

Oversight of the Administration's Criminal Alien Removal Policies
U.S. Senate Judiciary Committee
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Thank you, Chairmen Grassley and Ranking Member Leahy, for the opportunity to testify today on the Obama administration's criminal alien removal policies. There can be no doubt that immigration enforcement is in a state of collapse. Despite a purported emphasis on "smarter" enforcement that prioritizes the removal of criminal aliens, the number of removals of criminal aliens has fallen to less than half the level reached in 2010, despite the fact that immigration officers have developed the resources and systems to identify more criminal aliens than ever before. Because of policies implemented by the Obama administration, the vast majority of illegal aliens – including many criminal aliens -- residing in the interior of the country face no threat of deportation, regardless of when or how they arrived, or if they have been deported before. Many deportable aliens who are encountered and apprehended by Immigration and Customs Enforcement (ICE) officers are ignored or released, even if they have come to ICE's attention after being arrested by local authorities.

This state of affairs is primarily due to two types of policy changes: first, a so-called "prioritization" scheme that shields from enforcement all but the most egregious convicted criminals and immigration violators, and second, the suppression of the use of critical (and legitimate) tools that enable ICE officers, agents and attorneys to do their job in an efficient and cost-effective manner. Among the tools that have been abandoned by the agencies: 1) detainers, which enable ICE officers to take custody of aliens who have been arrested by local law enforcement agencies; 2) accelerated forms of due process that avoid the need for long, drawn out proceedings in the clogged immigration courts; and 3) partnerships with local law enforcement agencies to identify and remove criminal aliens in jurisdictions where ICE cannot cover its workload.

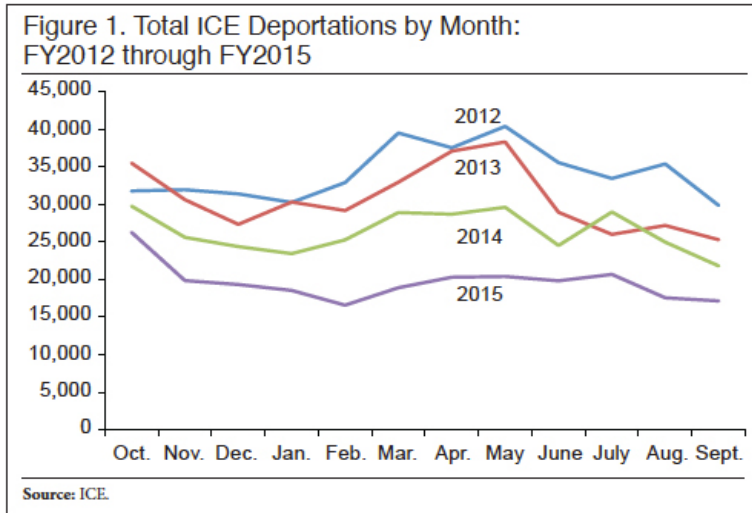
The drop in enforcement activity began in 2012, but has become particularly acute since President Obama's controversial executive actions were announced on November 20, 2014. These included two new policy memoranda spelling out new restrictions on immigration enforcement, with the effect that only narrow classes of illegal aliens – primarily those convicted of the most serious crimes and new arrivals who lack family or community ties in the United States – would be subject to arrest, questioning, detention, or immigration charges, and that any immigration infractions in prior years, such as apprehensions, deportations, or skipping a court date, would be ignored. In addition, under these new policies, now known as the Priority Enforcement Program (PEP), state and local governments are permitted to have sanctuary policies that obstruct ICE efforts to take custody of deportable criminal aliens.

These policies impose enormous costs on American communities -- not just the distorted labor markets and higher tax bills for social welfare benefits that result from uncontrolled illegal immigration, but more specifically, a real and present threat to public safety from criminal aliens that ICE officers are told to release instead of detain and remove. ICE's mandated over-focus on processing only the "worst of the worst" convicted criminal aliens means that too many of "the worst" deportable criminal aliens are still at large in our communities. One of the most urgent tasks now before Congress is to restore integrity to our immigration laws by ending this massive catch and release scheme that wastes government resources and endangers the public.

ICE Deportations in Decline. The graphs below show how the total number of deportations credited to ICE (of which 2/3 are aliens arrested by border patrol agents and port of entry officers) has declined year after year.¹

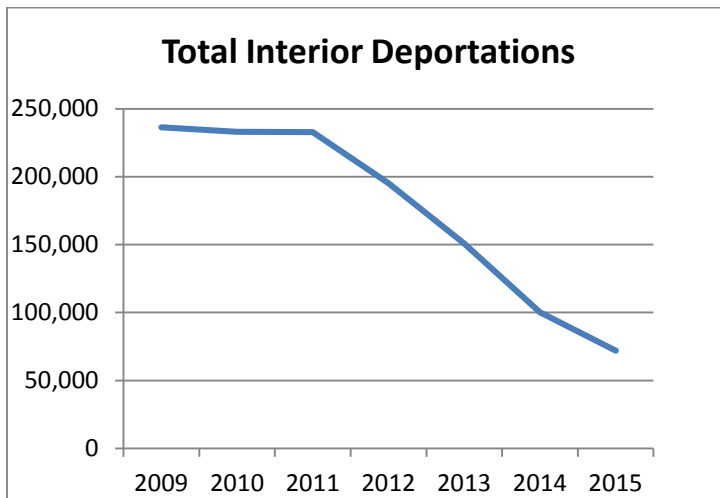
¹ U.S. Immigration and Customs Enforcement (ICE) records as reported in the Weekly Departures and Detention Report prepared by the Office of Enforcement and Removal Operations (ERO).

Deportations in 2015 were about half the number as in 2012, despite the fact that illegal immigration has remained steady, and apparently increased in the last couple of years. According to Census Bureau data, approximately 2.5 million new illegal aliens have arrived since President Obama took office, with an acceleration in new arrivals since 2013.²



Deportations from the interior (cases of aliens arrested by ICE deportation officers and special agents) have similarly declined.

Figure 2.



Note 1. Figures include removals and returns.

Note 2. The figure for 2015 is a projection based on the first 5 months of FY2015 data.

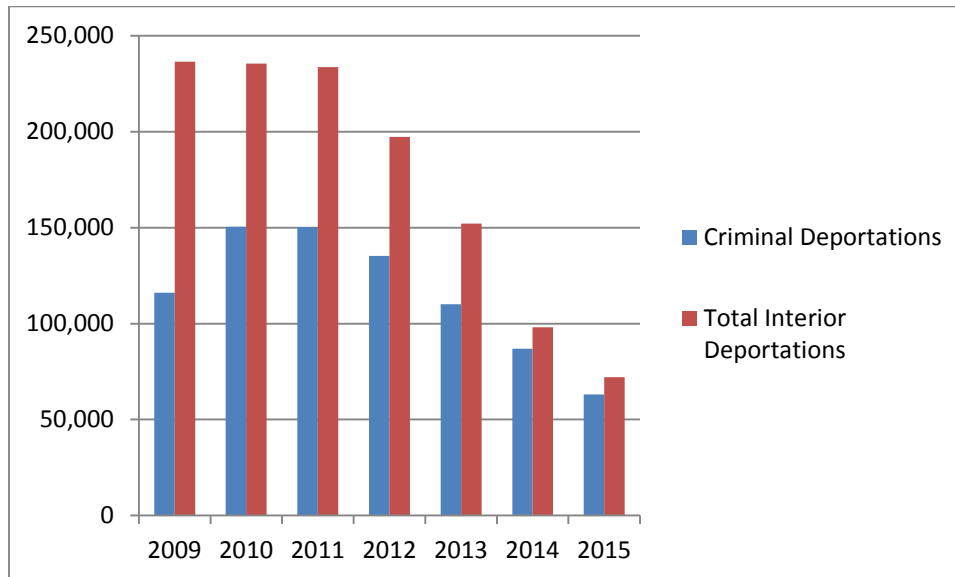
Note 3. This data series begins in 2009 because before that year the statistics include a significant number of unknown or una possibly skewing the number of border and interior arrests.

² Steven A. Camarota, "2.5 Million Join Illegal Population Under Obama," Center for Immigration Studies, July, 2015, <http://cis.org/2.5-Million-Join-Illegal-Population-under-Obama>.

Criminal Deportations. While Obama administration officials claim that their policy changes have improved public safety by allowing ICE to focus its limited resources on the removal of criminal aliens, in fact the number of criminal aliens deported from the interior has also declined sharply, to less than half the level of the peak in 2010. The number of criminal deportations from the interior was just over 63,000 in 2015, down from about 150,000 in 2010 and 2011 (see graph below).

Figure 3.

TOTAL INTERIOR AND CRIMINAL INTERIOR DEPORTATIONS: 2009-2015



Note 1. These figures include both removals and returns.

Note 2. The 2015 Total Interior Deportations figure is a projection based on the first 5 months of FY2015. ICE has not yet p

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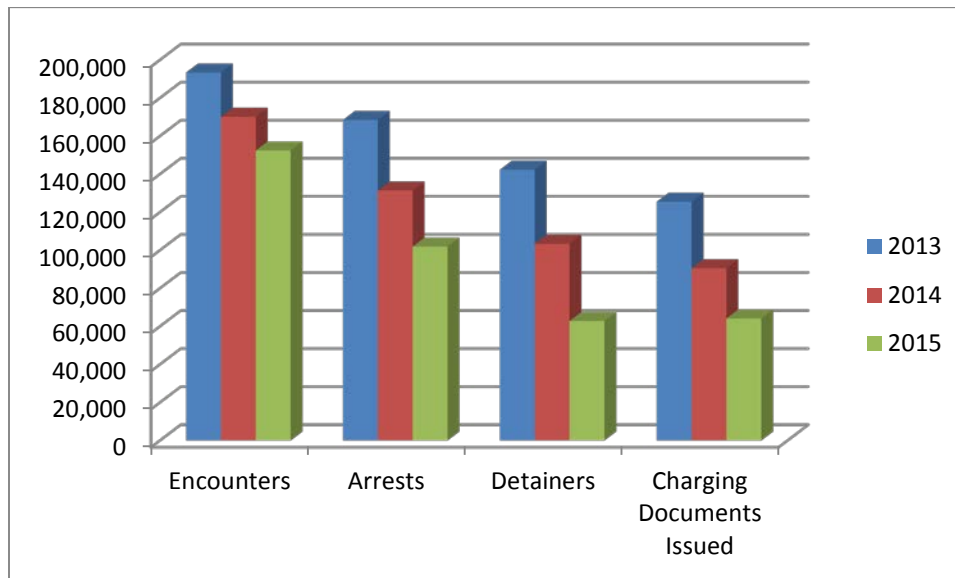
This decline has occurred despite increases in the number of criminal aliens identified by ICE, largely from the nationwide implementation of the Secure Communities program, which screens the fingerprints of aliens arrested by local law enforcement agencies. This successful program, which was tremendously popular with local law enforcement agencies, was dismantled by the President's November 20 executive actions, and replaced by PEP.

ICE Metrics Show “Catch & Release”. An examination of internal ICE enforcement metrics illustrates in more detail how the prioritization and enforcement suppression policies cause ICE personnel to ignore and release even criminal aliens that are identified by officers in the field (see Figure 4, below). All of the significant metrics of enforcement activity tracked by ICE – encounters, arrests, detainers and charging documents issued -- show declines in recent years. The key indicator here is the gap between the number of encounters reported by ICE officers and the number of enforcement actions they initiate. While there are some duplicate individuals in these figures, there can be no question that ICE is taking a pass on many deportable criminal aliens that are brought to their attention, usually after a local arrest. In 2015, deportation processing was initiated for approximately 64,000 of the 152,000 aliens encountered by ICE agents who were labeled a criminal threat. This gap between encounters and enforcement actions initiated can only be interpreted one way: ICE officers were instructed to ignore more than half of the criminal aliens they came across—presumably because these aliens didn't meet the

administration's priorities for "keepers" even though most were already in the custody of local law enforcement agencies.³

Figure 4.

ICE ENFORCEMENT METRICS FOR CRIMINAL ALIENS: 2013-2015



ICE officers have told me that since the administration's policies of prosecutorial discretion were expanded, they are allowed to process only a small fraction of the number of aliens that they used to handle. One recently told me that his office used to process as many as 80-100 aliens per day but, since the president's executive actions went into effect, now they are processing about five to 10 aliens per day, with the same staff and budget – meaning the government is spending at least 10 times more on average per deportee than was the case before.

Criminal Releases. When ICE declines to action against criminal aliens, that means they are released back into American communities. This is not a small problem. In 2013, ICE released 36,007 convicted criminal aliens from its custody.⁴ Of these, 193 had homicide convictions, 426 had sexual assault convictions, and 303 had kidnapping convictions. As of September, 2014, already 5,700 of them (16 percent) had been arrested again for subsequent offenses, and 1,000 had been again convicted. ICE had taken only 1,600 back into custody.

In 2014, ICE released another 30,558 convicted criminal aliens. Of these, 175 had homicide convictions, 373 had sexual assault convictions, and 186 had kidnapping convictions. The number arrested for subsequent crimes has not been disclosed.

Many Criminal Aliens Ordered Removed But Are Still Here. As of October 4, 2015 there were 179,037 convicted criminal aliens on ICE's docket who had received final orders of removal, but who had not departed. Of these 172,473 were at large in the United States after release by ICE.

³ Year-end ICE Weekly Departures and Detention Reports for 2013-2015.

⁴ Jessica M. Vaughan, "ICE Document Details 36,007 Criminal Alien Releases in 2013," Center for Immigration Studies: <http://cis.org/ICE-Document-Details-36000-Criminal-Aliens-Release-in-2013>.

In addition, there were 194,791 convicted criminals awaiting the outcome of deportation proceedings. Of these, 184,948 were at large in the United States, released by ICE.⁵

Gang Arrests Have Plummeted. Although the President has said that gang members are a high priority for enforcement, just as with criminal aliens in general, the number of gang arrests by Homeland Security Investigations (HSI) agents has declined considerably in recent years. According to ICE records, in 2014, ICE arrested 1,571 gang members, of which 1,514 were in the United States and 57 were abroad. This is less than half the number of gang arrests by ICE made in 2013, and the lowest number since 2005, when ICE first launched its anti-gang programs, known as Operation Community Shield. This steep drop in arrests does not indicate that there are fewer deportable gang members here, but that ICE is devoting fewer resources to the problem, and that the administration's restrictions on interior deportations have affected the agents' ability to target gang members for removal.

The state where the most arrests occurred was Texas, with 502, or about one-third of the total; followed by California, with 354 arrests. Florida and New Mexico had the next largest numbers. The ICE field office with the most arrests was El Paso, with 196, followed by San Francisco, with 122, and Los Angeles with 106. These figures show that immigrant gangs are a problem even outside the traditional immigrant gateway cities; for example, ICE arrested 16 deportable gang members in Rapid City, South Dakota and 18 in Cleveland, Ohio. Yet ICE gang targeting efforts seem to have been nearly abandoned in certain cities. ICE arrested only 7 gang members in New York City, 5 on Long Island, 9 in Newark, New Jersey, and 6 in Phoenix, Arizona – all areas with significant problems with illegal alien gangs (a problem that has been exacerbated by the influx of illegal Central American youths). In 2014, ICE arrested more gang members in El Salvador (33) than they did in the Atlanta metropolitan area (20).⁶

Further, ICE gang investigators have expressed to me concerns that gang members they arrest (usually after a local arrest on state charges) and turn over to Enforcement and Removal Operations (ERO) for detention and removal processing are sometimes de-prioritized and released – and even allowed to receive work permits.

ICE officers also report that lax enforcement policies make it more difficult to recruit informants to help in dismantling major gang conspiracies. Some have told ICE agents that they have no incentive to do so, because they qualify for the president's amnesty or know that they can take advantage of "prosecutorial discretion" policies, such as instructions to ICE lawyers to increase administrative case closures. One gang investigator told me that some illegal alien gang members have actually taunted ICE agents, knowing they are now virtually untouchable for deportation.

About one month ago, an 18-year old documented MS-13 illegal alien gang member named Jose Misael Reyes-Reyes, who apparently entered originally as an unaccompanied alien child, committed an unprovoked assault on a sheriff's deputy in Frederick, Md. Reyes-Reyes had two prior arrests (malicious property destruction and carrying a concealed deadly weapon) but these were ignored by ICE and he was allowed to remain at large to await an immigration court date in 2016.

Funding Is Not the Problem. The Obama administration's failure to remove even the criminal alien priority cases cannot be blamed on a lack of resources. Not only is the administration not seeking additional resources from Congress for immigration enforcement, but it is giving away the money that ICE has in its budget for this purpose. Earlier this year, the Department of Homeland Security leadership took \$113 million that Congress had appropriated for ICE detention and removal operations – funds that were intended to be used to detain and deport criminal aliens -- and reprogrammed it for use by the Secret Service, NPPD, and FEMA.

⁵ ICE WRD, October 4, 2015.

⁶ ICE records obtained by the author through a FOIA request.

Abandonment of Critical Enforcement Tools. In addition to declaring significant categories of illegal aliens who once would have been classified as an enforcement priority to be off-limits, the Obama administration has abandoned certain critical tools that gave immigration enforcement officers the ability to carry out their mission efficiently. Instead of detaining criminal aliens, the administration practices catch and release; detainers have been replaced by “requests for notification” of an alien’s release; and use of accelerated forms of due process have been suspended in favor of administrative closures, rubber-stamped preliminary asylum (or “credible fear”) applications, parole, stays of deportation, and/or allowing cases to languish for years on the backlogged immigration court dockets, during which time deportable aliens often can obtain work permits and live as if they were here legally.

Wasted Detention Capacity. The administration maintains that it cannot possibly detain and remove all of the estimated one million deportable aliens who are arrested each year, due to a lack of personnel and resources. Congress provides ICE with funding (and a mandate to fill) 34,000 detention beds.

But, according to ICE records, the agency has not complied with this mandate since FY2012. The average daily population (ADP) has declined every year since then. ICE reports an ADP of 33,788 for FY2013, an ADP of 33,227 for FY2014, and an ADP of 28,449 in FY2015. This is the lowest level since FY2006.

Clearly the criminal alien releases and decline in deportations cannot be blamed on a lack of detention capacity. On the contrary, one significant problem appears to be unwillingness to use the detention capacity that Congress has provided.

A number of ICE’s local law enforcement partners have reported noticeable drops in the number of illegal aliens that ICE will take into custody after arrest and incarceration in their jails. Several sheriffs have told me that the number of beds that ICE has contracted with them to fill has shrunk considerably, and the number of illegal aliens they have to release back into the community has grown. For example, Sheriff Tom Hodgson of Bristol County, Massachusetts says that just a couple of years ago his jail held an ADP of more than 200 aliens for ICE, but it has now shrunk to about 80 ADP.

Sheriff Paul Babeu of Pinal County, Arizona has testified to the House Judiciary Committee that ICE is releasing 30-50 illegal aliens *every day* from ICE detention facilities in his area, and that these aliens would have been deported but for the new policy changes outlined in the President’s 2014 executive actions.

Most criminal aliens who are released by ICE are allowed to walk out of custody without being enrolled in a program of supervision. Nowadays fewer criminal aliens are being enrolled in ICE’s Intensive Supervision Appearance Program (ISAP), in which the offender wears an electronic monitoring bracelet and checks in frequently with monitors. Instead, criminal aliens typically are able to bond out without supervision.

These releases often occur without notification of local law enforcement agencies and victims. ICE has only recently begun implementing a pilot notification program, after media coverage exposed the absence of such a system.

Discontinuing Use of Detainers. Detainers are a legitimate, lawful tool authorized by Congress that has been used for decades by ICE to take custody of aliens from local authorities. Their use protects the public and ICE officers by enabling enforcement to take place in a secure setting rather than on the street, in homes or at work places. The administration is pretending that it abandoned this tool because of unfavorable court rulings determining that detainers are optional for local law enforcement agencies to honor. In fact, after years of whittling away at the use of detainers, top agency leaders helped instigate these court rulings by reversing (over the objections of career personnel and without legal foundation) the long-held position articulated in federal regulation that detainers are not optional. This new, dubious position that detainers are optional was then simply

accepted by certain judges – sometimes leaving ICE’s local law enforcement partners who had cooperated in good faith (and in compliance with federal regulations) twisting in the wind and subject to significant legal and financial liability.⁷

Finally, with the implementation of PEP, when ICE officers are notified of the arrest of a deportable alien, or identify a deportable alien in a jail, they are prohibited from issuing detainers in most cases. Now, only certain convicted felons, offenders with three separate misdemeanor convictions, and some new illegal arrivals will be considered appropriate for deportation. And, ICE officers are told to make exceptions even to these categories if certain factors exist, such as family or community ties, illness, pregnancy, and other exceptions.

In 2015, ICE officers issued 40 percent fewer detainers than the year before, primarily due to the new restrictions on their use following the roll-out of PEP. Sheriffs and other law enforcement leaders around the country have expressed concern and frustration at the prospect of releasing known deportable criminal aliens back to their communities. One Sheriff from a county in the Northeast gave me a list of the 62 illegal aliens that have been booked into his jail since the beginning of 2014, mostly for serious crimes such as rape, sexual assault, attempted murder, child abuse, and drug trafficking. ICE issued detainers for only five of these criminal aliens. “We have to beg the federal government to do its job,” lamented one of his top officers.

Instead of detainers, in most cases ICE officers now issue a “request for notification” of a criminal alien’s release. As a practical matter, this guarantees that many more deportable aliens will fall between the cracks and avoid deportation, either because local agencies are not able to notify ICE in time for a variety of reasons that are beyond theirs or ICE’s control, or because the local agencies ignore the request as a matter of policy.

Just last month ICE began limited use of what it calls the “X” detainer, or I-247X, which it developed in response to concerns that have been raised by law enforcement agencies across the country about PEP, and in response to numerous accounts of criminal aliens freed by ICE policies who went on to commit other serious crimes. The “X” detainer may be issued in the case of criminal aliens who fall outside ICE’s new limited priorities, and requires the signature of an ICE senior manager. The creation of the ICE detainer is a tacit admission that the PEP priorities are inadequate to deal with ICE’s real-life criminal alien case load and to protect the public. It is commendable that ICE created this workaround to the President’s priorities, but it should not have been necessary; the law already provides ICE officers with the authority they need to arrest, detain and remove criminal aliens, and now they have the confusion and hassle of working with three different detainer forms, when one is really all they need.

PEP Enables Sanctuaries to Obstruct Enforcement. The implementation of PEP has not effectively addressed the problem of sanctuary jurisdictions, despite administration claims to the contrary. Instead PEP has created a patchwork of hundreds of different immigration enforcement policies across the nation – exactly the situation that the President claimed he wanted to avoid, and which served as a justification for his administration’s lawsuit against the state of Arizona for attempting to assist in immigration enforcement.

Rather than take action against the sanctuaries, the administration is negotiating minimal thresholds of enforcement with local officials and allowing them to dictate exactly which categories of criminal aliens ICE officers may target for deportation. Moreover, there are still places that refuse to turn over any criminal aliens, and still hundreds of jurisdictions across the country that have policies that in some way limit their cooperation in turning over criminal aliens to ICE. Some of them, including San Francisco and several other counties in California; Cook County, Ill.; Clark County, Nev.; have rejected hundreds of ICE detainers and requests for notification of the release of criminal aliens.

⁷ See Dan Cadman and Mark H. Metcalf, *Disabling Detainers: How the Obama Administration Has Trashed a Key Immigration Enforcement Tool*, Center for Immigration Studies, January, 2015: <http://cis.org/disabling-detainers>.

It is important to remember that some sanctuaries are obstructing other ICE enforcement activities that are equally critical to ICE's public safety mission – for example, by denying ICE officers access to jails to screen alien inmates. Many criminal aliens, specifically those who crossed a land border illegally, cannot be identified by fingerprints alone, because they have never been encountered by a DHS official, and their arrest will not generate a hit in DHS databases. In some Texas counties, about half of the illegal alien inmates are in this category, and this is likely to be true in other border states and any place where illegal border crossers have settled. Much has been made of our inability to vet Syrian refugees because of the lack of information available; the same is true of illegal border crossers. Local law enforcement agencies such as New York City, Cook County, and several others, that prohibit ICE officers from speaking to inmates to identify potentially deportable aliens, are not only obstructing immigration enforcement, but enabling criminals and other potentially dangerous people to fly under the radar of law enforcement. By failing to address this obstruction, the Obama administration is willfully contributing to a public safety and homeland security vulnerability.

Criminal Alien Recidivism. Since the beginning of 2014, more than 10,000 criminal aliens that ICE was seeking to deport have been released back to the streets due to local sanctuary policies. Approximately two-thirds of these released criminal aliens had a serious criminal history at the time of their release. As of a year ago, nearly 1,900 had subsequently re-offended, sometimes committing very serious crimes. Only 28 percent have been re-apprehended by ICE.

Numerous reports show that criminal illegal aliens who are released back into the community instead of detained for prompt removal have a high likelihood of re-offending. A 2012 study by the Congressional Research Service using data subpoenaed by the House Judiciary Committee found that over a two and one-half year time period, more than 26,000 deportable aliens who were flagged by ICE's Secure Communities program, but whom ICE chose to take no enforcement action against, were charged with 58,000 new crimes. These crimes committed after identification by ICE included 59 murders, 21 attempted murders, and more than 5,000 major or violent criminal offenses. In addition, they were charged with more than 6,000 drug violations and more than 8,000 DUI violations.⁸

A 2007 Department of Justice study found even higher apparent recidivism rates among criminal aliens released from custody after four years had elapsed from the alien's release. This report found that 73 out of a random sample of 100 criminal aliens had re-offended after release. The aliens committed an average of six new crimes apiece after release. Noted the report: "If this data is indicative of the full population of 262,105 criminal histories [from the four-year time period], the rate at which released criminal aliens are re-arrested is extremely high."⁹

Legal Action. One factor behind the erosion of enforcement has been a steady stream of predatory law suits aimed at obstructing ICE from doing its job. The administration has contributed to the success of these lawsuits by declining to challenge them; conceding in settlements; withholding assistance from local enforcement partners; and issuing controversial policy statements, sometimes without sound legal foundation, that can be used by plaintiffs hostile to the government's mission. If one were to think of immigration litigation against the government and its enforcement partners as a game, then the Obama administration is throwing it.

⁸ Congressional Research Service, "Analysis of Data Regarding Certain Individuals Identified Through Secure Communities," July 27, 2012, http://cis.org/sites/cis.org/files/smith.crs_.sc%20catch%20and%20release%20results.pdf.

⁹ U.S. Department of Justice, Office of the Inspector General, Audit Report 07-07, "Cooperation Of SCAAP Recipients In The Removal Of Criminal Aliens From The United States," January, 2007, <https://www.oig.justice.gov/reports/OJP/a0707/final.pdf>.

Deference to Foreign Countries on Criminal Deportees. Much as it allows local governments to dictate the terms of federal immigration enforcement, the Obama administration also allows other countries to thwart deportations of criminals that these countries do not wish to have returned. These criminal aliens then eventually have to be released back into the U.S. communities, according to the terms of a Supreme Court decision. In 2014, 2,457 of the 30,558 convicted criminal aliens released by ICE fell into this category. These deportable aliens had more than 16,000 criminal convictions among them, including 122 homicides, 1,461 assaults, and 246 sex offenses.

Current law provides for DHS to request that the State Department invoke visa sanctions on recalcitrant countries. In addition, career personnel in the DHS agencies have put together a long list of additional steps that could be taken to address this problem, but they have fallen on deaf ears within the top echelon of this administration. Instead the releases continue. Just two weeks ago in Arizona, ICE had to free a Nigerian man who served about 16 years in prison for a series of violent sexual assaults and other crimes, because Nigeria did not wish for him to return and refused to issue travel documents, even though his citizenship was not in dispute. Nigeria is also refusing to cooperate in the deportation of a Nigerian citizen convicted in Texas for bank fraud, multiple DWIs, and forgery.

287(g) Programs. The administration has reduced the number of local law enforcement agencies that can volunteer to assist with immigration enforcement by canceling dozens of these effective delegation of authority programs, refusing to approve new ones, and assisting in lawsuits against some of its former partners.¹⁰ ICE unilaterally terminated agreements with 21 jurisdictions that were operated successful 287(g) criminal alien and anti-smuggling task forces. In addition, the agency has failed to act on formal applications from 10 law enforcement agencies that want to participate in 287(g). Allowing these new applications to gather dust has discouraged other interested agencies from seeking to join. In the meantime, more criminal aliens fall between the cracks and are able to evade deportation, and ICE field offices lose out on the opportunity to have local officers do ICE's work at almost no cost to the federal government, in places that are already difficult for ICE to cover.

Career Personnel Blow the Whistle on Policy Changes. Numerous career immigration officers working in different parts of the agency, at all ranks and in various parts of the country have expressed to me their dismay and frustration with the Obama administration's calculated unraveling of enforcement, which they consider to be an abdication of their agencies' mission and responsibilities to the public.

"It was almost a perfect system," one ICE officer told me, in describing the combination of Secure Communities, 287(g), and fugitive operations teams that had been in place in his area of responsibility from about 2009 to 2011. "Almost no illegal aliens went through the jails here without us knowing about them. It was a rare case when we did not issue a detainer, such as a LPR [lawful permanent resident] or someone we could not identify. And when they were caught, they asked to go home. The word was out in the community, ICE is out there, and they'll find you. Now, people are laughing at us [ICE]; the illegal aliens know all they have to say is, 'I have kids,' or 'You can't arrest me because Obama changed the law'....And now local police keep us at arm's length, because they either don't understand what we do, or are afraid of being sued, and our own agency contributes to it."

The catch and release mentality governs the work of ICE trial attorneys too, with the result that even criminal alien felons escape consequences. In a lawsuit filed in late 2014, a widely respected senior career ICE attorney described how she and other ICE lawyers were told to ignore the law and routinely dismiss charges on

¹⁰ One of these lawsuits, against Alamance County, North Carolina, was recently dismissed, vindicating the local Sheriff and his management of the program, but the administration is determined to block reinstatement of the successful program and reportedly plans to appeal.

entire categories of criminal aliens, including certain convicted felons, drunk drivers, DACA applicants, and illegal juveniles from the border surge. The attorney was instructed by a superior to implement a program known as the Arizona Identity Theft Initiative, whose purpose was to drop and release hundreds of cases of illegal aliens convicted of felony identity theft in Arizona, even those whose crimes were so serious that they served several years in state prison and who under the law are subject to mandatory ICE detention before removal. The justification from ICE headquarters was that such aliens "had simply been using a fake ID to get and keep employment." In September 2014 ICE attorneys were ordered to begin exercising "prosecutorial discretion" in cases of aliens convicted of DUI if they were "old" cases and if the alien had U.S. family members. When a number of attorneys objected on the grounds of public safety, they were told by a top ICE official from headquarters: "We [ICE leadership] don't give a s*** about that. Let it go."¹¹

Public Safety Consequences. There is a human cost to the policies that prevent ICE officers from arresting, detaining and removing illegal aliens who have committed crimes and engaged in reckless behavior such as drunk and/or reckless driving. Some recent lives lost for which administration policies share some responsibility:

Starlette Pitts, 17, her mother Dorla Pitts, 37, and Michael Kelly, Jr., 19, were killed in August, 2015 in Florida. The accused is illegal alien Brian Omar Hyde, now age 19, an illegal border crosser who was apprehended in Texas in January, 2015 and then released to await an immigration hearing. Before his arrest for the triple murder, he was arrested in his home country of Belize for assaulting a police officer and was a suspect in another double murder and was wanted in connection with a robbery.

Jonathan Montez, age 2, was run over and killed in San Bernardino County in September, 2015 by an illegal alien named Jose Enrique Vasquez, with a lengthy criminal record including domestic violence, armed robbery, battery on a police officer, DUI, and eight deportations – but ICE did not issue a detainer, so he reportedly is out on bail today.

Another California two-year old is paralyzed and in foster care after the illegal alien boyfriend of her mother beat her, breaking several of her limbs. The accused, Francisco Javier Chavez, is a fugitive. Despite a long rap sheet including kidnapping, assault and drug convictions, and at least one deportation, ICE chose not to issue a detainer, setting him up to be freed on bail. He did not appear for his scheduled arraignment for the beating of the young girl.

Dominic Durden, a 30-year old Riverside County California sheriff's dispatcher, was killed on July 12, 2012 by illegal alien Juan Z. Tzun, who crashed into him while making an illegal left turn hurrying to a day labor site. Tzun was driving without a license and had two prior drunk driving convictions, which had not triggered ICE action. On April 3, 2013, Tzun was sentenced and served 30 days in jail before he was set free on a work release program. Eventually ICE took him into custody and Tzun was deported to his native Guatemala on March 20, 2014.

Katerin Gomez, age 35 and mother of three children under age 13, was killed in Chelsea, Massachusetts on October 18, 2014 by a stray bullet through her window. The gun was fired during a street brawl allegedly by Hector Ramires, a 21-year old illegal alien member of the notoriously violent MS-13 gang, who was at large awaiting trial for two prior arrests for armed robbery (one with a gun, one with a knife), in which his illegal status and gang membership were noted. The police report also includes mention of prior criminal involvement in his home country of Honduras. ICE did not issue a detainer nor initiate deportation proceedings after either prior arrest, nor did it make an effort to charge Ramires as an illegal alien in possession of a firearm, which is a felony punishable by up to 10 years in prison.

¹¹ See complaint of Patricia Vroom: <http://cis.org/sites/cis.org/files/Vroom%20complaint.pdf>.

Magno Sosa, age 32, was shot twice in the head and killed on January 17, 2015 in Everett, Massachusetts. The accused is Rigoberto Escobar, an illegal alien who was out on pretrial probation for assault and battery with a dangerous weapon and assault and battery on a police officer. Again, ICE had declined to issue a detainer or pursue immigration charges after the assault and battery arrests, most likely because of policies forbidding officers from initiating charges on illegal aliens who have not yet been convicted.

Ismael Mejia, age 26, and **Luariano M. Ramirez**, age 19, were killed on June 20, 2013 in Muscoy, California, after being struck by illegal alien drunk driver Felix Roman Nava. About one year prior to this fatal incident, Nava had been in ICE custody after a prior DUI conviction, but was released on bond to await proceedings. In August, 2013 he was convicted of two counts of Gross Vehicular Manslaughter While Intoxicated and sentenced to six years in prison.

In August 2015, Arizona Sheriff Paul Babeu called a press conference to alert the public to the release by ICE of three violent criminal aliens in his county: a Russian man who set a police informant on fire, an Iraqi who killed his two-year old daughter; and an illegal alien from Sudan has committed multiple assaults in two states.

In September 2015, Border Patrol agents in Arizona apprehended and then released a man who had been deported five times, despite his extensive criminal history including nine felonies and 11 misdemeanors, and an outstanding, validated warrant of arrest in Colorado.

In October, a man who had been released by ICE on an electronic bracelet under a controversial alternative to detention/supervision program was arrested on several weapons charges by a Newark, NJ gang unit detective.

Examples of Short Term Action for Congress

- A. Restrict DHS appropriations so that no funds may be used to implement any executive actions or policy directives that prevent enforcement officers from performing their jobs and/or allow any criminal aliens to avoid deportation.
- B. Clarify the authority and imperative for the transfer of aliens from local to federal custody for enforcement. Impose sanctions on local governments that obstruct the process. Provide local law enforcement officers with the same qualified immunity that the law gives to 287(g) officers.
- C. Provide funding for an increase in detention capacity for immigration enforcement agencies, and require that DHS use it for that purpose.
- D. Clarify ICE's authority to use accelerated forms of due process, especially for recent border crossers and criminal aliens, in order to relieve pressure on the immigration courts and reduce the duration of detention.
- E. Restore funding and flexibility to programs such as 287(g) that enhance ICE deportation capacity and address local public safety needs, and require that ICE approve new programs.

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