



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON
“Removal of Aliens from the United States in Recent Years”

BEFORE THE

U.S. SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND THE NATIONAL INTEREST

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INTRODUCTION

Chairman Sessions, Ranking Member Schumer, and distinguished members of the Committee, thank you for the opportunity to appear before you today to discuss how U.S. Immigration and Customs Enforcement (ICE) works with its sister agency, U.S. Customs and Border Protection (CBP), to smartly and effectively enforce our immigration laws. Individuals who pose a threat to public safety or national security or who are apprehended crossing the border illegally are enforcement priorities, and ICE allocates enforcement resources accordingly. Day-in and day-out, ICE agents, officers, 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 am pleased to outline the role the dedicated men and women of ICE Enforcement and Removal Operations (ERO) play in the identification, arrest, detention, and removal of individuals meeting the Department's enforcement priorities.

The Department's removal and return statistics are affected by a number of factors including: (1) the Department's increased focus on prioritizing convicted criminals and threats to national security, public safety, and border security; (2) the rate of CBP interdictions at the border, which decreased dramatically in Fiscal Year (FY) 2015 compared to FY 2014, reflecting a lower level of attempted illegal immigration at U.S. borders; (3) the level of cooperation from our state and local partners last year; (4) the increased scale of and need for at-large enforcement work; (5) changing migrant demographics; and (6) the challenges posed by recalcitrant countries.

This focusing of effort was clarified on November 20, 2014 when Secretary Johnson issued several memoranda, including *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* and *Secure Communities*, outlining the Department's enforcement

priorities and guidance on the exercise of prosecutorial discretion. These priorities continue to inform our decisions to identify, arrest, detain, prosecute, and remove aliens from the United States. The ability to use good judgment on a case-by-case basis is one of our most important tools for ensuring that our laws are enforced fairly and humanely. ICE will continue to perform optimally within legal bounds, accomplish our mission, make strategic use of our resources, and improve efficiency and reporting.

ICE ENFORCEMENT AND REMOVAL OPERATIONS

Guided by DHS's enforcement priorities, the nearly 6,000 law enforcement officers of ERO identify removable individuals and make arrest, detention, prosecutorial, and removal determinations in a manner designed to best promote national security, public safety, and border security, consistent with the following priorities:

- Priority 1 includes those who pose a threat to national security, border security, or public safety.
- Priority 2 includes those who have been convicted of significant or multiple misdemeanors, those who have significantly abused the visa or visa waiver programs, and those apprehended who unlawfully entered the United States after January 1, 2014.
- Priority 3 focuses on those individuals who have been issued a final order of removal on or after January 1, 2014.

ERO works to identify individuals who may be subject to immigration enforcement actions in a number of ways, including working with our federal, state, and local law enforcement partners to identify, locate, arrest, and remove dangerous convicted criminal aliens who pose a threat to the community. Throughout the process, ERO works closely with ICE's Office of the Principal Legal Advisor, which represents the government in removal proceedings in the immigration court system, administered by the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR). ERO also coordinates the removal of individuals with final removal orders, including obtaining necessary travel documents from the countries to which they are being returned.

Removals

Over the past several years, ICE has refined its priorities to focus on the most serious public safety and national security threats as well as recent border crossers. FY 2015 was a transitional period in which ICE implemented Department-wide civil immigration enforcement priorities, as directed by DHS Secretary Johnson in his November 2014 enforcement priorities memorandum.

The revised priorities have intensified ICE's focus on removing aliens convicted of serious crimes as well as public safety and national security threats and recent border entrants. ICE's FY 2015 removal statistics also 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 reflect ICE's commitment to public safety.

In FY 2015, ICE conducted 235,413 removals: 59 percent of all ICE removals, or 139,368, were previously convicted of a crime, and 98 percent of all ICE removals met one or

more of DHS's stated civil immigration enforcement priorities. Of the 96,045 individuals removed who had no criminal conviction, 94 percent, or 90,106, were apprehended at or near U.S. borders or ports of entry. The leading countries of origin for removals were Mexico, Guatemala, Honduras, and El Salvador.

ICE continued to prioritize its removals in FY 2015 by focusing on serious public safety and national security threats, increasing by 3 percent over FY 2014 the percentage of removals that were convicted criminals. More specifically, of the total ICE removals, 86 percent (202,152) fell into Priority 1, which includes national security and public safety threats; 8 percent (18,536) fell into Priority 2, which includes individuals convicted of serious or multiple misdemeanors; and 4 percent (9,960) fell into Priority 3, or those aliens who received a final order of removal on or after January 1, 2014.

Level of Cooperation from State and Local Partners

In the past, a significant factor impacting removal operations has been the number of state and local law enforcement jurisdictions limiting or declining cooperation with ICE. Secure Communities—which used a detainer form that did not have a probable cause standard—drew criticism from communities, was widely misunderstood, and became embroiled in litigation. Many counties and cities across the country stopped holding individuals on immigration detainers to avoid potential liability. When state or local law enforcement agencies decline to transfer custody of removable convicted criminal and public safety threats to ICE, ICE must locate and arrest such aliens at-large, after their release. Not only does this create a time period in which the dangerous individual is not in custody thereby putting the public at risk, but it is also a significantly more resource intensive and dangerous way to do business, both for my

deportation officers and for the public. To address this problem, the Department created the Priority Enforcement Program (PEP).

Our objective with PEP is to implement an interior enforcement strategy that supports community policing by focusing on convicted criminals and individuals who threaten public safety, and by working with state and local law enforcement to take custody of dangerous individuals and convicted criminals—including felons, significant/repeat misdemeanants, and criminal gang participants—before they are released into the community. ICE is committed to working with all jurisdictions that are interested in partnering with us. PEP was developed to bring back on board those state and local jurisdictions that had concerns with, or legal obstacles to, assisting us in implementing Secure Communities. Lastly, individuals who do not fall within the specific parameters of PEP but whose removal would serve an important federal interest, may be transferred from jurisdictions interested in doing so.

It is critically important that we bring back non-compliant jurisdictions as partners, so that we can work together to keep our communities safe and maintain community policing, which is a critical component in this work. I think it is an encouraging sign that, for the top 25 previously non-cooperating jurisdictions, 17 are now participating in PEP. Collectively, the jurisdictions that have re-commenced compliance with ICE to some degree account for 61 percent of previously declined detainees from January 2014 to June 2015, the month immediately preceding PEP deployment. As ICE continues to strengthen and improve relations with state and local law enforcement partners and tailor PEP to their community's needs, more jurisdictions will participate in PEP, increasing the number of convicted criminal aliens transferred to ICE for removal.

At-Large Efforts

I would also like to highlight ERO's continued actions in locating and arresting priority aliens in non-custodial settings. Each and every day, deportation officers seek and arrest criminal aliens and other enforcement priorities. Our officers continue to accomplish their mission with accuracy, consistency, and professionalism. Recently, in accordance with a congressional appropriation, ERO established ten Mobile Criminal Alien Teams (MCATs) in field offices to augment Fugitive Operations teams. The MCATs will conduct targeted, at-large field enforcement activities designed to investigate, locate, and arrest priority aliens for removal from the United States. One key responsibility of these teams is the location and arrest of convicted criminals who were released to the streets because detainers or requests for notification were not honored.

Changing Migrant Demographics

Changing illegal migrant demographics have also significantly impacted ERO's removal operations. As illegal entries by Mexican nationals continue to decrease, illegal entries by Central Americans—especially unaccompanied alien children and family units—continue to increase. In general, more time, personnel, and resources are required to complete the removal process for nationals from Central America and other non-contiguous countries when compared to Mexican nationals apprehended at the border. This is because removals of non-Mexican nationals usually requires ICE to use additional detention capacity, expend more time and effort to secure travel documents from the host country, and arrange air transportation to remove such aliens to their country of origin. Additionally, many Central American nationals are making asylum claims. Such cases require careful adjudication by U.S. Citizenship and Immigration

Services—the other immigration component in DHS in addition to ICE and CBP—and therefore take longer to process.

Even still, as Secretary Johnson has repeatedly said, our borders are not open to illegal immigration and we will enforce the law consistent with our priorities, at all times endeavoring to do this consistent with American values, and basic principles of decency, fairness, and humanity. Individuals are priorities for removal only after receiving a final order of removal and exhausting all their legal remedies for relief.

Recalcitrant Countries

The removal process is also impacted by our foreign partners. As the Committee is aware, in order for ICE to effectuate a removal, two things are required: (1) a final order of removal or grant of voluntary departure and (2) a travel document from the foreign country. Although the vast majority of countries adhere to their international obligation to accept the timely return of their citizens, ICE suffers from unique challenges with a limited set of countries that systematically refuse or delay the repatriation of their nationals. Such countries are considered to be uncooperative or recalcitrant, and ICE works with the Department of State to consistently engage government officials in these countries when feasible. Additionally, the decision of the U.S. Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) creates challenges in the removal process for individuals from these countries. Pursuant to *Zadvydas*, ICE has the authority to detain aliens subject to a final order of removal for 180 days from the date the removal period begins. Generally speaking, after 180 days, continued detention of aliens with final orders of removal is permitted only when removal is significantly likely in the reasonably foreseeable future, with very limited exceptions that are the subject of litigation.

As of May 2, 2016, ICE records indicated that there were 23 countries listed as uncooperative including Afghanistan, Algeria, the People's Republic of China, Cuba, Iran, Iraq, Libya, Somalia, and Zimbabwe. As a result of their lack of cooperation, ICE has experienced a significant hindrance in our ability to removal aliens from these countries. ICE is closely monitoring an additional 62 countries which strain cooperation, but are not deemed recalcitrant at this time. Due to such countries' delays and sometimes outright refusal to repatriate their nationals, ICE has been compelled by law to release thousands of aliens, including some with criminal convictions.

Despite ICE's continued efforts, a number of factors constrain ICE's ability to improve the number and timeliness 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 utilize to delay the repatriation process; and foreign governments that simply do not view repatriation as a priority.

Pursuant to a Memorandum of Understanding signed in April 2011 with its partners at the U.S. Department of State, ICE continues to work through U.S. diplomatic channels to increase repatriations to recalcitrant countries. We have made some progress. In FY 2015, ICE was able to remove convicted criminals to ten additional countries via ICE Air Operations charters, including an individual convicted of selling drugs, resisting arrest, DUI, and criminal trespassing to Uganda; and 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.

CONCLUSION

With the Committee's support, ICE will continue to effectuate immigration enforcement in a strategic manner to safeguard public safety, maximize the agency's success, 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. I look forward to answering your questions.