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Enforcement and Removal
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ICE announces enhanced oversight and release procedures for custody determinations involving detainees with criminal convictions



WASHINGTON — Today, U.S. Immigration and Customs Enforcement (ICE) announced enhanced oversight and release procedures for custody determinations involving individuals with criminal convictions.

"Like Secretary Johnson, I am determined to do what we can to improve and reform our immigration system within the confines of existing law," said ICE Director Sarah R. Saldaña. "Today's announcement is an example of this, and I believe it will enhance public safety and public confidence in our enforcement and administration of the immigration laws."

The primary mission of the Department of Homeland Security (DHS) is to keep America safe, including from threats posed by individuals with criminal records who come into ICE custody. To that end, and consistent with DHS's civil immigration enforcement priorities, we have focused our detention and removal resources on public safety and national security threats to ensure we are doing everything we can to keep America safe. ICE is committed to making certain that both mandatory and discretionary releases are executed in a way that promotes public safety and protects our communities. Last year, Secretary Johnson directed ICE leadership to re-assess the decision-making process that leads to a determination to set a bond amount or otherwise allow the release of an individual with a criminal conviction, and the factors that contribute to that decision. As a result of this review, ICE is instituting the following enhanced policies and procedures with regard to the potential release of individuals with a criminal conviction:

First, ICE is instituting enhanced supervisory approval for discretionary releases of certain categories of individuals with criminal convictions, including those convicted of two or more felonies or any single aggravated felony, by requiring that any such decision be approved by an Assistant Field Office Director, Deputy Field Office Director, or Field Office Director.

Second, while there may be limitations on detention capacity in some circumstances, detention capacity should not be a determinative factor in the release of an individual with a serious criminal record. ICE manages a nationwide detention system and will manage capacity to ensure that field offices have

access to sufficient adult detention space to detain public safety threats until removal, including reprioritizing resources, if necessary, to ensure the promotion of public safety.

Third, ICE has established a panel of senior managers to review discretionary release decisions for individuals convicted of crimes of violence, to ensure compliance with supervisory approval requirements and identify any inconsistencies in release determinations across the agency. This panel will convene monthly and report regularly to ICE leadership.

Fourth, ICE will take steps to enhance the supervision of a number of individuals released from custody. This supervision may include enhanced physical and telephonic reporting and other methods of supervision such as use of ICE's Alternatives to Detention Program.

Fifth, ICE will develop a capability to provide appropriate information regarding the release of individuals with criminal convictions to state law enforcement authorities in the relevant jurisdiction.

In Fiscal Year (FY) 2014, ICE booked-out of custody 30,558 individuals with criminal convictions. However, some of those convictions likely occurred after ICE made the required custody determination because ICE data systems reflect an individual's criminal history on file at the time the data are retrieved. "While this number is down considerably from the 36,007 with criminal convictions released in Fiscal Year 2013, the number — which includes some with felony convictions -- still concerns me," said Director Saldaña. "Under Secretary Johnson's leadership, we have made important reforms and I am determined to continue to take every possible measure to ensure the public's safety and the removal of dangerous criminals."

Notably, in fiscal years 2013 and 2014 the majority of releases of serious criminal offenders were made pursuant to federal court decisions or bond decisions by immigration judges. In a leading court case on immigration detention, *Zadvydas v. Davis*, the Supreme Court ruled that ICE generally could not detain an individual ordered removed in immigration detention beyond six months, unless the individual would be repatriated in the reasonably foreseeable future. This detention limit can be triggered when a country simply refuses to accept repatriation of its national, irrespective of the individual's criminal history.

ICE's custody decisions for individuals in removal proceedings are also often reviewed by immigration judges who may set a bond amount that can result in release from ICE custody. Other individuals, typically those associated with less serious offenses, are released as a discretionary matter or after posting a bond amount set by career ICE law enforcement officers. The decision to make a discretionary release, or to set bond, enables ICE to prioritize its resources, to detain and remove other individuals whom ICE deems to pose a greater risk to public safety or national security. ICE is committed to making certain that both mandatory and discretionary releases are executed in a way that promotes public safety and protects communities in accordance with existing law.

