Under PEP, requests for notification will be issued in certain cases in line with the enforcement priorities, and requests detention will only be issued in limited circumstances. The program is continuing 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 aliens in their custody. We are engaging state and local governments to educate them on the priorities related to PEP in an effort to increase law enforcement agency participation, thereby enhancing our ability to arrest, detain, and remove individuals deemed threats to national security, border security, or public safety. State and local participation is vital because it allows for the controlled and secure transfer of convicted criminals aliens 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 convicted criminal aliens at-large, which, in turn, reduces the number of convicted criminal aliens 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. That's why we are also developing plans to engage local communities so the public can better understand the critical goal that PEP will plan in focus 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 ICE 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 implementation of our objectives. I commit to implement ICE's priorities in a smart and strategic manner to maximize success, protect against fraud, engage with state and local governments and local communities where our officers work but also live, and enhance cooperation, and I look forward to working with Congress on more 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.