Statement by Chris Crane, President,

National Immigration and Customs Enforcement Council 118

of the

American Federation of Government Employees

Before the

Judiciary Subcommittee on Immigration and Policy Enforcement

July 26, 2011

Chairman Smith and Members of the Subcommittee:

Good morning. 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 for the past 8 years. During that time, I have observed many plans developed by this agency fail due to a lack of resources, commitment or 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 To be clear, the no confidence vote has never been rescinded; we remain committed to it now more than ever before.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, not just the ICE Secure Communities Program. ICE and DHS appear to be scrambling to issue policies and press releases intended to satisfy complaints from immigrant's advocacy groups. These 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 any new policy being implemented in the field, haven't even been developed yet. ICE met its real goal of putting out a press release intended to satisfy advocacy groups, but made no attempt to effectively implement the new law enforcement policy in the field leaving officers, agents and field management confused regarding the policy's application. This failure by ICE leadership has created uncertainty among its own officers with regard to making arrests in the field, a situation that cannot exist in a law enforcement organization.

The prosecutorial discretion memorandum sets forth approximately nineteen criteria for ICE agents and officers in the field to use in determining whether an alien can be detained or arrested. Important to note, Director John Morton will determine which aliens are to be arrested and that guidance will be passed down to ICE supervisors in the field. ICE agents and officers in the field will be under orders to release and avoid arresting certain groups of aliens altogether. 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 this policy is to prohibit officers and agents from arresting individuals from certain groups, not to provide officers with additional options.

From an enforcement standpoint the biggest dilemma facing officers and agents in the field may be how to apply the policy to the hundreds of thousands of aliens encountered each year. Each claim made by an alien which may prevent his or her detention or arrest must be investigated. 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 numbers are staggering. No other law enforcement group does more with less. These operations have already stretched our officers too thin; we do not have the resources to support the new ICE prosecutorial discretion memo as it written. While ICE has informed the union that that it has not planned how agents and officers will effectively apply the policy in the field, ICE has been clear that the policy will be applied by officers in every case.

With that in mind, if approximately one-quarter of the aliens removed each year by ICE claimed to meet the criteria outlined in the prosecutorial discretion memo and each claim required only one hour to substantiate, this would require 100,000 man hours each year. Of course 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. ICE will be dependent on the alien making the claim to provide supporting documentation, but what protocols ICE will use to ensure that diplomas and transcripts, or any other documents are not fraudulent is not known. 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.

For officers and agents in the field the reality of this policy seems clear. The ICE Office of Enforcement and Removal Operations does not have the resources to properly substantiate the claims made by aliens as they apply to the new prosecutorial discretion memorandum. Officers and agents will be under intense pressure from managers to simply take the alien's word regarding a claim to avoid lengthy or troublesome attempts to substantiate claims. While releasing thousands of aliens that would have been placed into immigration proceedings in previous years, ICE managers will still be pushing officers and agents to remove approximately 400,000 aliens each year. The end result will be that ICE will simply avoid certain groups of aliens altogether.

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 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 report to ICE cannot in any way be held accountable for failing to report to an ICE office. As the only negative consequence results from actually reporting to ICE, as a rule aliens will not report. If implemented nationwide, this has the potential to quickly result in hundreds of thousands of aliens illegally present in the

United States who are identified by ICE agents in jails, but who are released and never placed in immigration proceedings.

Keeping in mind that ICE has justified changes like this one by 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 locate and arrest the alien on the street. These claims are disingenuous at best as ICE knows the resources do not exist to conduct manhunts of thousands of aliens most of whom provided fake addresses and names to local police and ICE officers to begin with. The entire policy is merely 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 alerted 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 – most importantly the detainer prevented the alien from being released. 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 aliens will be released from jails. Under previous policy, these same aliens would have been processed and 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 those no arrest orders 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 speak to individuals create an especially high risk to public safety as agents may unknowingly walk away from individuals who pose a public threat.

Resources

While none of ICE's new policies claiming to better utilize the agency's resources actually seem to make any improvements, it is important to note that ICE and DHS have grossly oversimplified ICE's resource shortages to support new agency policies that 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 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, and also provides balanced enforcement of U.S. immigration laws.

Officer Safety

Perhaps nothing more accurately illustrates ICE's true law enforcement priorities than the disregard the agency appears to have for the safety of its own officers. Threats against local and federal law enforcement agents in the U.S. are on the rise. Intelligence reports indicate that cartels and gangs are actively seeking to capture, torture and kill ICE agents in the United States. With the shootings of ICE agents and Border Patrol agents as well as large scale murders in Mexico as an indicator, these are threats that must be taken seriously.

While most federal agencies have already prepared their officers prior to these incidents as a matter of sound law enforcement practice and officer safety – ICE in many cases has not. On March 7, 2011, the union sent a letter to ICE Director John Morton reporting that ICE Enforcement and Removal Operations officers were prohibited in some areas from carrying shotguns and rifles under the direction of Field Office Directors. ICE responded by stating that the problem did not exist.

ICE Director John Morton was then presented with information proving that ICE agents and officers in Salt Lake City, Utah were not instructor qualified with rifles issued to the Field

Office, qualification being a requirement to carrying the rifles in the field. The rifles were not issued to officers and sat locked in a safe as they had for years. The Salt Lake Office had no rifle training program in place.

Once this information was provided to Director Morton as proof of the safety concerns, a nationwide inventory was requested by the Union to determine not only the number of weapons available for use in the field but also to identify offices using policies similar to the one utilized in Salt Lake City that prohibited the use of rifles in the field. ICE Director John Morton has not responded to this request for over four months, and in doing so has ignored the safety of his officers and agents in the field. While his officers and agents await his response regarding matters of their personal safety, policies regarding non-life threatening protections for individuals present in the U.S. in violation of law are produced by Director Morton's office almost weekly.

In a separate matter, approximately one year ago the union met with Director Morton and alerted him to allegations made by ICE lab technicians and quality assurance engineers that they were ordered by ICE managers to falsify official government records and approve ammunition lots that did not meet contract specifications. If true, hundreds of millions of dollars in faulty ammunition may have been illegally approved by ICE supervisors and sent to our officers in the field, who at any time could depend on that ammunition to defend their own life, the life of a partner, or a member of the public. A contract lab technician who allegedly reported improper practices in the facility was allegedly fired following the filing of those reports and escorted off of the facility. One ICE employee who reported the incidents has been on administrative leave for years facing termination. Another ICE employee who reported the falsifying of ammunition testing records has allegedly been prohibited from entering the lab and has been restricted to his office for months. He alleges that he also faces daily harassment and is investigated by ICE for frivolous allegations as supervisors attempt to have him fired.

Director Morton has never responded to the union regarding this matter, and we are concerned that these practices continue at the facility which inspects ammunition used by ICE agents and officers in the field. In addition to obvious safety concerns and misuse of taxpayer dollars, ICE employee whistleblowers stepped forward and filed reports but instead of being rewarded now face termination for reporting suspected fraud waste and abuse and possible criminal misconduct by ICE managers. While harassment and retaliation are standard practice at ICE, these employees need assistance and oversight appears necessary at the ammunition testing facility. This is a matter for which ICE officers and agents would greatly appreciate the Committee's assistance.

Homeland Security Committee on Secure Communities

A Homeland Security Advisory Committee on the ICE Secure Communities Program was formed with each member selected by ICE Director John Morton. Approximately 50% of the committee's members appear to be immigrant's advocates and/or attorneys representing immigrants at some level. In comparison, not one member of the committee is a public advocate for reforms through stronger immigration enforcement. Some of the other members, while not identified as advocates themselves, do not oppose the majority of the positions advanced by advocates on the committee, creating a committee with little diversity on significant issues. I am the only member of the committee who is an immigration agent and has a technical understanding of the ICE programs under review; I am accompanied by a union representative who is an ICE attorney by profession. For the most part, our combined concerns are not heard within the committee.

The committee was originally tasked with providing input on only two matters – how ICE should handle traffic violators and should ICE move to a post conviction model. With that very limited scope presented to the committee for review, at one point the committee chairman moved that the committee advise on all ICE law enforcement operations. I objected stating that the committee had grossly overstepped the guidance given to it and that the committee should not be advising on other programs such as the ICE Fugitive Operations Program and ICE participation on Federal Task Forces. My concerns were over ruled, and the committee, in my opinion, continues to act far beyond its appointed duties.

Most alarming to me, the committee's "findings and proposals" were written for the committee and given to us on the second day of our first meeting. The committee had not yet discussed findings or proposals in any way and was still struggling to understand the basic ICE Secure Communities Program. Many members of the committee protested stating that the entire approach of writing the findings and proposals was improper, but the chairman did not change his position saying only that members of the committee would be permitted to "wordsmith" the findings and proposals, which were written by persons unknown to me on behalf of the committee. As a rule, only suggestions that meet with the approval of the committee chairman have been permitted. While the committee can make suggestions, it is a dictatorial relationship, and the chairman appears to have the one and only say as to whether information is added or deleted from the findings and proposals of the committee, which again, were not written by the committee.

The complaints about the Secure Communities Program thus far have come from state government representatives, county sheriffs, city police chiefs and immigrant's advocacy groups. State government representatives appear to unanimously believe that ICE and DHS have misled them regarding the nature of the program. Sheriffs and Police Chiefs state that ICE and DHS have done such a horrific job regarding communication and public relations that immigrant

communities falsely believe that local police play a role in identifying and arresting aliens as part of the Secure Communities Program, which they do not. Immigrant's advocacy groups allege that local police officers now profile individuals from certain groups and arrest them for minor state and local traffic violations with the motive of eventually having them deported through the Federal Secure Communities Program. The validity of these claims aside, the complaints provided to the committee thus far relate to mismanagement and poor communication by ICE and DHS and alleged profiling by local police not involved in the Secure Communities Program. Of course accusations that ICE leadership mismanaged the program and misled participants are an ICE leadership matter, not a failure of the Secure Communities Program that can be remedied though changes to the program. Similarly, if true, allegations that local police who do not have immigration arrest authority are profiling groups with hopes that ICE will later apprehend them under Secure Communities must be addressed by the local police and sheriff's departments. Alleged abuses by local police and sheriff's departments cannot be fixed or eliminated by changing ICE arrest protocols and practices, or by ignoring problems that may exist in individual police or sheriff's departments. Yet the committee, for reasons which I do not understand, continues to explore dramatic changes to the Secure Communities Program and ICE in general, most of these changes falling well outside of the committee's assignment, with no accountability of ICE and DHS leadership or local law enforcement agencies.

Many of the committee members have expressed strong concerns that ICE "intentionally misled" the states participating in the Secure Communities program, the public and ICE's other law enforcement partners. It has been widely discussed that the misleading nature of ICE's communications are at the source of many of the problems surrounding the ICE Secure Communities Program. The committee, however, has been prohibited from making mention in the committee's findings or recommendations that Janet Napolitano, John Morton, DHS, or ICE purposely or inadvertently misled the public or any group regarding the program as well as any problems that any misleading information may have created for immigrant communities, ICE's law enforcement partners, or the Secure Communities Program.

While I have a deep respect for the committee's members, it appears that the process of selecting members by ICE and DHS has led to a lack of appropriate balance of viewpoints and knowledge of ICE operations also needed on the committee. It is my opinion, that the findings or recommendations made by the Homeland Security Committee on Secure Communities, of which I am a member, should not be considered for the purpose of modifying any ICE law enforcement policy, practice or procedure. It is my opinion that immediate oversight of this committee is required to provide balance and integrity to the process.

Conclusion

In conclusion, 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.