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Written testimony of ICE Director Sarah Saldaña for a House Committee on Oversight and Government Reform hearing titled "Criminal Aliens Released by the Department of Homeland Security"

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2154 Rayburn House Office Building

Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee, thank you for the opportunity to appear before you today to discuss the detention and removal of criminal aliens by U.S. Immigration and Customs Enforcement (ICE), an agency within the U.S. Department of Homeland Security (DHS).

As Secretary Johnson has mentioned in previous congressional hearings, the Department is focused on the smart and effective enforcement of our immigration laws. Individuals who pose a threat to national security or public safety, or who are arrested crossing the border illegally, are enforcement priorities, and ICE is allocating enforcement resources accordingly, consistent with our laws. Day-in and day-out, Deportation Officers, Special Agents, and attorneys focus their efforts and resources on the removal of individuals who have been convicted of felonies, those who have been convicted of significant or multiple misdemeanors, those actively and intentionally engaged in gang activity, and recent border entrants. Today, I highlight the role the dedicated men and women of ICE play in the arrest, detention, and removal of individuals meeting the Department's enforcement priorities, and I am pleased to share some of ICE's recent initiatives and successes.

Over a year ago, on November 20, 2014, Secretary Johnson issued several memoranda, including *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants and Secure Communities*, outlining the Department's civil immigration enforcement priorities and strategies for the removal of criminal aliens. These priorities continue to inform our decisions to arrest, detain, prosecute, and remove aliens from the United States. Apprehending and removing individuals who pose a threat to national security, border security, or public safety is DHS's highest immigration enforcement priority. ICE also depends on the ability of its cadre of trained, professional law enforcement personnel to use good judgment in their enforcement actions, which they do very well. Our personnel are one of the most important tools the agency has to ensure our laws are enforced fairly, humanely, and with the understanding that each decision will affect the lives of many people.

Immigration enforcement is the largest single area of responsibility for ICE. We execute those responsibilities in concert with many partners, including the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), which is responsible for adjudicating most immigration cases in the United States. When the DOJ's immigration courts' case volume is coupled with federal court decisions impacting our detention authority, we face a number of challenges to our removal efforts. Notably, ICE's detention authority exists to support its mission of removing individuals from the United States, not for punitive purposes. However, ICE will continue to do the best job possible, within the bounds of existing law, to accomplish our mission, make strategic use of our resources, and improve efficiency and reporting.

ICE's Enforcement and Removal Operations

Guided by DHS's enforcement priorities, the approximately 6,000 Deportation Officers of ICE Enforcement and Removal Operations (ERO) identify removable individuals and make arrest, detention, prosecution, and removal determinations in a manner designed to best promote national security, public safety, and border security.

ERO works to identify individuals who are subject to removal in jails and prisons through the Criminal Alien Program and the 287(g) Program; it further effectuates interior enforcement through Fugitive Operations teams, task force participation, and other initiatives. ERO works hand-in-hand with ICE's Office of the Principal Legal Advisor (OPLA) as its attorneys represent the United States in removal proceedings administered by EOIR. ERO also coordinates the removal of individuals with administratively final orders of removal, including by obtaining necessary travel documents from the countries to which they are being returned.

ICE's recent criminal release statistics illustrate our commitment to ensuring that individuals who pose a threat to public safety are not released from ICE custody, and demonstrate that our review processes embody and support ICE's commitment to public safety. As you are aware, in fiscal year (FY) 2013, ICE had 36,007 criminal releases, while in FY 2014, that number had fallen to 30,558 criminal releases—that is, a 15 percent reduction from the previous year in the number of criminal aliens released from custody pending removal proceedings.

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In FY 2015, the number of criminal releases fell even further to 19,723, a 30 percent decrease from FY 2014. Notably, while almost two-thirds of the criminal releases in FY 2013 and FY 2014 were due to ICE discretionary determinations authorized by the Immigration and Nationality Act (INA) and its implementing regulations, in FY 2015, that trend had reversed such that nearly two-thirds of the criminal releases that year were legally required rather than the result of ICE's exercise of discretion.

Removals and Returns

Over the past few years, ICE has refined its priorities to focus on the most serious public safety and national security threats, recent border crossers, and other individuals who fall within our civil enforcement priorities. I believe this strategy enhances public safety and preserves the integrity of our immigration system.

In previous testimony, Committee Members have heard of the impact that limited or declined cooperation on the part of some State and local law enforcement agencies has had on removals and returns of individuals posing a threat to public safety. As a result, ERO has had to expend more time and resources, including using more Deportation Officers, to locate and arrest "at-large" such individuals who have been released back into our communities. However, with the deployment of the Priority Enforcement Program (PEP) and ICE's proactive efforts over the past year to reach out to those communities and encourage them to work with us, we are making important gains in this area. PEP builds collaboration between Federal, State, and local law enforcement, facilitating more effective enforcement by allowing federal immigration officials to take custody of convicted criminals or other top enforcement priorities while preserving community trust. ICE believes this collaborative approach, which prioritizes the worst offenders, is the most effective strategy for engaging local law enforcement. The vast majority of local law enforcement agencies—and more than half of previously uncooperative jurisdictions—are now cooperating via PEP.

Immigration and Federal Court Decisions

As the Committee is aware, there are situations outside of ICE's control in which convicted criminals must be released from the agency's custody. Though ICE retains the ability to appeal DOJ-EOIR's immigration judge decisions related to bond to DOJ-EOIR's Board of Immigration Appeals, ICE's custody decisions may be subject to review by the EOIR which may re-determine ICE's custody decisions. Additionally, federal courts have limited our detention authority, both in individual cases and for entire categories of aliens. For instance, the Supreme Court's 2001 ruling in *Zadvydas v. Davis* limits our ability to detain removable individuals with final orders of removal. Under the *Zadvydas* decision, ICE has been required to release thousands of convicted criminals, often due to a foreign government's refusal to accept the repatriation of its nationals. Last year the Ninth Circuit, in *Rodriguez v. Robbins*, held that individuals in ICE detention who have been detained longer than six months must be granted bond hearings. The Department of Justice, with ICE's support, has petitioned the U.S. Supreme Court for review in *Rodriguez*.

Recalcitrant Countries

Although the majority of the countries in the world adhere to their international obligation to accept the timely return of their citizens, ICE has confronted unique challenges with those countries that systematically refuse or delay the repatriation of their nationals.

Despite ICE's continued efforts, a number of factors constrain ICE's ability to improve the level of repatriations to those nations. Such factors include limited diplomatic relations with some countries; the countries' own internal bureaucratic processes, which foreign governments at times rely upon in order to delay the repatriation process; and foreign governments that simply do not view repatriation as a priority.

ICE is working through diplomatic channels with its partners at the Department of State to increase repatriations to previously recalcitrant countries. We have made some progress, albeit slowly. In FY 2015, ICE was able to remove convicted criminals to ten additional countries via ICE Air Operations charters. For example, ICE removed an individual convicted of selling drugs, resisting arrest, DUI, and criminal trespassing to Uganda, and was able to remove another individual convicted of attempted bombing to Sudan. The U.S. Government remains firm and focused in its resolve to engage all nations that deny or unreasonably delay the acceptance of their nationals.

At-Large Efforts

Each day, our objective is to conduct interior enforcement in a way that maximizes public safety. We do this by focusing on those individuals who threaten public safety, including convicted felons, significant/repeat misdemeanants, criminal gang participants, and others who pose such a threat. Deportation Officers continue to accomplish their mission with accuracy, consistency, and professionalism. With Secretary Johnson's 2014 enforcement priorities as a guide, we are succeeding in our efforts to remove dangerous convicted criminals from the country.

Recently, in accordance with a congressional appropriation, ERO established ten Mobile Criminal Alien Teams (MCATs) in field offices where personnel resources have lagged behind the pace and volume of the criminal alien workload. The MCATs will conduct at-large field enforcement activities designed to investigate, locate, and arrest priority individuals for removal from the United States. One key responsibility of these teams is the location and apprehension of convicted criminals who were released to the streets because detainers or requests for notification were not honored.

In FY 2015, 98 percent of all removals fell within one of our three enforcement priorities. Of the roughly 235,000 removals we conducted in FY 2015, 59 percent were convicted criminals, reflecting a three percent increase over FY 2014, a record high percentage for ICE. When we drill down even further and look at interior removals only – those not apprehended at or near the border – the percentage of convicted criminals jumps to 91 percent.

Criminal Alien Release Procedures

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ICE remains committed to implementing safeguards to ensure that releases (either mandated by case law or authorized by the INA) are executed in a way that promotes public safety and protects our communities. Thus, in March of 2015, ICE instituted additional safeguards, including enhanced supervisory approval for discretionary releases, based on humanitarian or similar grounds, of certain categories of individuals with criminal convictions, and the creation of a panel of senior managers to review such discretionary release decisions for individuals convicted of crimes of violence, to ensure compliance with supervisory approval requirements and identify any inconsistencies in release determinations. ICE is also committed to ensuring detention capacity is not used as a determinative factor in the release of an individual with a serious criminal record. ICE will continue to manage its nationwide detention system to ensure that field offices have access to sufficient adult detention space to detain individuals posing a public safety threat until removal, including reprioritizing resources, if necessary, to ensure the promotion of public safety.

Law Enforcement Notification System

I remain firmly committed to enforcing our immigration laws effectively and sensibly, in a way that prioritizes national security, public safety, and border security. Beyond PEP, another example of ICE's commitment to this principle is the Law Enforcement Notification System (LENS). LENS promotes transparency and maximizes public safety through electronic message transmission to State law enforcement partners, for appropriate distribution to local law enforcement agencies, regarding subjects being released from ICE custody into their jurisdictions who have been convicted of sex offenses or violent crimes. ICE completed nationwide deployment of LENS in September 2015. ICE is also working on deploying a second generation LENS system that will allow State and local law enforcement agencies to directly subscribe to the system without interfacing with a State-level criminal justice agency. ICE plans to deploy this system by the end of this fiscal year.

Prioritization of ICE Detainers

Another recent success is the agreement between ICE and the Federal Bureau of Prisons to prioritize ICE detainers over those of States and localities. In instances where ICE and another law enforcement agency have both issued a detainer on a subject, the Bureau of Prisons will provide ICE the opportunity to take custody of the subject before honoring a detainer issued by the other law enforcement agency. Factors ICE may consider in determining whether to take custody would include whether the law enforcement agency will honor an ICE detainer or request for notification prior to relinquishing custody of the individual.

Conclusion

I believe ICE will be successful in the deliberate and strategic implementation of our mission objectives. I remain committed to implementing ICE's priorities in a smart and strategic manner to safeguard our communities, maximize the agency's success, improve data collection and reporting, protect against fraud, and engage with State and local governments and local communities to enhance cooperation and build enduring partnerships. Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. You have my commitment to work with each Member of your Committee and its staff to forge a strong and productive relationship going forward. I look forward to answering any questions.

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