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Good afternoon,

On December 10, 2009, I testified before the Subcommittee on Border, Maritime and Global Counterterrorism, House Homeland Security Committee regarding ICE Detention Reforms. Among other things, I testified that the lack of oversight of ICE contract employees presented perhaps the most significant risk to detainee welfare; I testified that ICE detainee populations were becoming increasingly criminal and violent in nature, and that while DHS Secretary Janet Napolitano and ICE Director John Morton brought in over a hundred "stakeholders" consisting primarily of immigrants advocacy groups to provide input on the new ICE detention standards, both DHS and ICE excluded ICE officers, agents and field managers from having input in creating the new ICE detention standards.

It was with great appreciation that the union accepted the 2009 invitation from Representative Loretta Sanchez to testify before Congress. Subcommittee staff shared union concerns that the so called ICE detention reforms provided no real increase in oversight of ICE detention centers, the most significant change needed to provide for the proper welfare of ICE detainees. In large part, ICE detention centers already had sufficient standards that were in keeping with national detention guidelines established by nationally recognized accreditation associations. Problems in ICE detention facilities arose when those guidelines were not followed, a byproduct of mismanagement and inadequate oversight by ICE. In our opinion, without proper management and oversight of contractors to ensure standards are followed, new standards do not equate to improvement.

Regarding union involvement in the new detention reforms since the 2009 hearing, there was none. Janet Napolitano and John Morton actively sought for over three years to exclude their own employees from any and all participation or input in the new detention reforms; the most anti-union and anti-federal law enforcement campaign we have witnessed. As employees, we were shocked and embarrassed by the actions of both individuals. On October 15, 2010, ICE Director John Morton signed an agreement regarding the new detention standards sent to AFGE National President John Gage agreeing that ICE would engage the union in interest based bargaining, a type of bargaining that lends itself to an open discussion of issues. When the agency and union met to bargain, ICE Director Morton and his staff broke the agreement and refused to bargain with the union. Members of the Federal Mediation and Conciliation Service, as well as the Federal Service Impasses Panel were called upon. Both informed ICE leadership that they must bargain with the union. ICE utilized stalling tactics to prevent bargaining of the new detention standards during the two week negotiation session.

Now that ICE had successfully avoided bargaining with the union during the first negotiation session, John Morton and his staff notified the union that the policy was to be dropped altogether. We suspect that this was done in an attempt to permanently nullify the original agreement Director Morton signed with AFGE President John Gage to bargain with the union. The tactic was simple, if the new detention standards policy was taken off the table completely,

Morton's agreement with the union to utilize interest based bargaining would die with it. Keeping in step with that strategy, Director Morton later reinstated the new detention standards policy under a new notice to the union, but this time refused to utilize interested based bargaining as previously agreed to. By breaking the original agreement with the union and refusing to engage in interest based bargaining, Director Morton knowingly decreased the union's ability to provide input by approximately 95%. But it did not end there.

In October 2011, after approximately three years of mismanaged efforts to change ICE detention standards, a project that should have taken no more than a year, John Morton and his staff notified the union that the new detention standards policy had to be bargained by January 1, 2012. The union scrambled to meet the timelines, submitting an incomplete list of 224 proposed changes. ICE accepted the proposals but when the parties met to negotiate the new detention standards ICE determined that it wanted to bargain a different policy instead. In good faith, the union agreed to bargain a different policy with a commitment from John Morton and his staff that the new detention standards would be bargained on another date. On January 20, 2012, ICE notified the union that all of its proposals, which had previously been accepted by ICE and scheduled by ICE for bargaining in November 2011, were now determined unilaterally by ICE to be non-negotiable with no discussions with the union or a third party, so the new detention standards were implemented by ICE Director John Morton immediately with no union involvement.

Important to note, had the union refused to bargain a different policy in November 2011 and insisted that the detention standards be bargained, the union would have secured many of its bargaining rights. Instead, when ICE asked for our assistance in completing a different policy it needed to implement, the union obliged and completed the policy in short order. DHS Secretary Janet Napolitano and ICE Director John Morton repaid the favor by breaking yet another agreement and deceptively excluding the union from bargaining the new detention standards altogether, stripping the union and federal law enforcement officers of their part in this process as American citizens. The three year exclusion of the union in the creation of new ICE detention standards cannot be justified and flies in the face of the Presidential Executive Order 13522, signed by President Barack Obama which states in part, "*allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106.*"

ICE has now notified the union that it will not even engage the union in post implementation bargaining of the new standards for the purpose of developing adequate training programs for officers and ensuring appropriate officer safety protocols are in place. It is apparent that those representing the safety, health and wellbeing of federal officers and their families will not be heard by this Administration.

**Detainee Populations**

In 2009, ICE announced its goal of having a nationwide detainee population consisting of at least 85% to 90% convicted criminals within 12 months. Currently, while not every ICE detainee is a convicted criminal, ICE has moved toward a "conviction only" model and stressed publicly its desire to arrest the "worst of the worst." Clearly, any efforts that increase targeting of the most violent criminals will result in a more violent, aggressive and overall dangerous detainee population in ICE facilities nationwide. ICE officers around the nation believe that is exactly what is happening.

As officers, we are concerned that as detainee populations become more criminal in nature and violence by detainees appears to be on the rise, security protocols within ICE facilities appear to be weakening. While the purpose of ICE detention may not be punitive in nature, one cannot ignore the dangers associated with holding large numbers of criminals against their will pending removal. For that reason, the Administration should be working with the union to increase security and safety protocols in conjunction with new changes to ICE detention standards and detainee populations - but the Administration is not. It is the union's opinion, that if left unchecked, the Administration's actions will defeat many of its own stated goals by creating a more dangerous detention system resulting in injury to ICE detainees, ICE officers and contract employees.

**Assaults against officers**

Approximately one year ago ICE leadership divulged to union representatives that assaults against officers and escape attempts were up significantly, doubling numbers from the previous year. While data supporting these claims is not available to employees or the union, the union had already observed what appeared to be a steep increase in both violence and aggression by detainees against officers as well as escape attempts.

A push by the Administration to change detention standards and create a more criminal detainee population has been accompanied by no measures to increase safety for ICE officers and contractors. In fact, the trend has been to knowingly make conditions more dangerous in the face of valid concerns voiced. Attempts by the union to discuss stronger safety precautions for ICE officers and agents have been met with strong opposition by ICE. ICE and DHS appear to have a singular concern for working with immigrant's advocacy groups, and no concern for working with unionized federal law enforcement officers, as shown by the DHS/ICE exclusion of union involvement in detention reforms.

ICE currently has no national reporting system accessible to employees for reporting detainee assaults against officers, and no national training exists to guide officers on reporting assaults. It is hard to imagine that such an inexpensive measure so fundamental to the safety of employees is

not already in place. As a result, many assaults go unreported as officers are not provided guidance on reporting assaults, and managers may unilaterally determine not to report assaults through the chain of command for varying reasons, such as when mismanagement or low staffing are contributing factors. Perhaps most importantly, trends or "lessons learned" are not identified, tracked or shared nationally that could prevent future assaults or allow individual officers or the agency as a whole to better prepare. The gathering, sharing and utilization of this type of internal intelligence is critical to officer safety and practiced by almost every legitimate law enforcement agency in the nation, except ICE. Our concerns for officer and detainee safety should be the Administration's concerns; it is troubling that they are not.

**No Criminal Background Screenings of Visitors**

New ICE detention standards provide no criminal background screening of visitors before they enter an ICE detention facility. Background screenings of visitors are standard practice at most detention facilities throughout the nation, to include those run by the U.S. Bureau of Prisons. Without appropriate screening, ICE will unknowingly permit convicted felons, wanted fugitives, and other individuals who pose a security threat to the facility, or a safety threat to employees and detainees, to enter ICE facilities. Conducting background checks of visitors is a long held and proven law enforcement security practice established by other agencies in their facilities to establish safety, security and good order. To ignore these protocols blatantly and negligently places the lives of ICE detainees and ICE employees at risk and compromises the overall security of ICE facilities, which often hold large numbers of violent and aggressive criminal detainees who pose a significant threat to communities if able to escape. Some of course may also have terrorist ties, as may their unscreened visitors.

In discussions with ICE leadership, ICE stated that it was concerned that aliens attempting to enter ICE facilities would be identified as being in the U.S. illegally during background screenings and would therefore be subject to arrest or otherwise unable to enter the facility. ICE was more concerned with preserving the ability of foreign nationals illegally in the U.S. to enter ICE facilities than the safety of its own officers and the general security of ICE detention facilities and communities nationwide.

It is my understanding that all facilities and camps utilized by the U.S. Bureau of Prisons (BOP) require, among other things, that each person entering a BOP facility first pass a criminal background screening. We ask that members of Congress support us in instituting similar security protocols in ICE detention facilities.

**ICE Prohibition on Strip Searches**

A "pat down search," is a technique developed primarily for law enforcement officers making arrests on the street enabling the detection of weapons and other dangerous items and providing for immediate and short term officer safety until a more thorough search can be conducted in a secure and private location. Pat down searches may also be utilized in some facilities during the

initial intake process in semi-public areas, but consistently are followed by strip searches in a private location before the individual enters the facility's detainee/prisoner population. While for the most part effective in detecting most weapons, pat down searches do not detect all weapons and can be highly ineffective in detecting all manner of miscellaneous contraband such as controlled substances. Throughout law enforcement, strip searches of those admitted to detention facilities, jails and prisons is standard practice and is considered essential in preserving life and safety.

While assaults against ICE officers appear to be increasing and the Administration pushes ICE to detain the most violent and dangerous criminals citing a goal of 100% convicted criminal populations, new ICE detention standards establish the highly ineffective pat down searches as the standard search for ICE detainees prior to their admission to an ICE facility, not strip searches, creating the opportunity for unprecedented levels of smuggled weapons and drugs to enter ICE facilities placing the lives and safety of ICE officers, contractors and detainees at greater risk than ever before.

ICE officers and contract staff are prohibited from conducting strip searches of detainees entering ICE facilities unless the officer can meet and articulate the law enforcement standard of "reasonable suspicion." Reasonable suspicion was not intended to and cannot effectively be applied to individuals smuggling small items into a detention setting on their bodies, under clothing, that is not visible and cannot be felt by touch. Reasonable suspicion when applied to the smuggling of well concealed contraband into ICE facilities will generally require an allegation or admission by a detainee that a specific detainee is smuggling contraband. Otherwise the presence of contraband must be so obvious that it is visibly detected or easily felt during pat down searches. In discussing reasonable suspicion, the new ICE detention standards state, "*No simple, exact or mathematical formula for reasonable suspicion exists*," clearly identifying it as an impractical and ambiguous standard to meet. Security protocols protect lives and cannot rely on concepts that are impossible to qualify.

Even with strict requirements at most state and federal facilities that officers conduct thorough pat down searches of prisoners prior to entering a detention facility, strip searches routinely result in the detection of weapons, drugs and other contraband missed by officers during thorough pat down searches.

Important to note, new ICE detention standards also establish limited prohibitions on strip searches following full contact visitation with the public, to include attorneys, legal assistants, consular officers or "accredited representatives," automatically assuming that any of these groups are less prone to smuggle contraband simply based on their positions as detainee representatives. As just one example, a recent article in the USA TODAY titled, *"Strippers pose as legal aides at detention center,"* reports that strippers hired by drug lords posed as legal assistants and were able to enter a maximum security federal detention center. Once inside, the

imposters committed various improper acts and allegedly smuggled money and pornography to detainees.

It is the union's opinion that new prohibitions on strip searches ignore sound and proven detention practices utilized nationwide and we ask members of Congress to support us in changing this standard. In order to preserve life and safety inside ICE detention centers for detainees and officers, strip searches following full contract visitation or upon initial admission or reentering a detention facility must be the nationwide standard in ICE detention facilities as it is in other organizations such as the U.S. Bureau of Prisons. Strip searches are not a punitive action in any organization, but instead a proven safety and security technique. As ICE detainee populations become increasing more dangerous, forcing ICE employees to adhere to a separate and hazardous standard is at best unethical and inappropriate.

**ICE Detainees May Observe Searches**

New ICE detention standards allow for detainees to observe ICE officers and contractors as they search detainee housing and work areas as well as when officers search personal items contained within those areas.

Generally, searches are conducted by one officer searching housing units that contain more than one detainee. Officers cannot safely search and inspect housing and work areas and monitor detainees at the same time, even if only one detainee is present. Most importantly, however, when detainees observe officer searches they are also able to monitor and learn officer search techniques allowing them to better conceal contraband such as weapons and controlled substances within the facility.

**Medical, Dental, Mental Health, Substance Abuse and Suicide Screenings for Detainees to be performed by ICE officers**

New ICE detention standards allow for "detention officers" to perform initial medical, dental and mental health screenings of detainees to be conducted within 12 hours of arrival. This will include detention officers questioning and observing new detainees with regard to emergent medical conditions, mental illness and propensity for suicide, as well as reliance on and potential for withdrawal from mind and mood altering substances. Detainees responding in the affirmative to any of these conditions will see a qualified, licensed health provider no later than two working days from the time of the initial screening. Of course medical attention within two working days is solely dependent on "detention officers" properly recognizing and reporting suspected conditions.

If interpreted correctly, new ICE detention standards prevent detainees with potentially serious mental, medical or dental issues from seeing qualified medical staff for 36 hours or more after being placed in detention. Most concerning, under the new ICE detention standards ICE officers

and agents will now perform medical screenings and evaluations regarding matters of life and death typically reserved for highly trained medical professionals.

This standard, as with others is blatantly negligent and places ICE detainees at risk. It is the union's position that the only responsible approach is that these types of duties be performed by medical professionals.

**Conclusion**

As a union and as federal law enforcement officers we do not oppose public outreach as a part of policy development, but we do point out that such approaches are unbalanced and ineffective when law enforcement officers who perform the duties and are familiar with current practices, facilities and equipment involved are prohibited from providing input as well. New detention standards proposed by ICE are unsafe; unsafe for detainees and unsafe for employees. Good intentions do not make for sound security and do not create a safe detention setting. In addition to many parts of the new standards being unsafe, the policy is littered with ambiguous statements and titles that require clarification so that officers and managers in the field can successfully implement and follow the new guidelines and clearly understand the different roles of contractors, managers, officers and agents. As ICE is consistently criticized for not following its own policies, training programs for ICE officers will be critical to ensuring policies are understood and adhered to in the field. For years ICE leadership has refused to provide adequate training for officers, a far reaching problem that the union is attempting to rectify. Without union involvement, training for the new detention standards will amount to nothing more than "checking a box" resulting in officers not being familiar with new standards and therefore not following them.

If the Administration is only concerned with implementing a policy for political purposes it will move forward with the new detention standards as is. If the Administration is concerned with providing a safe detention setting for detainees and safe working conditions for employees it will work with the union in achieving those goals.

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