

“Comprehensive Immigration Reform”

February 13, 2013

Questions for Chris Crane, President, National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees from Senator Lee

Prosecutorial Discretion

In your written statement, you recounted several stories that I found troubling regarding the disciplinary action some ICE agents have endured for attempting to perform the duties Congress has requested. In particular, I was disturbed by the experience you described of the three agents in Salt Lake City who were investigated for arresting a man who openly declared his illegal status in court.

- *Has it been your experience that the prosecutorial discretion laid out in the Morton memoranda has been implemented on a case-by-case basis, or as a categorical prohibition of enforcement?*

It is a categorical prohibition of enforcement. The new ICE detainer policy, which I submitted as evidence at the hearing, is a well documented example of how ICE policy removes discretion from officers and prohibits the arrest of certain individuals and groups. According to the new detainer policy, ICE agents encountering illegal aliens in jails can no longer make arrests based on the most fundamental and important sections of immigration law – illegal entry and visa overstay. ICE officers can only make arrests if these inmates have already been convicted of 3 or more misdemeanor offenses, or arrested or convicted for a felony offense, etc. So a categorical prohibition has been placed on arresting individuals for illegal entry and visa overstay. These practices equate to a form of amnesty for millions of immigration violators in the U.S. They are essentially protected from arrest. Officers who attempt to enforce these sections of law will face disciplinary action.

- *How do the agents you interact with regard the restraints they face while attempting to do their jobs?*

It's no secret that morale in the agency continues to plummet and the restraints you mention play a large role in that problem. Officers are literally afraid to enforce our nation's laws. They believe that if they attempt to enforce immigration law as it was enacted by Congress, they will be fired and lose the ability to support their families. Most officers in the field speak in terms of “keeping their heads down” until the nation's economic situation recovers so that they can seek employment elsewhere. In large part

the reaction is one of fear, leading officers to look for jobs that do not involve immigration enforcement both within and outside of ICE.