



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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DEPARTMENT OF HOMELAND SECURITY**

Regarding a Hearing on

“Oversight of U.S. Immigration and Customs Enforcement”

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY**

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INTRODUCTION

Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee, thank you for the opportunity to appear before you today. I welcome the opportunity to discuss where U.S. Immigration and Customs Enforcement (ICE) has made progress over the past year, what challenges still remain, and what we are doing to continue our efforts to carry out ICE's critical mission efficiently and effectively.

I am very proud to represent the dedicated men and women of ICE charged with investigating and enforcing a multitude of complex federal laws governing border control, customs, trade, and immigration. ICE has approximately 20,000 employees in all 50 states, the District of Columbia, three U.S. territories, and strategically stationed positions in 46 foreign countries. Without question, the work conducted by our staff is extraordinary. In fact, on an average day, the men and women of ICE contribute to the arrest of 4 human traffickers, 7 child predators, 279 criminal aliens, and the removal of 645 aliens. Each day, ICE initiates 8 new sensitive technology investigations, blocks 3,055 malware attacks, and forensically processes 17 terabytes of data. We manage more than 6,500 active legal cases on an average day, obtain 5 convictions for human smuggling, and complete 3 removal flights carrying dozens of individuals.

Given our young age as an agency, many Americans are still trying to understand all that ICE does to promote homeland security and protect our communities. Because of this, I have committed time and energy to increasing engagement – with the communities we serve, with the ICE employees who deserve to be recognized for their important work, and with Congress. Today I would like to discuss some of the important, but sometimes unrecognized, homeland security work ICE personnel perform, the areas where we have made progress, and what ICE needs to keep working on.

ENGAGEMENT AND OUTREACH

As Director, effective employee engagement is vital to ICE's success and a top priority for me. ICE could not carry out its homeland security mission without the hard work and talent of its 20,000 person workforce. My goal has been to ensure each of our employees has a voice, they are heard, mentored, feel empowered, are part of a larger team, and are recognized for their contributions our mission, agency, and country. That means listening and receiving input from the employees, and communicating our mission and priorities clearly. To date, I have visited 65 offices in 33 cities and 11 countries, with more planned over the next several months. More importantly, I believe these employee engagement efforts are helping, as there are indicators morale is improving.

Developing and maintaining collaborative partnerships with external stakeholders – state and local law enforcement agencies, elected officials and the Congress, professional groups, and non-governmental organizations – is equally important. It helps foster trust and increase understanding of ICE policies and programs. To that end, this past March, I announced efforts to hire more than two dozen community liaisons as part of an initiative aimed at increasing local community engagement across the country. These community relations officers – 14 of whom are on the job today – coordinate with state, local, and tribal law enforcement to identify

community challenges and explain partnership services that ICE can provide to meet those challenges, strengthen and build relationships with state and local elected officials so they are better able to understand ICE's mission and resources, and facilitate the resolution of complaints, inquiries, and referrals from a variety of internal and external stakeholders. The Office of Community Engagement will communicate ICE priorities to stakeholders and assess stakeholder needs, develop engagement measurement and reporting mechanisms, and coordinate with ICE's Offices of Public Affairs and Congressional Relations as the agency works on critical issues. I am confident that the thoughtful and regular engagement ICE undertakes with all of its external stakeholders will serve to better inform the public about the important work we do.

Over the past year ICE, with the Department of State (DOS) has, increased its engagement with foreign governments, particularly those nations that are recalcitrant in accepting their nationals ordered removed from the United States. Working with DOS, ICE has ramped up its efforts to improve the cooperation of recalcitrant countries. In addition, ICE is actively engaging to improve cooperation with regards to the removal process in an additional 62 countries. In April, May, and July 2016, I sent letters to DOS to explore additional options regarding cooperation from Guinea, Cuba, Liberia, China, Afghanistan, Mali, and the Gambia. ICE, along with DOS, has also been more active in meeting with foreign governments to try to improve cooperation. For example, on April 28, 2016, the Assistant Secretary for Consular Affairs, Michele Bond and I met with the Ambassador of Guinea to encourage Guinea to be more compliant with the issuance of travel documents. We also met with the Chinese Ambassador to the United States this past July. In August, I met with both the Salvadoran Ambassador to the United States and El Salvador's Foreign Minister to discuss delays in travel document issuance and met with Guatemala's president to pave a way forward for expansions to the repatriation reception center in Guatemala City.

Since December 2015, ICE has sent so-called Annex 9 letters—letters that draw attention to applicable standards promulgated by the International Civil Aviation Organization (ICAO) in Annex 9 to the Convention on International Civil Aviation regarding the issuance of replacement travel documents for nationals with final orders of removal, and that encourage ICAO member states to comply with those standards—in 151 cases, to 23 countries, including Gambia, China, Liberia, and El Salvador. While there is still work to be done in this area, ICE has made some progress recently. As of September 13, 2016, the Government of Somalia issued travel documents for the removal of approximately 150 Somalian nationals and the Government of Liberia has issued travel documents for the removal of approximately 37 Liberian nationals. On August 18, 2016, ICE successfully executed a Special High Risk Charter flight to Guinea removing eight Guinean nationals. The charter to Guinea was the first to occur in recent years, and Guinean officials have expressed a willingness to sign a repatriation Memorandum of Understanding. This fiscal year, ICE has conducted 27 Special High Risk Charter flights, a record, which includes flights to 16 new countries due to continuing efforts to repatriate nationals.

KEY CRIMINAL INVESTIGATIVE OPERATIONS

Terrorism remains one of the most significant threats U.S. law enforcement faces in protecting the homeland. Homeland Security Investigations (HSI) is the second largest presence

of federal agents to the Federal Bureau of Investigation-led Joint Terrorism Task Forces (JTTFs), which benefit from our agents' investigative expertise and broad enforcement authorities. ICE will continue to participate in more than 100 JTTFs supporting and complementing counterterrorism investigations with ICE's unique immigration and trade-based authorities. Last year, 34 percent of the JTTF's disruptions of potential terrorist activity involved the use of ICE's unique law enforcement authorities.

Counterterrorism and criminal investigative efforts seek to prevent terrorists and other criminals, such as human rights violators, from exploiting the nation's immigration system. ICE's overstay analysis efforts provide timely, relevant, and credible information on entry, exit, and immigration overstay status of visitors to the United States in order to enhance security, to facilitate legitimate trade and travel, and to ensure the integrity of the immigration system, as well as to protect the privacy of visitors.

ICE maintains a robust international footprint to work with foreign counterparts to mitigate threats to public safety and national security through investigative activity, and expand our relationships worldwide. ICE's international relationships and operations serve a number of important functions beyond the repatriation of foreign nationals. ICE currently deploys approximately 250 Special Agents, 11 Deportation Officers, and 176 support staff to 62 offices in 46 countries.

There are hundreds of foreign law enforcement officers that comprise Transnational Criminal Investigative Units (TCIUs) and International Taskforce units. The TCIUs are vetted, U.S. trained at Federal Law Enforcement Training Centers, and multi-disciplinary units primarily comprised of foreign prosecutors and national/federal police. The teams also include foreign customs, immigration, and intelligence officials. TCIUs provide operational support to ICE personnel stationed overseas in support of domestic and international investigations and operations in compliance with host country laws, agreements, treaties, and U.S. mission policies. ICE provided training to TCIUs from Mexico, Colombia, Panama, El Salvador, Guatemala, the Dominican Republic and Honduras at the Federal Law Enforcement Training Center during Fiscal Year (FY) 2015.

In FY 2015, ICE trained a total of 618 foreign law enforcement personnel from Mexico, Guatemala, El Salvador, Honduras, and Panama in an effort to promote the rule of law and provide each country's law enforcement personnel additional capacity to combat organized smuggling. Further, *Operation Citadel* resulted in 210 criminal arrests, the rescue of 51 unaccompanied children, the seizure of \$2,078,988 from illicit currency movements, 2,133 biometric enrollments, and the initiation of 68 additional criminal investigations. Our efforts continued in 2016 with similar results. Crucial to the success of this ninety-day investigative operation was the interagency support provided by U.S. Customs and Border Protection (CBP); the U.S. Coast Guard; the U.S. Drug Enforcement Administration; and the Departments of Justice, Defense and State.

ICE strives to protect our nation's homeland security wherever threats confront us. One of our most important priorities is to detect and deter threats before they reach our nation's borders. The Homeland Security Act of 2002 authorizes the deployment of Department of

Homeland Security (DHS) officers to diplomatic posts to perform visa security activities and provide advice and training to DOS consular officers. This critical mission is accomplished by the Visa Security Program (VSP). VSP's primary purpose is to identify terrorists, criminals, and other individuals who are ineligible for visas prior to their travel or application for admission to the United States.

The visa adjudication process is often the first opportunity to assess whether a potential visitor or immigrant poses a threat to our country. Furthermore, the visa adjudication process is an ongoing and continuous vetting process that searches for derogatory information on applicants. No visa recipient is granted admittance based on a single review point.

Visa security is an important and collaborative function, shared by both DOS and DHS, including ICE, CBP, and U.S. Citizenship and Immigration Services (USCIS). Our components constantly seek to enhance our systems and processes to improve visa security efforts. Through the Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) initiative, we conduct automated screening of visa application information against DHS holdings, as well as holdings of other U.S. agencies, prior to the applicant's interview and visa adjudication. The process includes in-depth vetting of applicants identified as potentially having derogatory information who may be of investigative interest, or ineligible to receive U.S. visas. PATRIOT takes a risk-based approach and uses interagency resources from ICE, CBP, DOS, and the Intelligence Community to identify national security and public safety threats.

VSP differs from most other U.S. Government screening efforts in that it leverages its capabilities, such as in-person interviews and working collaboratively with U.S. agencies at post, to investigate suspect travelers, enhance existing information, and identify previously unknown threats instead of simply denying visas and any potential travel. We saw similar numbers in FY 2015 and FY 2016 where each year, VSP reviewed over two million visa applications, contributing input to approximately 8,600 cases in which visas were refused. Of these refusals, over 2,200 applicants per year had some known or suspected connection to terrorism or terrorist organizations.

In addition, VSP enhances visa vetting by increasing automated data exchange between DOS and the CBP National Targeting Center (NTC), which provides tactical targeting and analytical research to prevent terrorists from entering the United States. The flow of online visa information to DHS systems is now automated and information is sent back to DOS using an automated interface.

ICE also deploys personnel to the NTC to augment and expand current operations, and the co-location of personnel helps increase both communication and information sharing. The NTC conducts pre-departure vetting of all travelers on flights bound for the United States. This vetting identifies high-risk passengers who should be the subject of no-board recommendations to carriers, including those whose visas are later revoked.

Within VSP's international footprint, we deploy specially trained agents overseas to screen and vet visa applications at high-risk locations, augmenting vetting mechanisms in place worldwide in order to enhance efforts at these critical posts to identify potential terrorist and

criminal threats before they enter the United States. ICE accomplishes this crucial function by conducting targeted, in-depth reviews of individual visa applications and applicants prior to visa issuance, and making recommendations to consular officers to refuse or revoke visas when warranted. ICE actions complement the consular officers' screening, applicant interviews, and reviews of applications and supporting documentation. As a result of additional congressional funding, we expanded VSP operations in FY 2015 and are adding additional posts in FY 2016.

Additionally, DHS' role in the visa screening process does not end at the visa screening units. Rather, government screening efforts continue to examine visa holders before and during their authorized travel to the United States. For example, should a visa traveler match derogatory information within government holdings, DHS and DOS work collaboratively to determine if the information warrants DOS revocation of his/her visa regardless of whether the individual is outside or inside the United States, thereby denying him/her any further travel access to our country. DHS also strives to ensure that only authorized visitors are entering the country, and DHS components actively share with each other information gathered about admissibility indicators, intelligence records and additional information retrieved from travelers interviewed at secondary inspections stations at the ports of entry.

ICE also performs critical work combatting human smuggling, human trafficking, online child exploitation, and transnational criminal organizations (TCOs). Notably, in FY 2015, our investigations led to the disruption or dismantlement of approximately 239 TCOs. ICE made more than 33,000 criminal arrests, including more than 3,500 transnational gang members. ICE also seized more than 1.08 million pounds of narcotics, 1,479 seizures for violations of U.S. export laws and regulations, and nearly \$513 million in currency and monetary instruments. Additionally, ICE identified and assisted more than 2,300 crime victims, including 384 human trafficking victims and more than 1,000 child exploitation victims.

One of the top investigative priorities for ICE is human smuggling and trafficking, for which ICE possesses a full range of investigative and border-related authorities. Human smuggling is a transportation-based crime that violates the integrity of the border and the immigration system. Human trafficking, on the other hand, is a crime against a person involving the exploitation of an individual, and is often referred to as modern day slavery.

In response to the sudden influx of unaccompanied children in the summer of 2014, ICE initiated *Operation Coyote*, which was designed specifically to stem the flow of Central America illegal migration, including that of unaccompanied children, by targeting the human smuggling organizations that facilitate these illegal activities. We deployed personnel to strengthen capacity for conducting human smuggling investigations and enforcement actions, and to monitor international conditions to enable targeted responses to the influx.

To build upon its early investigative accomplishments, we expanded the initiative not only across the country, but worldwide, to harness all investigative activity related to the smuggling of Central Americans into the United States. On March 23, 2015, ICE commenced *Operation Coyote 2.0*, which further evolved and enhanced our overall human smuggling strategy. In FY 2015, the operation resulted in 837 criminal arrests, 706 indictments, and 618 convictions related to human smuggling investigations.

As part of our overarching efforts to combat human smuggling, ICE leads two interagency initiatives: the Human Smuggling Cell (HSC) and Operation Citadel. The HSC created an innovative model that synthesizes the four pillar disciplines of Investigation, Interdiction, Intelligence, and International Engagement from DHS component agencies in investigations involving criminal networks. The HSC harnesses DHS's unique access to immigration, border, and financial data to develop information on individuals or organizations involved in human smuggling. It also develops and distributes intelligence products on human smuggling.

In summer 2015, ICE led an interagency effort focused on human smuggling in Colombia, Panama, Guatemala, Honduras, and El Salvador under *Operation Citadel*. This operation, coordinated with TCIUs in the region, focused on partner nation capacity building and training with real-time intelligence, interdiction, and investigative operations at international seaports, airports, land borders, and other locations. *Operation Citadel's* operational and intelligence efforts supported our domestic investigations and the dismantlement of several large-scale transnational criminal organizations involved in human smuggling.

As part of ICE's ongoing human smuggling investigations work in South and Central America, this past July, *Operation Mesoamerica* culminated with the arrest of 41 individuals linked to TCOs. Evidence gathered during the investigation revealed that TCOs in Panama, Costa Rica, Honduras, and El Salvador worked to smuggle individuals from Asia, Africa, Europe and the Middle East through South and Central America. The multilateral operation demonstrated that the international community can work together in a united front against criminal networks involved in human smuggling.

While combatting human trafficking, ICE has fully committed to a victim-centered approach to its investigations in which the identification, rescue, and needs of the victims are equal in value to the apprehension and prosecution of traffickers. We investigate various forms of human trafficking, including sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the victim is a minor; and labor trafficking, in which the victim is forced or coerced into labor against his or her will.

ICE is committed to the DHS Blue Campaign; the Department's unified voice to combat human trafficking. Working in collaboration with law enforcement and non-governmental organizations, the Blue Campaign strives to protect victims of human trafficking and to bring those who exploit human lives to justice.

ICE is also dedicated to its efforts to combat child sexual exploitation. The Human Exploitation Rescue Operative (HERO) Corps is a program developed by ICE and U.S. Special Operations Command (SOCOM) in conjunction with the National Association to Protect Children (PROTECT). The HERO Corps program, which began in 2013, marked the first time ICE, PROTECT, and SOCOM joined forces to combat child sexual exploitation. The cooperative private-public partnership that has made the HERO Corps program such an enormous success is an example of inter-agency collaborative efforts. Partnerships are critical in the fight against child sexual abuse and exploitation and the identification and rescue of victims.

The HERO Corps is a program designed to train, equip and embed wounded, injured and ill military veterans into a one-year computer forensic internship within law enforcement offices around the country. HEROs attend three weeks of training provided by PROTECT and eight weeks of digital forensics and child exploitation investigation training at our Cyber Crimes Center (C3). Upon successful completion of both training courses, the HEROs are deployed to our field offices for the remaining 10 months of the internship program. To date, 115 individuals have entered the HERO Corps Program, four classes of graduates (a total of 64 students) have completed the entire process, and an additional class is scheduled for graduation on October 14, 2016.

The key to the success of the HERO program are the individual heroes: the military veterans who have been selected to serve in the HERO Corps have been tried, tested and proven as America's finest warriors, many of whom were wounded in the line of duty. In their military careers, these veterans were engaged in the critical mission of protecting and defending the nation. They've transformed that same level of dedication toward another critical mission—protecting and defending innocent children. These heroes align with ICE in one of our highest mission priorities—the pursuit and arrest of child sexual predators.

IMMIGRATION ENFORCEMENT PROGRESS AND CHALLENGES

ICE's nearly 6,000 Enforcement and Removal Operations (ERO) law enforcement officers promote national security, public safety, and border security by identifying, arresting, detaining, and removing individuals from the United States consistent with the following DHS enforcement priorities.

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

I remain firmly committed to enforcing our immigration laws effectively and sensibly. However, ICE's immigration enforcement efforts continue to face a number of significant challenges. As this committee knows well, ICE continues to respond to the continued trend of family units and unaccompanied children who are apprehended while attempting to illegally cross the Southwest Border into the United States. We continue to address this humanitarian and border security issue in a manner that is comprehensive, coordinated, and humane. While ICE is only one of several agencies involved in the processing of unaccompanied children and families pursuant to its statutory responsibilities, it plays a critical role by quickly and safely transporting unaccompanied children from CBP custody to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), transporting families to ICE custody at

family residential centers, placing eligible adult family members on alternatives to detention, and effectuating removal orders as appropriate following the conclusion of immigration proceedings.

As the Committee is also aware, DHS has refined its immigration enforcement priorities to focus on the most serious public safety and national security threats as well as recent border crossers. The revised priorities have intensified ICE's focus on removing convicted criminals as well as other public safety threats, national security threats, and recent border entrants. ICE's FY 2015 removal statistics illustrate our commitment to ensure individuals who pose a threat to public safety are not released from ICE custody, and our review processes demonstrate ICE's commitment to public safety.

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

In FY 2015, ICE conducted 235,413 removals: 59 percent of all ICE removals, or 139,368, were previously convicted of a crime, and 98 percent of all ICE removals met one or more of ICE's stated civil immigration enforcement priorities. Of the 96,045 individuals removed who had no criminal conviction, 94 percent, or 90,106, were apprehended at or near U.S. borders or ports of entry. The leading countries of origin for removals were Mexico, Guatemala, Honduras, and El Salvador. While the FY 2016 end-of-year numbers are not yet available, I've seen a similar trend in FY 2016 for priority removals as we maintain our focus on meeting DHS enforcement priorities.

ICE promotes and implements ongoing national operations conducted including *Operation Cross Check*, which targets at-large criminals convicted of violent offenses, or members of transnational criminal gangs. *Operation Sex Offender Alien Removal (SOAR)* builds on ICE's ongoing efforts to target egregious criminal aliens convicted of sex offenses and remove them from communities. Targeted arrests of sex offenders are conducted as parts of SOAR surge operations, as well as part of our daily enforcement operations.

ICE remains committed to implementing safeguards to ensure that any releases from its custody—either mandated by case law or authorized by the Immigration and Nationality Act (INA)—are executed in a way that promotes public safety and protects our communities. As the Committee is aware, in March 2015, ICE instituted additional safeguards, including enhanced supervisory approval for discretionary releases of certain categories of criminal aliens. ICE created a panel of senior managers to review discretionary release decisions for individuals convicted of crimes of violence to ensure compliance with supervisory approval requirements. In February 2016, ICE also signed a Memorandum of Understanding (MOU) with the Department of Justice (DOJ) Bureau of Prisons (BOP) regarding the transfer of criminal aliens from BOP custody. The MOU provides ICE with priority to make custody decisions, when both ICE and a state or local jurisdiction have lodged a detainer. Finally, ICE is committed to ensuring detention capacity is not used as a determinative factor in the release of an individual

with a serious criminal record. ICE will continue to manage its nationwide detention system to ensure that field offices have access to sufficient beds to detain individuals posing a public safety threat until removal.

One example of ICE's commitment to enforcing immigration law in a way that prioritizes public safety is the Law Enforcement Notification System (LENS). LENS promotes transparency and maximizes public safety through electronic message transmission to state law enforcement partners, for appropriate distribution to local law enforcement agencies, regarding subjects being released from ICE custody who have been convicted of sex offenses or violent crimes. ICE completed nationwide deployment of LENS in September 2015 and completed deployment of a second generation LENS system in August 2016 allowing local law enforcement agencies to directly subscribe to the system without interfacing with a state-level agency.

A significant factor continuing to impact ICE operations has been the number of state and local law enforcement jurisdictions limiting or declining cooperation with ICE. Secure Communities drew criticism from communities, was widely misunderstood, and became embroiled in litigation. Many counties and cities across the country stopped holding individuals on immigration detainers to avoid potential liability. When state or local law enforcement agencies decline to securely transfer removable convicted criminals or public safety threats to ICE custody, the agency must expend additional resources to attempt to identify, locate, and arrest these individuals at-large. Not only does this create a time period in which the dangerous individual is not in custody, thereby putting the public at risk, but it is also a significantly more resource intensive and dangerous way to do business for my deportation officers.

To address these problems, the Department created the Priority Enforcement Program (PEP). Our objective with PEP is to focus on convicted criminals and other priority aliens who pose a threat to public safety—including felons, significant/repeat misdemeanants, and criminal gang participants—by working with state and local law enforcement to take custody of these dangerous individuals before they are released into the community. ICE is committed to working with all jurisdictions that are interested in partnering with us. In cooperative jurisdictions, ICE can also facilitate the transfer of priority aliens whose records fall outside the specific parameters of PEP, and whose removal would serve an important federal interest.

For the past year, DHS, through ICE, conducted a nationwide effort to implement PEP and promote collaboration by reaching out to thousands of local law enforcement agencies and government officials. The agency's Field Office Directors have provided briefings about the program to more than 2,000 law enforcement jurisdictions. Notably, most of the top 25 jurisdictions in terms of previously declined detainers have now agreed to participate in PEP by accepting ICE requests for notifications and detainers.

As ICE continues to strengthen and improve relationships with state and local law enforcement partners, we remain hopeful that more of our law enforcement partners will join us and participate in PEP, keeping our communities safer and decreasing the risk to both communities and ICE officers who would otherwise need to locate these individuals at-large.

I would also like to highlight our continued efforts in locating and arresting priority aliens in non-custodial settings. Each and every day, deportation officers seek and arrest criminal aliens and other enforcement priorities. Our officers continue to accomplish their mission with accuracy, consistency, and professionalism. Recently, in accordance with a congressional appropriation, we established 10 Mobile Criminal Alien Teams (MCATs) in ICE field offices to augment Fugitive Operations teams. The MCATs will conduct targeted, at-large field enforcement activities designed to investigate, locate, and arrest priority aliens for removal from the United States. One key responsibility of these teams is to locate and arrest convicted criminals who were released because detainers or requests for notification were not honored. ICE also created the “Fugitive Alien Removal (FAR)” program, which encompasses ICE’s efforts to identify, locate and arrest foreign fugitives—removable aliens wanted for, or convicted of, crimes committed abroad, including murder, kidnaping and rape—who are at-large within the United States.

While we have made significant progress in the last year, a number of other factors have also affected ICE’s ability to efficiently and effectively remove priority aliens.

Changing demographics have significantly impacted our removal operations. As unauthorized border entries by Mexican nationals continue to decrease, those by Central Americans—especially unaccompanied children and family units—have increased. In general, more time, personnel, and resources are required to complete the removal process for nationals from Central America and other non-contiguous countries when compared to Mexican nationals apprehended at the border. This is because removals of non-Mexican nationals usually require ICE to use additional detention capacity, expend more time and effort to secure travel documents from the host country, and arrange air transportation to remove these individuals to their country of origin. Additionally, many Central American nationals are seeking protection as asylees fleeing persecution. Such cases require careful adjudication by USCIS in order to ensure that individuals are given an opportunity to seek humanitarian relief if they are eligible. Of course, these cases take longer to process.

As Secretary Johnson and I have repeatedly said, we will enforce the law consistent with our priorities, values, and basic principles of decency, fairness, and humanity. However, it is important to make clear that our borders are not open to unauthorized migration. Once an individual receives a final order of removal and has exhausted all his/her legal remedies for relief, detention is an important tool in effectuating timely removals.

As I noted earlier, the removal process is also impacted by the level of cooperation offered by our foreign partners. As the Committee is aware, in order for ICE to effectuate a removal, two things are generally required: (1) a final order of removal or grant of voluntary departure, and (2) a travel document issued by a foreign government. Although the majority of countries accept the timely return of their citizens, ICE suffers from unique challenges with countries that are recalcitrant regarding the repatriation of their nationals. ICE works with the Department of State to consistently engage government officials in these countries when feasible. Additionally, the decision of the U.S. Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), creates challenges in the removal process for individuals from these countries. Pursuant to *Zadvydas*, ICE has the authority to detain individuals subject to a final order of

removal for 180 days from the date the removal period begins. Generally speaking, after 180 days, continued detention of those with final orders of removal is permitted only when removal is significantly likely in the reasonably foreseeable future, with very limited exceptions that are the subject of litigation.

ICE considers 23 countries to be recalcitrant, including Afghanistan, Algeria, the People's Republic of China, Cuba, the Gambia, Iran, Iraq, Libya, Somalia, and Zimbabwe. As a result of their lack of cooperation, ICE has experienced significant hindrance in its ability to remove aliens from these countries. ICE is also closely monitoring an additional 62 countries with strained cooperation, but which are not deemed recalcitrant at this time. Due to challenges regarding the repatriation of nationals from these countries, ICE has been compelled by law to release thousands of aliens, including some with criminal convictions.

Due to the threat continued recalcitrance poses to its ability to successfully carry out its mission, DHS as a whole, and ICE specifically, takes very seriously its sustained efforts to remove foreign nationals in a timely and efficient manner. As a result, we work both directly with foreign governments and through DOS to improve cooperation with countries with whom we have encountered challenges regarding the repatriation of their nationals.

ICE's interior enforcement and removal operations also face difficulties as a result of a number of federal court rulings, most notably *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). *Rodriguez* applies throughout the Ninth Circuit, which has the largest number of individuals in removal proceedings of any federal circuit. The ruling allows individuals who previously would have been detained without bond under the INA, including criminal aliens, to seek release on bond from immigration judges after six months' detention. This ruling poses significant public safety concerns. Of the 533 aliens released pursuant to *Rodriguez* in the ICE Los Angeles Area of Responsibility from October 2012 through December 2013, ICE records indicate that 195 (approximately 37 percent) have been subsequently re-arrested by other law enforcement agencies, for a total of 471 crimes as of August 15, 2016. Crimes for which the aliens were arrested range from drug and theft offenses to violent crimes like murder, rape, child cruelty and spousal abuse. The Supreme Court granted certiorari on June 20, 2016. The Government filed its opening brief on August 26, 2016.

Recently, the U.S. Court of Appeals for the Second Circuit has followed the lead of the Ninth Circuit in *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. Oct. 28, 2015), which provides bond hearings after six months for those detained under the mandatory detention provision of the INA. If a bond is granted and an individual is released from detention, their case is then transferred from the relatively expedited detained court docket to the non-detained court docket, where cases generally take much longer to litigate.

ICE USE OF PRIVATE DETENTION FACILITIES

Following a recent announcement by DOJ that it would reduce the Bureau of Prisons' (BOP) dependence on private correctional facilities as contract terms end, questions have been asked whether DHS and ICE should continue to utilize private detention operators. Secretary Johnson recently announced the formation of a Homeland Security Advisory Council (HSAC)

subcommittee to evaluate whether ICE should move away from private detention facilities. The subcommittee will review and consider all factors, including current policies, practices, and fiscal requirements, and any relevant differences between the needs of DOJ and ICE.

The Secretary has asked the subcommittee to provide a written report by November 30, 2016. ICE looks forward to the results of this evaluation, and to any findings or recommendations the Council may make.

WORKING WITH CONGRESS

Since the agency's establishment in 2003, ICE has experienced substantial growth and evolution in its mission. For example, our enforcement strategy has shifted heavily towards the investigation, identification, location, arrest, prosecution, and removal of aliens who present a danger to national security or threaten public safety. We must ensure our employees are adequately and equitably compensated for the work they perform, and that ICE has the flexibility to cover unforeseen operational requirements and to assign both scheduled and unscheduled work to meet our needs. Pursuant to Secretary Johnson's November 20, 2014 Executive Action memo, *Personnel Reform for Immigration and Customs Enforcement Officers*, ICE has reviewed its pay structures and is currently working towards an equitable pay system for its law enforcement employees. I would welcome this Committee's future support for this DHS legislative priority.

CONCLUSION

ICE will continue to play a critical role in fulfilling DHS's national security, border security, and public safety mission. Thank you again for the opportunity to testify today and for your continued support of ICE and its employees. I look forward to your questions.