

Statement by Chris Crane, President,
National Immigration and Customs Enforcement Council 118
of the
American Federation of Government Employees

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Chairman Smith and Members of the Subcommittee:

Good afternoon. My name is Chris Crane and I am the President of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees (AFGE). The National ICE Council is the union representing approximately 7,200 ICE employees who work primarily in the Office of Enforcement and Removal Operations. I have been an ICE Immigration and Customs Enforcement Officer since 2003. During that time, I have observed many plans developed by this agency fail due to a lack of proper planning, resources, commitment and leadership.

In my capacity as an ICE Immigration Enforcement Agent (IEA), I have worked the Criminal Alien Program (also known as CAP) for approximately five years. CAP is a program within ICE which targets criminal aliens who were first arrested by local police or other Federal law enforcement agencies and charged criminally. I have also served as a member of an ICE Fugitive Operations Team whose primary function was to apprehend foreign nationals who had not departed the United States after receiving an Order of Deportation from a Federal immigration judge.

Union Vote of No Confidence

On June 25, 2010, ICE union leaders across the nation publicly issued a unanimous vote of no confidence in ICE Director John Morton. It is the only time that I am aware of in the history of ICE or the history of the legacy Immigration and Naturalization Service that officers, agents and employees of Enforcement and Removal Operations issued a no confidence vote in their leadership. To be clear, the no confidence vote has never been rescinded; we remain committed to it now more than ever before.

Mr. Morton's term as director also marks the first time that ICE employees have ever taken their personal vacations to stand in picket lines publicly protesting the actions of the Agency. ICE union leaders are in the papers and on television like never before in full public view speaking out about gross mismanagement and matters of public safety; warning that ICE and DHS are misleading the public.

It is my hope that these unprecedented acts by ICE employees across the nation have sent a loud, clear message that something is seriously wrong at ICE, and that the concerns voiced are not simply those of a small group of disgruntled employees, but instead reflective of thousands of men and women working at ICE who are committed to public safety and national security, and who by the very nature of their jobs are uniquely qualified to speak regarding problems within the agency and among its leadership.

As I stated in my congressional testimony on December 10, 2009, ICE is broken. Law enforcement and public safety are no longer the priority at ICE; politics are the priority at ICE.

Immigrant's advocacy groups are now brought in by ICE and DHS leadership to create ICE's law enforcement practices in the field as well as security protocols for ICE detention centers. ICE agents and officers in the field are excluded from essentially all pre-decisional involvement involving changes to law enforcement policies in the field. While we applaud public outreach, input from special interest groups and outside agencies cannot replace sound law enforcement practices and input from ICE officers and agents in the field.

Prosecutorial Discretion

The prosecutorial discretion memorandum issued by ICE Director John Morton on June 17, 2011 cannot be effectively applied in the field and has the potential to either completely overwhelm ICE's limited manpower resources or result in the indiscriminate and large scale release of aliens encountered in all ICE law enforcement operations. ICE and DHS appear to be scrambling to issue policies and press releases intended to satisfy complaints from immigrant's advocacy groups. ICE's new policies do not appear to improve law enforcement practices or better utilize ICE's resources. The prosecutorial discretion memorandum was written and issued to the field in such a rush that the actual training and guidelines for officers and agents in the field, which should always be issued prior to the implementation of new policy, haven't even been developed by ICE. However, by prematurely issuing the prosecutorial discretion memorandum, ICE met its true goal of putting out a public statement intended to satisfy immigrant's advocacy groups pressuring the Administration. No attempt was made by ICE Director John Morton to effectively implement the new law enforcement policy in the field leaving officers, agents and field management confused regarding how to apply the policy's directives in the field. This failure by ICE leadership has created uncertainty among its own agents and officers with regard to making arrests in the field, a situation that cannot exist in any law enforcement organization if it is to be effective.

The prosecutorial discretion memorandum sets forth approximately nineteen criteria for ICE agents and officers in the field to use in determining if an alien can be arrested or detained. Important to note, ICE Director John Morton will make the determination, not ICE officers and agents in the field, as to which aliens are to be arrested and detained. Director Morton's guidance will be enforced by ICE supervisors in the field, who will take disciplinary actions against officers and agents who do not adhere to the Director's guidelines. ICE agents and officers will follow orders, not exercise any true discretion. Claims by ICE that this memorandum gives field agents more discretion in the field are false. The purpose of ICE's prosecutorial discretion memorandum is to prohibit officers and agents from arresting individuals from certain groups, not to provide officers with additional law enforcement options in the field.

From an enforcement standpoint the biggest dilemma facing ERO officers and agents in the field may be how to apply the policy to the hundreds of thousands of aliens encountered each year, as

the prosecutorial discretion memorandum clearly implements a far more extensive and time intensive investigative process than has ever been utilized before by ERO. That is, if it can be assumed that ICE and DHS leadership actually intend to allow ERO agents and officers to properly investigate claims before an arrest is declined or a subject is released.

If responsible law enforcement focused on public safety is truly the goal, the approximately nineteen criteria established by the prosecutorial discretion memorandum must be investigated regarding any alien encountered by ICE who claims to meet one or more of the criteria, as each claim may prevent the alien's arrest or detention. Each investigation could require hours or days. Currently approximately 5,800 ICE Enforcement and Removal officers and agents nationwide man ICE detention centers across the country as guards; provide security and transportation to immigration courts nationwide; arrest, process and deport hundreds of thousands of aliens annually, removing approximately 370, 000 aliens from the U.S each year. The number of aliens encountered by ERO each year is staggering. No other law enforcement group handles more cases with fewer resources. These operations have already stretched ERO officers, agents and employees too thin; ERO does not have the resources to effectively support the new ICE prosecutorial discretion memo as it written. While ICE has informed the union that that the Agency has not conducted planning with regard to how ERO agents and officers will effectively apply the prosecutorial discretion memorandum in the field, ICE has been clear that the policy will be applied by its officers in every case. With removal numbers alone approaching 400,000 annually, this will be a daunting task for the handful of already overwhelmed ERO employees performing this mission.

If only one-quarter of the aliens removed each year by ICE claimed to meet one of the criteria outlined in the prosecutorial discretion memo and each claim required only one hour to investigate, this would require approximately 100,000 additional man hours each year. Of course ICE officers and prosecutors will tell you that investigations of this sort can at times require weeks, and that an estimate of one hour per case is probably unrealistic. ICE has not issued any type of direction to the field supporting an officer or agent's ability to hold a subject in custody until an investigation can be properly conducted and closed. Additionally, the question as to how officers and agents will substantiate these claims remains unanswered. For example, if an alien claims to be a high school graduate or attending college, ICE officers will need documentation substantiating those claims. However, schools will not provide ICE with high school diplomas or transcripts for students attending colleges or universities, so ICE will be dependent on the alien making the claim to provide supporting documentation. It is not known what protocols ICE will use to ensure diplomas, transcripts or other documentation provided as evidence are not fraudulent. As the usage of fraudulent birth certificates, immigration documents, social security cards and driver's licenses is prevalent among those illegally in the U.S., this task could prove especially difficult and time consuming. The prosecutorial discretion memorandum creates many complex obstacles for officers, agents and managers in the field,

many of which will never be effectively overcome. It is the union's opinion that this policy will drastically reduce the ability of agents and officers to effectively enforce U.S. immigration law and provide for public safety, and will only serve to increase the negative aspects of America's current immigration problems.

ICE Call-in letters

According to ICE it has implemented a pilot program in certain areas which mandates that ICE agents and officers not arrest or detain certain aliens arrested by local police. Instead, ICE agents and officers are required to mail letters to the aliens at the jail asking the aliens to self report to an ICE office after their release from jail. As no charging documents have been issued by ICE in this scenario, any alien who does not self report to ICE cannot in any way be held accountable for failure to report. As the only negative consequence results from actually reporting to ICE, as a rule aliens will not self report to ICE after their release from jail. If implemented nationwide, the use of call-in letters has the potential to result in the release of hundreds of thousands of criminal aliens with absolutely no accountability.

Claiming it is a better use of ICE's limited resources, ICE proposes that cases involving aliens who do not report to an ICE office after receipt of a call-in letter will be turned over to an ICE task force which will then attempt to locate and arrest the alien on the street. These claims are disingenuous at best as ICE managers know the resources do not exist to conduct manhunts of thousands of criminal aliens who did not self report, most of whom provided fake names and addresses during their initial encounter with local police and ICE officers, and who most certainly will be keenly aware of the need to allude law enforcement following their release from jail. The call-in letters will effectively serve only as a warning to aliens to run, and in doing so clearly disadvantages enforcement. As an enforcement policy it will obviously be completely ineffective and merely represents another attempt by ICE to avoid enforcing violations of U.S. immigration laws for political reasons, while simultaneously attempting to convince the public that ICE is taking some type of legitimate law enforcement action.

New ICE Detainers

Traditionally, ICE detainers were used by ICE officers and agents to alert prisons, local jails, courts and police to contact ICE before releasing specified aliens from jails or prisons to allow ICE the necessary time to take custody of the prisoner or inmate and process them for deportation. ICE reports that it has implemented a new pilot program in certain areas directing jails to simply release aliens not yet convicted of crimes, stating that ICE will now only take custody of aliens who have been convicted of a crime. As with the call-in letters, large numbers of criminal aliens will be released from jails into U.S. communities if these policies continue and are eventually implemented nationwide. Under previous policy, these same aliens would have been processed, charged, and at minimum required to appear before an immigration judge.

Field arrest procedures

Increasingly, ICE headquarters leadership refuses to put directives to supervisors, agents and officers in the field regarding law enforcement operations in writing. Orders and directives are given orally to prevent the activities of ICE's leadership from becoming public. Agents and officers in the field are frequently under orders not to arrest persons suspected of being in the United States illegally. At times, orders not to arrest certain groups include ICE fugitives, who have been ordered deported by an immigration judge, as well as individuals who have reentered the U.S. following deportation, which is a federal felony.

Agents and officers report that they are ordered not to run criminal or immigration background checks or even speak to individuals whom they reasonably suspect are in the U.S. illegally. These directives prevent officers and agents from enforcing U.S. immigration laws and prevent the apprehension of fugitives, felons and other individuals who may present a threat to public safety. Situations in which officers and agents are ordered not to run criminal background checks or ordered not to speak to suspect individuals create an especially high risk to public safety as agents may unknowingly walk away from individuals who pose a significant public threat such as murderers, rapists and individuals with terrorist ties.

Resources

While none of ICE's new policies claiming to better utilize the agency's resources actually seem to make any improvements in that area, it is important to note that ICE and DHS have grossly oversimplified ICE's resource shortages to support the Administration's focus on providing protections from arrest for many aliens illegally present in the U.S.

An accurate understanding of ICE's resources and their best usage cannot be captured by looking only at the number of aliens ICE is funded to remove each year – as ICE and DHS have done repeatedly in the media. ICE's workload can be highly unpredictable and fluctuates dramatically from office to office and from day to day. In conjunction with these increasing and decreasing workloads, the availability of ICE's resources and manpower also fluctuate from office to office and change from day to day. ICE agents and officers focus on the "worst of the worst," and make those cases a priority. However there are those days and situations in which time is available to process less significant cases and on those occasions it is in fact the most effective use of resources to do so. Every day will not lead to the apprehension of the nation's most wanted criminals for each and every ICE officer and agent nationwide. Those periods of time in which individual officers or agents only encounter lower priority cases cannot be captured in a bottle and saved for use on a different date when more high priority cases are abundant. Under those circumstances it is a highly efficient use of resources for that particular officer or agent on that particular date to process cases of lower priority. This type of prioritization maximizes work

performed by officers, maintains the proper focus and best utilizes ICE's day to day flow of changing resources; it also provides balanced enforcement of U.S. immigration laws.

Conclusion

In conclusion, if left unchecked, it is the opinion of ICE officers and agents in the field that the Administration's policies will lead to victimization and death within the U.S. that was otherwise preventable. These policies are not an exercise of prosecutorial discretion, but instead an absence of prosecutorial discretion and accountability. They are not law enforcement actions, but the opposite. These policies take away officers' discretion and establish a system that mandates that the Nation's most fundamental immigration laws are not enforced.

We commend this Committee's efforts to bring oversight to the activities of this troubled agency, and unconditionally commit our resources to this or any future inquiries made by this honorable body. Thank you for allowing me the opportunity to speak on behalf of our ICE employees.

This concludes my testimony, and I welcome any questions that you may have.