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PROBLEMS WITH ICE INTERROGATION, DETENTION, AND REMOVAL PROCEDURES

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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PROBLEMS WITH ICE INTERROGATION, DETENTION, AND REMOVAL PROCEDURES

WEDNESDAY, FEBRUARY 13, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:38 p.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Jackson Lee, Waters, Delahunt, Sánchez, Ellison, King, and Gallegly.

Ms. LOFGREN. Thank you. We have noticed this for a postponement to 2:30. We have a private bill we need to take action on, but we need a working quorum to do that. So we will interrupt our hearing when we obtain that quorum, and we will begin now with our oversight hearing.

This is the hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.

And without objection, the Chair will recess the hearing as necessary to accommodate our vote.

Six months ago, I first heard about a U.S. citizen deported from the United States, Pedro Guzman, who had to get himself caught by the Border Patrol in order to get back into his own country.

At that time, I had hoped that this case was an isolated incident. I asked the Immigration and Customs Enforcement for answers on this case, and specifically for procedures to help prevent another deportation of a U.S. citizen.

Instead, I received a perfunctory response more than a month later with no answers and an apathetic attitude toward protecting U.S. citizens from deportation.

Without objection, I would like to enter my letter and the ICE response into the record.

There is never a justification for the deportation of U.S. citizens, let alone the negligent attitude toward helping to locate and return a U.S. citizen when he or she is erroneously deported.

Six months ago, I feared this Nation might be entering another era that would become one more blight in our Nation's history. Based upon the witness testimony I have read for today and a long list of other individual cases, I feel we have arrived at that era where an overzealous government is interrogating, detaining, and deporting its own citizens while treating noncitizens even worse.

It is true that ICE's enforcement capacity has grown exponentially in the last several years. But based upon today's testimony, it appears training and oversight at ICE has lagged far behind.

I am hopeful that this hearing will not only show us where the problems lie but also lead us to solutions. I have many questions beginning with the long list I asked in my June 26, 2007, letter to ICE that was essentially ignored.

I would like to know specifically what procedures are in place to train and oversee ICE agents during detention, interrogation, and removal processes. And I would like to know exactly how ICE ensures it is not interrogating, detaining, or deporting U.S. citizens.

And I would like ICE to explain how it is that its policies, procedures, and management allows for each of the situations described today by our U.S. citizens, witnesses, or their representatives.

At this point, I would now like to recognize our distinguished Ranking minority Member, Steve King, for his opening statement.

Mr. KING. Thank you, Madam Chair.

U.S. citizenship is, of course, an absolute defense to immigration removal proceedings. No citizen should live in fear of being detained by immigration officials or deported from the country, so our government should do everything reasonably necessary to ensure that does not happen.

I am confident that ICE is taking those steps that we would all want it to take to ensure that U.S. citizens are not being detained or deported even for brief periods.

That is not to say that there has never been a U.S. citizen detained or deported. But it is a very rare occurrence, at least statistically.

ICE will describe a few instances in which a U.S. citizen was detained or deported.

For instance, a U.S. citizen child was detained after his illegal immigrant father was arrested on a fugitive warrant. ICE repeatedly asked the father to provide the name of a caretaker for the child, but the father refused to do so.

So ICE was faced with the choice of holding the boy until Child Protective Services could be called or releasing him without supervision. Luckily, after several hours, the father gave ICE the name of a caretaker, and the child was released.

ICE also indicates that some U.S. citizens chose to claim Mexican citizenship and agree to voluntary removal to avoid background checks that may reveal a criminal record. These persons know they can later easily enter back into the United States from Mexico using U.S. identification documents.

There are often extenuating circumstances in these cases of deportation of U.S. citizens. There are safeguards in place to prevent the detention and deportation of citizens.

Those safeguards include everything from questioning and records checks by ICE officials to processes set out in the Immigration and Nationality Act for a Federal Court to follow up a claim when U.S. citizenship is made.

ICE does not aim to harass and deport U.S. citizens. It has got a lot of work to do. It doesn't need to take on any more.

It seems to me that instead of focusing a hearing on the extremely unusual instances where citizens have been accidentally

detained or deported, we should focus on the millions of illegal immigrants who should but are not being removed from this country.

Last year, ICE removed 238,204 illegal immigrants from the United States. That number includes many thousands of expedited removals at ports of entry and along the borders. So the number of people deported is actually a lot less.

There are an estimated 12 to 20 million illegal immigrants in the United States. I think the number is greater than 20 million. But by those numbers, only 1 to 2 percent or less of the U.S. illegal immigrant population was removed last year.

Our government should be deporting many more people. We are hardly ahead of the Mexican government, which deported, by one set of records, 125,000 last year. My notes from a speech by Vicente Fox just late last fall say that they had deported 250,000.

In either case, either proportionally or in raw numbers—the population of Mexico is about a third of that of the United States—they are deporting more people out of Mexico than we are out of the United States.

While I understand the reason behind this hearing, we should not take a lack of malice on the part of ICE—we should note the lack of malice on the part of ICE to detain or deport U.S. citizens. We should note the rarity and brevity of occurrences, and we should note the safeguards that ICE has in place to reduce such occurrences to the absolute minimum.

Finally, as to worksite enforcement actions at locations where mass lawbreaking is taking place, the U.S. citizens affected should blame their reckless employers and illegal immigrant co-workers.

They should not blame the dedicated Federal officials trying to enforce our laws for all our benefit.

There is a huge human haystack of humanity that crosses our border every night that has piled up here in the United States. And it is the cumulative effect of lack of enforcement going clear back to 1986; employers who break the law, and the incentive that is there is a big job that ICE has ahead of them.

With all of those numbers to work with, and by the way, interdicting my numbers, a year before last, 1,188,000 on our southern border—it is a huge number. To deal with all of that without a single mistake would be asking too much of a mortal.

And so we want you to do your best at ICE. And we want to look at these cases and make sure that American citizens are as protected as possible as part of your job in enforcing immigration law and also, by enforcing it, protecting American citizens.

I thank the witnesses in advance for their testimony.

Thank you, Madam Chair.

And I yield back my time.

Ms. LOFGREN. Thank you.

We have two distinguished panels of witnesses here today to help consider the important issues before us.

Seated on our first panel, it is my pleasure to introduce Gary Mead. Gary Mead is the assistant director of management in the Office of Detention and Removal Operations at Immigration and Customs Enforcement.

Prior to joining ICE in 2006, he served with the U.S. Marshals Service. He worked as the associate director for administration, the

associate director for operations support, and the assistant director for management and budget. He holds a bachelor's degree from Sacher University of New York, a master's from Bowling Green State University, and graduated from the management program at the National Defense University here in Washington.

Mr. Mead, your written statement will be made part of the record in its entirety.

We ask that each witness summarize their testimony in 5 minutes or less and help to stay within that timeframe.

We do have that little machine in front of you. When the yellow light goes on, it means you have 1 minute left. And when the red light goes on, we do ask you to complete your thoughts and conclude, so that we can get to our questions.

So we would invite you now, Mr. Mead, to give us your testimony.

TESTIMONY OF GARY MEAD, ASSISTANT DIRECTOR FOR DETENTION AND REMOVAL, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. MEAD. Good afternoon, Chairman Lofgren and distinguished Members of the Subcommittee.

My name is Gary Mead, and I am the assistant director for management in the Office of Detention and Removal Operations at U.S. Immigration and Customs Enforcement.

Among its many responsibilities, ICE promotes public safety and national security by ensuring the safe and efficient departure from the United States of all removable aliens through the fair enforcement of the Nation's immigration laws.

One of its core missions is the apprehension, detention, and removal of inadmissible and deportable aliens. In carrying out this mission, ICE officers are ever mindful of their sworn duty to protect the rights of all individuals to the best of their abilities.

ICE officers must interview hundreds of thousands of individuals annually to determine citizenship and immigration status. ICE uses its authority to question individuals regarding their citizenship and legal right to be in the United States with the utmost professionalism and respect for individual rights.

Over the last 4 years, more than one million individuals have passed through ICE detention facilities. During fiscal year 2007 alone, more than 310,000 illegal aliens passed through our custody and approximately 280,000 of these were removed from the United States.

At no time did ICE knowingly or willfully place a U.S. citizen in detention or remove them from the United States.

ICE immediately releases individuals who are U.S. citizens or who may have a legitimate claim to derive U.S. citizenship. However, it should be noted that some people falsely assert U.S. citizenship in order to evade deportation.

It is common for ICE's law enforcement personnel to encounter individuals who make false claims about their immigration status or citizenship. For example, in 2007, ICE investigators made more than 1,530 criminal arrests in cases involving document or benefit fraud.

Upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for examination at a designated port of entry and provide proof of citizenship and their right to enter the United States.

Away from the ports of entry, ICE bears the burden of proving that the individual is not a U.S. citizen when he or she is questioned by an immigration officer. ICE may engage in consensual encounters like any law enforcement officer.

Once an individual provides a credible response that he or she is a U.S. citizen, questioning regarding alienage must stop. If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States.

For cases involving detainees in ICE custody who are pending removal from the United States, ICE works actively to ensure any claims of U.S. citizenship are timely and properly adjudicated.

If a detainee makes a credible claim of U.S. citizenship, ICE officers will ask the detainee whether he or she can produce supporting evidence. In addition, the officer will review the detainee's files and query all relevant databases to support the detainee's claims.

In addition to the many safeguards that are already in place that I can discuss further, with the exception of Mexico and Canada, all people removed from the United States must obtain a travel document from the country in which they are being removed to.

Those countries often engage in consular interviews and conduct their own detailed review to determine that the person being removed is, in fact, a citizen of the country that they are going to.

Even though ICE has never knowingly or intentionally detained or removed a U.S. citizen, ICE is currently reviewing its policies and procedures to determine if even greater safeguards can be put in place to prevent the rare instance when this event might potentially occur.

ICE anticipates having this review completed within the next 60 days and would welcome any suggestions from the Committee.

I want to thank you, Madam Chairwoman and Members of the Subcommittee, for the opportunity to testify today on behalf of the men and women of DRO and ICE. And I look forward to answering any questions you may have.

[The prepared statement of Mr. Mead follows:]

PREPARED STATEMENT OF GARY E. MEAD

U.S. Immigration and Customs Enforcement

STATEMENT

OF

GARY E. MEAD
DEPUTY DIRECTOR,
OFFICE OF DETENTION AND REMOVAL OPERATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"PROBLEMS WITH ICE INTERROGATION, DETENTION AND REMOVAL PROCEDURES"

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY AND INTERNATIONAL LAW
February 13, 2008 at 2:00pm
2141 Rayburn House Office Building

INTRODUCTION

Good afternoon, Chairwoman Lofgren, and distinguished Members of the Subcommittee. My name is Gary Mead, and I am the Deputy Director of the Office of Detention and Removal Operations (DRO) at U.S. Immigration and Customs Enforcement (ICE). It is my privilege to appear before you to discuss the enforcement mission of ICE as well as the removal process.

Among its many responsibilities, ICE promotes public safety and national security by ensuring the safe and efficient departure from the United States of all removable aliens through the fair enforcement of the nation's immigration laws. As such, among its core missions are the apprehension, detention, and removal of inadmissible and deportable aliens, the management of non-detained aliens as their cases progress through immigration proceedings, and the enforcement of orders of removal. In carrying out these missions, ICE officers are ever mindful of their sworn duty to protect the rights of all individuals to the best of their abilities.

DISCUSSION

In order to carry out these missions, ICE officers must interview hundreds of thousands of individuals that are encountered annually within the United States to determine citizenship and immigration status. ICE uses its authority to question individuals regarding their citizenship and legal right to be in the United States with the utmost professionalism and respect for individual rights.

Over the last four years more than a million people have passed through ICE detention facilities. During Fiscal Year 2007 alone, more than 322,000 illegal aliens passed through ICE detention

facilities and approximately 280,000 of those were removed from the Unites States. At no time did ICE knowingly or willfully place a U.S. citizen in detention. ICE immediately releases individuals who are U.S. citizens or who may have legitimate claims to derivative U.S. citizenship. Nevertheless, it should be noted that false assertion of U.S. citizenship is frequently used in order to evade deportation. Unfortunately, it is common for ICE's law enforcement personnel to encounter individuals who make false claims about their immigration status or citizenship. For example, in FY 2007, investigators made more than 1531 criminal arrests in cases involving document or benefit fraud, including those involving individuals who used genuine but fraudulently obtained green cards, birth certificates, social security cards, and other identity documents.

Upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for inspection or examination at a designated Port of Entry. At the border, it is the arriving applicant who bears the burden of proving his or her U.S. citizenship. 8 U.S.C. § 1357(b); 8 C.F.R. § 235.1(b). If an arriving applicant claims U.S. citizenship, he or she must present a valid U.S. passport upon entry (if a passport is required), and prove his or her claim to the Customs and Border Protection (CBP) officer's satisfaction. If an applicant for admission fails to satisfy the examining officer of his or her U.S. citizenship, he or she shall thereafter be inspected as an alien.

In the interior of the United States, ICE bears the burden to prove that an individual is not a U.S. citizen when an individual is detained by an immigration officer. ICE may engage in consensual encounters like any law enforcement officer. Once an individual provides a credible response

that he/she is a U.S. citizen, questioning regarding alienage must stop. See, e.g., Immigration and Naturalization Service v. Delgado, 466 U.S. 210, 217, 219-220 (1984); 8 U.S.C. § 1357(b); 8 C.F.R. § 287.8(b). If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States. If a person refuses to speak to the officer, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual is not detained and is permitted to leave.

ICE detainees who may have claims of U.S. citizenship

For cases involving detainees in ICE custody who are pending removal from the United States, ICE actively works to ensure any claims of U.S. citizenship are timely adjudicated. If a detainee makes a credible claim to U.S citizenship, the ICE officer will ask the detainee whether he or she can produce evidence. In addition, the officer will review the detainee's file and query all relevant databases to locate information to support the detainee's claim. This file review is necessary, as the majority of ICE detainees encountered rarely possess documentary evidence of citizenship or nationality. Following the review, if the individual is identified as a U.S. citizen, he or she will be released immediately.

If the ICE officer believes the detainee has a valid claim to derivative U.S. citizenship, the ICE officer will make a recommendation to his or her supervisor concerning custody. In that recommendation, the ICE officer will balance the detainee's claim to citizenship against other factors, such as the use of fraud, threat to the community, and criminal history. If the recommendation favors release and is approved, the detainee is released from ICE custody and

told to file an application for a certificate of citizenship with U. S. Citizenship and Immigrations Services (USCIS).

If the individual is classified as a "mandatory detention" case or poses a threat to public safety or national security or his or her claim to U.S. citizenship is found not to be credible based upon review of the file, investigative tools, and interviews, the detainee will remain in custody. Even in this circumstance, ICE encourages the alien to file an application for a certificate of citizenship with USCIS for a prompt adjudication. In many cases, ICE will forward a completed application to CIS with a request that the application be adjudicated expeditiously. Removal proceedings will proceed during this process, but the detainee may concurrently pursue a citizenship claim with the immigration courts and USCIS.

It should be noted that there have been instances of U.S. citizens who claim to be illegal aliens. This is especially true among criminals who are currently incarcerated in an effort to avoid further incarceration. In addition, ICE has also encountered individuals who believed they were not U.S. citizens who ICE has determined to have a valid claim to U.S. citizenship.

In the highly unlikely event where an ICE officer determines that a U.S. citizen has been erroneously removed, ICE would take appropriate action to locate the citizen and ensure immediate repatriation to the United States at no expense to the citizen.

Aside from the safeguards noted above, there is also another incidental safeguard that bears mentioning. With the exception of Mexico and Canada, all other countries must issue a travel document for every individual returned who does not possess a valid passport from that country.

As part of the travel document process, which often includes a consular interview, foreign governments must determine to their satisfaction that the person being returned is a citizen of their country. This additional process makes the removal of a U.S. citizen exceptionally rare.

Allegations against ICE

A recent news article made reference to an unpublished study by the Vera Institute of Justice, a New York nonprofit organization, that allegedly identified 125 people in immigration detention centers across the nation who immigration lawyers believed had valid U.S. citizenship claims. ICE has been unable to obtain a copy of the alleged study, so it is not possible for me to comment on its contents. However, individuals in ICE custody who believe they have a valid claim to U.S. citizenship would only be in custody if ICE has not been able to validate the claim, as mentioned previously. In these cases, the aliens can pursue their claims during their immigration trial before an Immigration Judge, within the Department of Justice. The following are summaries of the three cases that were mentioned in this article:

Pedro Guzman-Carbajal was granted voluntary return to Mexico on May 11, 2007. Prior to his return, Mr. Guzman claimed that he was a citizen and national of Mexico born in Nayarit, Mexico. Mr. Guzman further requested that he be Voluntarily Returned to Mexico in lieu of seeing an Immigration Judge. In October 2000, Mr. Guzman was arrested and convicted of Possession of a Controlled Substance for Sale. He was sentenced thirty-six months probation and one hundred sixty-five (165) days in jail. After Mr. Guzman was returned to Mexico, his family claimed he was a U.S. citizen born in Los Angeles, CA. Personnel from the Los Angeles Field Office obtained a copy of the U.S. birth certificate matching the same name and date of

birth as provided by the family. The Los Angeles Field Office created a Wanted/Missing Person Poster and forwarded it to various law enforcement agencies. The poster was sent to the U.S. Embassy in Mexico, which then forwarded it to the Border Consulates. Additionally, the poster was forwarded to CBP to post at ports of entry along the Southwest border. Mr. Guzman is currently in the United States.

Thomas Warziniack was incarcerated at the Colorado Department of Corrections (CDOC) facility in Buena Vista, Colorado. Mr. Warziniack was serving a sentence for criminal impersonation and possession of a controlled substance. Colorado officials brought him to the attention of ICE because he had informed them that he was a citizen of Russia. Mr. Warziniack had multiple arrests and convictions, including: Conviction for Simple Battery; Conviction for Simple Assault; Arrest for Theft by Conversion Leased or Rented Property; and Arrest for Abandonment of Child/Non-Support.

During his interview with ICE officers, Mr. Warziniack claimed to be a citizen of Russia, born in St. Petersburg on September 1, 1960, who last entered the United States in the late 1960's without permission. After the interview, ICE officers lodged a detainer with the CDOC. ICE conducted additional records checks and found no immigration history. Criminal histories and records checks indicated that Mr. Warziniack may have been born in Minnesota, Colorado, or Alabama. Mr. Warziniack was placed into ICE detention on December 18, 2007. During his stay in detention, he claimed that he was a Russian citizen; however, when he appeared before the immigration judge the following month, he asserted U.S. citizenship. At a subsequent immigration hearing, he denied the allegations in the immigration charging document and

produced a copy of a Minnesota birth certificate, which ICE authenticated. ICE thereafter released him immediately from detention and asked the judge to dismiss the case without prejudice. This example highlights ICE efforts to quickly respond to legitimate claims of citizenship prior to removal.

Encounter with a six-year-old U.S. citizen. The ACLU filed a lawsuit claiming that ICE detained a six-year old U.S. citizen while apprehending his fugitive alien father. ICE denies this allegation. The child's fugitive alien father last entered the United States at Nogales, Arizona, on July 24, 1991 without inspection. On November 3, 2000, he failed to appear for a hearing before an Immigration Judge at the Executive Office for Immigration Review and was ordered removed in absentia by the Immigration Judge. A notice to surrender for removal was mailed to Mr. Reyes' last known address. Mr. Reyes failed to surrender for removal on May 2, 2001. On March 6, 2007, Mr. Reyes was encountered at his residence during a targeted fugitive operation. A review of known facts revealed that the child was never detained but he was instead transported to an ICE office until custody arrangements could be made for him. ICE Officers were in Mr. Reyes' home for more than an hour trying to make arrangements for the child, but Mr. Reyes refused to make a call and claimed he had no friends or relatives in the U.S. Once in the ICE office, officers resumed requesting that Mr. Reyes call a relative. The child was at no time confined to a cell. The child and the father were kept in the juvenile area and provided food and drinks. Only when advised that ICE would have no choice but to turn the child over to Child Protective Services, did Mr. Reyes agreed to ask the uncle to take custody of the child. The uncle was immediately contacted and the child was placed into the care of the uncle within an hour.

CONCLUSION

Even though ICE has never knowingly or intentionally detained or removed a U.S. citizen, ICE is currently reviewing its policies and procedures to determine if even greater safeguards can be put in place to prevent the rare instance where this event occurs. ICE anticipates having this review completed within the next sixty days and would welcome suggestions from the Committee.

The integrity of our immigration system requires fair and effective enforcement of our nation's immigration laws. By aggressively enforcing these laws to the best of our abilities, ICE seeks to make our nation secure by preventing terrorism, improving community safety by ensuring that criminal aliens are not released back into the population, and strengthening the legal immigration process.

I would like to thank you, Madame Chairwoman and Members of the Subcommittee, for the opportunity to testify today on behalf of the men and women of DRO, and I look forward to answering any questions you may have.

Ms. LOFGREN. Thank you. Mr. Mead.

I am sure we do have questions. I will begin first by asking you if ICE has any jurisdiction over United States citizens.

Mr. MEAD. No, ma'am. We have no jurisdiction.

Ms. LOFGREN. The Code of Federal Regulations specifies that if an immigration officer "has a reasonable suspicion based on specific articuable facts that a person being questioned is in the U.S. legally, then the officer may briefly detain the person for questioning."

What constitutes a brief period of detention?

Mr. MEAD. Well, I think that is fact-dependent. During the interview of an individual, ICE officers are trained to ask questions to determine whether or not the person is in the country; whether or not the person is a citizen to begin with.

Once in the interior, our officers are obligated to determine the threshold question of whether or not this is a U.S. citizen.

If they satisfy themselves with reasonable suspicion that the person is not a citizen, then they can move on to additional questions to determine whether or not the alien is here legally or whether they are not here legally.

Ms. LOFGREN. We have, and I am sure you had available, the testimony of Mr. Mike Graves in the second panel, who testifies that he and hundreds of his co-workers in the Swift Plant in Marshalltown, Iowa were essentially held prisoner for 8 hours without food or water or contact with their families.

Would you consider 8 hours a brief period of time?

Mr. MEAD. Well, I think it would depend on the circumstances, Congresswoman.

At a worksite operation, we only enter the facilities pursuant to either a civil or a criminal arrest warrant. In rare occasions, we have the consent of the manager or the owner to enter.

Once in the facility, we ask the manager or owner to gather the employees in a safe place. And at that point, we begin our due diligence of identifying who is a U.S. citizen or a legal permanent resident and identifying who may be an illegal alien.

Depending upon the number of people there, that can take some time. But as soon as people are identified as U.S. citizens, they are allowed to leave. Depending upon what their bosses say, they either go home or they go back to work.

Ms. LOFGREN. Based on your knowledge of ICE's policy interpreting this regulation, what would you say was the reasonable suspicion based on specific articuable facts that would lead an ICE agent to handcuff a U.S. citizen like Mr. Graves and search his locker and question him about how he was from Iowa?

Mr. MEAD. I don't know the specific circumstances of what did or didn't happen to Mr. Graves. But during these worksite operations, as I said, our initial emphasis is on separating the citizens from the non-citizens who may not have a right to be here.

Those people who are identified as potentially illegal aliens are taken to a process location, a processing center, where a much more thorough examination of their situation is conducted, including giving them the right to contact their attorneys if they have them, contact free legal services, contact consular officials.

And so it is during that process that even more attention is paid to making sure that anyone who is ultimately placed in detention is, in fact, a potentially removable alien.

Ms. LOFGREN. The Code of Federal Regulations states that when ICE arrests an individual, it must either grant voluntary departure or determine whether the person will remain in custody and/or be placed in removal proceedings within 48 hours of the arrest, except in the event of an emergency or extraordinary circumstances.

Can you tell me how many times ICE has failed to make this determination within 48 hours and how many times, if that has ever happened, that has been due to emergency or extraordinary circumstances?

And give some example of what would be extraordinary or an emergency.

Mr. MEAD. Off the top of my head, Congresswoman, I don't know how many times that happened. We certainly do everything possible to serve NTA's on people within the required 48 hours.

And it would take a truly extraordinary circumstance—off the top of my head, I can't think of one—where we would not be able to do that. But if we have such information, I would be happy to——

Ms. LOFGREN. Well, I have a very large number of questions. My time is almost up. But I will be sending the agency my questions. And I would hope that I would have an answer to them promptly; certainly, within the next 2 weeks.

I would just, finally, like to clarify. A McClatchy newspaper article describes the plight of—an American with a southern accent, I might add, for some reason, ICE thought was a Russian.

And the spokesman for ICE was quoted in the paper—I don't know if he was quoted directly—that the burden of proof is on the individual to show that they are legally entitled to be in the United States.

Is this the agency's position? And, if so, how would you reconcile that with the INS Widbey case which the Supreme Court has gifted us with?

Mr. MEAD. I don't know the context within which that question was asked.

I think I was saying that I don't recall or I don't know the context of which the ICE spokesman was answering that question. But as I said in my opening remarks, once we are away from the port of entry, ICE has the authority to consensually speak with people about whether or not——

Ms. LOFGREN. But that is not the question. The question is: Who has the burden of proof?

Mr. MEAD. Well, I was about to tell you that.

We have the burden of proof to determine if someone is a citizen. We do that through questioning——

Ms. LOFGREN. Okay. Thank you. Then the state will just be..

Mr. MEAD. Okay.

Ms. LOFGREN. Thank you.

I turn now to our Ranking Member, Mr. King, for his segment.

Mr. KING. Thank you, Madam Chair.

Thank you, Mr. Mead, for your testimony.

The numbers of—I think it was in your testimony—the numbers of personnel that are handled by ICE in a year, could you refresh me as to that number?

Mr. MEAD. Yes. Over the past 4 years, approximately a million people have passed through our detention facilities. And last year alone, we had over 310,000 pass through detention. And of that number, approximately 280,000 were actually removed from the country.

Mr. KING. And can you tell me, out of that universe of either last year's number of 310,000 or the aggregate of the last 4 years and the million, about how many U.S. citizens were deported out of that list of people?

Mr. MEAD. To the best of our knowledge, only one U.S. citizen was removed during that period of time.

Mr. KING. Was that in your original testimony?

Mr. MEAD. My original testimony?

Mr. KING. The testimony that you gave here today?

Mr. MEAD. No. I did not cover that.

Mr. KING. Could I ask you why you would not have included that?

Mr. MEAD. For the sake of time. It is in our written testimony, I believe.

Mr. KING. Okay. And the individual would be the individual with the southern accent who said he was Russian?

Mr. MEAD. No. It was Mr. Guzman that the Chairwoman mentioned.

Mr. KING. Okay. That just strikes me as an exceptionally high statistical average. If you are an American citizen and you are encountered by ICE, the case that we are talking about here would be an extreme exception rather than any kind of a—is there any way that there could be a pattern here that I am missing?

We are trying to fix a policy or put a solution to something that there is an anomaly that exists?

Mr. MEAD. We don't think so, Congressman.

There are numerous safeguards in place to prevent the removal of a U.S. citizen. And as I said at the end of my statement, not the least of which is, other than Canada and Mexico, every other foreign country has to issue travel documents allowing the person to be returned.

And they often do consular interviews, and they do a complete record check in their own countries to determine that this is, in fact, a citizen of their country.

Mr. KING. Okay. We have an unpublished report that is part of the dialogue here that shows that, perhaps, 125 people were identified for deportation that were actually U.S. citizens. Are you aware of that unpublished report?

Mr. MEAD. Yes. We spoke with a representative of the Vera Institute, and they claim that there is no unpublished report. The Vera Institute is under contract with the Executive Office for Immigration Review.

Mr. KING. And did the Vera Institute ever maintain any data on those 125 people? Could they be analyzed to see why it was that they alleged they were——

Mr. MEAD. Well, what they said was that of the 124 people in question, they said that they planned to seek a claim to U.S. citizenship. The Vera Institute——

Mr. KING. Is there any evidence that they actually did seek a claim of U.S. citizenship?

Mr. MEAD. No.

Mr. KING. No breakdown of that number of 124 or 125?

Mr. MEAD. No. They did not keep any biographical data so there is no——

Mr. KING. No way to go back and see if it was anything other than a fabrication?

Mr. MEAD. No. But they clearly stated that these were not—they did not say that these were U.S. citizens. They just said that they planned to pursue a claim of U.S. citizenship.

Mr. KING. That seems to be the basis of our discussion here, a single incident, and then a study that is now being reported that can't be verified.

But I want to ask you about your practices when you go in and conduct a raid on a, say, on a food processing plant, which I am quite interested in. How do you deal with people who are clearly unlawfully present in the United States who have duties to take care of infant children? Say, a nursing mother, for example. How do you deal with a case like that?

Mr. MEAD. We deal with it twice. We deal with it at the worksite. If anyone makes that claim, assuming that they are not a criminal or someone who we would otherwise want to detain, we release them immediately on an order of supervision.

We make sure that when we get people to the processing site, we ask them these questions again. We go to the, I think, the extra step of making sure that these people are interviewed, not by law enforcement officers, but by officers of the public health service.

And, again, if they have a sole caregiver or humanitarian issue, barring a criminal record, we would release them.

Mr. KING. A sole caregiver, a humanitarian issue, or a nursing mother illegally present in the United States—unlawfully present in the United States and, perhaps, unlawfully working is still released back into society by ICE?

Mr. MEAD. That is correct.

Mr. KING. It doesn't sound very hardhearted to me, Mr. Mead. And hopefully the U.S. citizens are treated with the minimum standards that you are treating illegals with.

And I thank you for your testimony, and I yield back the balance of my time.

[Whereupon the Committee proceeded to other business.]

[Whereupon the hearing resumed.]

Ms. LOFGREN. And now we will return to our hearing.

We now turn to Mr. Gutierrez, in order of arrival at the hearing, for any questions he may have for ICE.

Mr. GUTIERREZ. Thank you very much.

Well, number one, I like the precedent that we are setting on the private bill. And I find it so ironic that some of the most anti-immigrant Members of the House, that is Stan Lipinski, who votes against immigrants all time, gets this private bill up.

Vote for a good cause. I am going to vote for it.

But I always wonder where the rest of the private bills are at from those of us that actually support immigrants day in and day out. Just a comment on that.

Interesting point about who you detain. Now, in Chicago, you detained, at a working, operating mall, did you not detain a hundred people at this mall in Chicago in midday?

Mr. MEAD. I am sorry. I didn't hear the question.

Mr. GUTIERREZ. Oh, I am sorry.

Did you not—did not ICE take an enforcement action at 2 o'clock in the afternoon at a mall on 26th and Pulaski in the city of Chicago?

Mr. MEAD. I am not familiar with that action.

Mr. GUTIERREZ. You are not familiar with that action. Well, you know, you should be up-to-date if you are going to come because you are real familiar—when the Ranking Member from the Republican side asks you questions. You guys have a real, you know—catcher attitude. But when we ask you questions, you don't remember.

That is okay. I would have a faint memory if I were you, too, about this situation.

But the fact is that is it not true that ICE will go in to a public area and specifically target people of a certain nationality?

Mr. MEAD. No, sir. That is not true.

Mr. GUTIERREZ. That is not true?

Mr. MEAD. No, sir.

Mr. GUTIERREZ. Oh. Then you don't know anything about Chicago? See, because in Chicago, your ICE official went with the U.S. Attorney standing next to her and said we were determined to walk into this mall and detain every Hispanic male between the age of 18 and 45—we have Hispanic males—they asked us—did you detain every Hispanic male between the age of 18 and 45, and she said, yes, we did. And we subsequently, after that, determined whether or not they were the people we were looking for.

You are telling me you don't take those kinds of actions?

Mr. MEAD. No, sir. I am not familiar with that operation.

Mr. GUTIERREZ. And why wouldn't you take such an action?

Mr. MEAD. As I said, it is not our policy to target people on the basis of nationality.

Mr. GUTIERREZ. So enlighten me. What should I do as a Member of Congress at this particular point so that we could not have this happen again?

Mr. MEAD. Well, sir——

Mr. GUTIERREZ. Because I already informed your boss. We called right away, and he said it was fine. So you have a little problem with Chertoff, just so that you understand.

He said it was fine, the actions of the ICE agents in terms of determining a specific ethnic group with a specific age and walk into an area and just arrest them.

Because I asked him, I said, "So what if they were looking for someone that was White, male, between the age of 25 and 40? Would you go into Lord and Taylor? Would you go into Macy's and shut the store down and then stop every White male between the age of 25 and 40 and simply stop them and ask them to prove that they were not the person you were after?"

And he said, no, we never had such an incident.

And I know you never had such an incident because those kinds of things don't happen in America.

But they do happen in specific geographical communities such as mine. So you are saying that it is against the policy of ICE to do that?

Mr. MEAD. I said it is not our policy to target people based on nationality.

Mr. GUTIERREZ. Is it against your policy?

Mr. MEAD. It is against our policy.

Mr. GUTIERREZ. It is against it. So in other words, what you are testifying here is what the ICE official did in the city Chicago, blessed by the U.S. Attorney's office of the city of Chicago, was not sanctioned by ICE?

Mr. MEAD. As I said, I don't—I am not familiar with the incident.

Mr. GUTIERREZ. I know. You know, maybe if I sat over there for a while on the Republican side, you would know all the answers, and I would have given you all the questions ahead of time.

Unfortunately, this is an adversarial relationship that we have here with ICE because you wouldn't be doing that in the community of people that I serve.

Thank you very much for not knowing any of the answers and any of the information about a very well, highly-publicized case in the city of Chicago in which Secretary Chertoff has been fully briefed and informed.

Thank you very much.

Ms. LOFGREN. I am advised that Mr. Gallegly does not have a question——

Mr. GALLEGLY. Perhaps, I would like to pursue, maybe——

Ms. LOFGREN. Then I recognize Mr. Gallegly for 5 minutes.

Mr. GALLEGLY. Thank you.

Mr. Gutierrez was going—because I am not familiar with it, but just because I am not familiar with it doesn't mean that it didn't happen anymore than our witness. But Mr.Gutierrez, can you give us some other information?

You say that you had—how many people, to your knowledge, were detained? You said "arrested." Actually handcuffed and carried away?

Mr. GUTIERREZ. Actually, they were detained. They were handcuffed, taken to the back——

Mr. GALLEGLY. But they were not arrested?

Mr. GUTIERREZ. Well, okay. You want to get—they were detained.

Mr. GALLEGLY. Okay. So they were——

Mr. GUTIERREZ. They were detained by ICE. They were handcuffed.

Mr. GALLEGLY. Were any of——

Mr. GUTIERREZ. If you put handcuffs on me, I think a reasonable American citizen will say once the police or a government agency handcuffs you, detains you, stops you, you are kind of arrested in Chicago. We have that standard.

Mr. GALLEGLY. Anyway, that is—maybe we are getting hung up on semantics. But as a result of that, of all these folks that were detained or temporarily arrested or held, as you would say, per-

haps, without cause, were any of them, subsequent to that, taken into custody or were they all released?

Mr. GUTIERREZ. They were all released.

Mr. GALLEGLY. So there wasn't one person there that they deemed to have committed a crime?

Mr. GUTIERREZ. No. They were executing arrest warrants for four individuals who were allegedly fabricating false documents at this public mall. And so they had the four people. They had their pictures, their addresses——

Mr. GALLEGLY. So they weren't just looking for illegal immigrants; they were looking——

Mr. GUTIERREZ. They were looking for a criminal—leaders of a criminal enterprise of false documents at a public—at a mall. That is why I gave the example what if I were a credit card person, scammer, and I was doing this at a big store like Lord and Taylor or Marshall Field or Macy's——

Mr. GALLEGLY. Did they have——

Mr. GUTIERREZ [continuing]. Would they arrest—and let us say I was White, between the age of 25 and 40. Would we detain every White male in order to find the four people we were——

Mr. GALLEGLY. Did they have a specific description of who they were looking for?

Mr. GUTIERREZ. They did. They did. They knew and they had pictures because the next day, the U.S. Attorney put the pictures—and they did arrest the people, subsequently, at their home. That is usually the way they do things.

If you know where a person lives, you go to their home and arrest them at their home. But this was a place of business, and we agreed that we should stamp out all of the illegal enterprise——

Mr. GALLEGLY. Was this a specific place of business? See, I didn't go to law school.

Mr. GUTIERREZ. It is a mall.

Mr. GALLEGLY. I didn't go to law school, so I don't have the good sense of not asking a question I don't know the answer to.

I legitimately don't know the answer, and I am asking. And you, obviously——

Mr. GUTIERREZ. I would have gone to law school, but I couldn't afford to.

Mr. GALLEGLY. Okay. Well, I couldn't either.

But in any event, sometimes it isn't such a bad idea to have folks that ask questions that legitimately don't know the answer to them.

So in any event, in this situation, I would like to know the real specifics of the environment. Was this where it was known to be a place of business for these four alleged counterfeiters?

Mr. GUTIERREZ. Apparently so.

Mr. GALLEGLY. Okay. And when you say a mall, was it a specific place in the mall?

Mr. GUTIERREZ. A mall. It is an open area where you walk in. It is a huge building.

Mr. GALLEGLY. So you would—so there is, like, thousands of people that were there?

Mr. GUTIERREZ. Well, there were hundreds of people there at this particular point.

Mr. GALLEGLY. But how many were actually arrested?

Mr. GUTIERREZ. Detained?

Mr. GALLEGLY. By your definition, detained?

Mr. GUTIERREZ. Detained? Nearly a hundred.

Mr. GALLEGLY. Almost a hundred?

Mr. GUTIERREZ. Yes.

Mr. GALLEGLY. Okay. I am just—Madam Chairman, I yield back.

Ms. LOFGREN. Thank you.

Next in order of their appearance to the Committee, we would recognize Mr. Ellison for any comments or questions he may have.

Mr. ELLISON. Mr. Mead, how many ICE raids have been conducted since the last 12 months?

Mr. MEAD. I would have to get back to you with a specific number on that.

Mr. ELLISON. Can you give me a range of——

Mr. MEAD. My best guess would be maybe a dozen in the past 12 months. You are talking about worksite——

Mr. ELLISON. Yes.

Mr. MEAD [continuing]. Enforcement? I am guessing. I would say maybe a dozen. I can get you a specific answer very quickly.

Mr. ELLISON. What criteria do you use before an ICE raid is determined to be executed?

Mr. MEAD. Well, it usually takes months of planning, involves U.S. Attorney. It involves, sometimes, undercover agents, informants to determine whether or not there is a criminal activity involving immigration; you know, fraudulent documents.

Mr. ELLISON. You have already indicated to Congressman Gutierrez that race is not a factor in determining whether to execute a warrant or take an action at a worksite. Is that right?

Mr. MEAD. Right. They are not predicated on race.

Mr. ELLISON. Okay. But let me ask you this: What is the race of the people of the last 12 months? Is there any predominant racial class that has been a target of the last ICE raids over the last 12 months?

Mr. MEAD. Well, the targets have been the businesses.

Mr. ELLISON. Yes. Well, the employees, too, right?

Mr. MEAD. The employees have been predominantly Hispanic.

Mr. ELLISON. Okay. Predominantly Hispanic. What percentage Hispanic? What percentage not?

Mr. MEAD. I don't have that off the top of my head.

Mr. ELLISON. More than 60 percent Hispanic?

Mr. MEAD. I don't have that percentage.

Mr. ELLISON. I know. But you must have some idea. I mean, you are a trained professional. You have been doing your job for many years. There is no way you would come to a Congressional hearing without some facts.

So my question is: What approximate percentage are we talking about is Hispanic? Because, of course, you are a trained professional and you know your job. So I know that you know something.

Mr. MEAD. Well, you asked me what was the predominant——

Mr. ELLISON. Yes. You answered that question, and I thank you for that answer. And I thank you for that answer. And now I want to know what percentage of the people were Hispanic.

Mr. MEAD. I don't have a specific percentage.

Mr. ELLISON. About 50 percent? Okay. Predominant would be above 50.

Mr. MEAD. Yes, sir.

Mr. ELLISON. 75 percent?

Mr. MEAD. I don't have a specific——

Mr. ELLISON. So you don't know between 55 and 99; it could be anywhere in there. Is that what you are saying?

Mr. MEAD. I said predominantly Hispanic. That is my best answer without getting back to you.

Mr. ELLISON. Okay. So will you get back with the Committee on what the racial categorization the individuals who have been arrested in the ICE-related raids was in the last 12 months?

Mr. MEAD. Yes, sir.

Mr. ELLISON. That is a statistic we can count on you to receive?

Mr. MEAD. Yes, sir.

Mr. ELLISON. Okay. Now, why predominantly Hispanic? I mean, there are a lot of people in this country who may be here without proper documentation coming from every area of the globe. Why Hispanics?

Mr. MEAD. I think you would have to ask the employers why. That is the population they are employing. I don't have a better answer than that.

Mr. ELLISON. Well, you would agree with me that Hispanic people are just one of the many groups in America where there may be some immigration violations going on.

I mean, if employers illegally employ people from Russia or other parts of the world, that would be as equally violative of the law. Wouldn't you agree?

Mr. MEAD. Absolutely.

Mr. ELLISON. So tell me about those folks. I mean, why do we have this predominant Hispanic bias?

Mr. MEAD. I am not suggesting we have a Hispanic bias. You asked me a question, and I answered it.

Mr. ELLISON. Yes. But I want to know why we haven't seen other ethic groups targeted.

Mr. MEAD. Again, we did not target any ethic groups. The cases revolve around the business and those that the business employs. We are not targeting the employees.

Mr. ELLISON. How did it happen to be such a nationality? How did it happen that these businesses happen to have a predominant number of Hispanic employees? Why aren't there other ethnic groups that are in the mix?

Mr. MEAD. I can't answer that. Again, you would have to talk to the business owners as to their hiring practices.

Mr. ELLISON. When an ICE raid is conducted and an individual is detained, what happens to that individual's children?

Mr. MEAD. As we were saying earlier, if there is a sole caregiver issue, we would release that individual to care for their child assuming there was no other criminal issues in their background.

In cases where that exists, we work with them to arrange a relative or other person to care for their child.

Mr. ELLISON. Now, you know, we have a case in Minnesota, the Swift Meat Packing Plant. Are you familiar with that case?

Mr. MEAD. Yes, sir.

Mr. ELLISON. How many people were detained in that case?

Mr. MEAD. I don't have the exact number. I am sorry.

Mr. ELLISON. If I said 500, would you disagree with that number?

Mr. MEAD. That is possible.

Mr. ELLISON. Yes.

Mr. MEAD. As I said, I don't have the exact number.

Mr. ELLISON. Right. But would you agree that about 500 was the approximate—let me ask you this one last question.

There was an American person, born in America, but was of Latino background. He was a radio host. And he said, I went to the meat packing plant to see what was happening, but the ICE officials demanded that I show them my papers because I was Latino.

Are we sweeping up Latino-Americans in these raids, as these raids are being conducted, and presuming that they have to show papers on a presumptive basis based on their ethnicity?

Mr. MEAD. We do not sweep up any group of people. We conduct the necessary interviews to determine who may be here illegally, and those people are detained.

Mr. ELLISON. Well, that would surprise the people detained at the Swift Plant because they were all picked up in a summary fashion. It was all corralled in——

Ms. LOFGREN. Gentlemen, your time is expired.

Mr. ELLISON. Thank you.

Ms. LOFGREN. I would recognize, now, the gentlelady from California, Miss Waters.

Ms. WATERS. Thank you very much, Madam Chairwoman.

First, I would like to thank you for the time and attention you have given this subject. A lot of complications and a lot to learn.

I would just like to ask our guest today more about training. It appears to me that you have a responsibility here to not only understand what undocumented—where they are, where they are working, whether or not we have employers who are exploiting and are violating the law.

But, you know, this is a very complicated subject, and I have several individual personnel who are specialized in dealing with immigration problems.

And as I review these papers with them, I am always amazed at how complicated they can get.

Tell me about the training that your officers have in doing this work.

Mr. MEAD. Our officers go through a very long basic training program.

Ms. WATERS. How long?

Mr. MEAD. It is over 18 weeks. They spend a great deal of time learning the Immigration and Naturalization Act. They spend a significant amount of time learning interviewing skills. They also spend time learning, you know, big law enforcement.

Ms. WATERS. Does the arresting officer have the responsibility of doing the interview, or are there special officers who do interviews once the undocumenteds have been detained?

Mr. MEAD. It really depends on the circumstance. In the case of worksite—for example, we were talking about earlier, there are initial interviews done at the place of business. Those people who are

believed to be here illegally are taken to a process site where other officers might, you know, complete the interview and, as appropriate, booking process.

So it really is case-specific. But all our officers are trained to do these interviews.

Ms. WATERS. All the officers are trained to do the interviews and understand the law and can make independent decisions about whether or not this individual should be deported?

Mr. MEAD. Well, the ultimate decision can be made by an immigration judge if the individual has a right and pursues that right to immigration hearing. So there are additional steps beyond the initial determination by the ICE officer.

And when the immigration proceeding begins, the burden shifts back to the government to prove the removability of that individual.

Ms. WATERS. I see. Tell me about the sites where we hold these detainees. For example, they are located in every city, every state, every region? Where do you take—do they go to regular facilities? Local police stations? How does this work?

Mr. MEAD. There is a combination of facilities, approximately 400 in total. They are not in every city, but they are spread throughout the United States.

There are some that, a small number, eight, that ICE actually owns and operates themselves.

There is a small number that are privately-owned and operated on behalf of ICE.

Ms. WATERS. Privately-owned?

Mr. MEAD. Yes.

Ms. WATERS. How do you own a private detention center?

Mr. MEAD. There are many private detention—not only detention, but correctional facilities—in the United States. There are many private jails, a number of private prisons, that state and local governments contract with as well as the Federal Government.

Ms. WATERS. Now, I suppose you are right. There has been the privatization of our prisons. I didn't know about the detainee centers.

Give me an example of one of our contractors. What do you have in California?

Mr. MEAD. There is a facility in San Diego that has operated, I believe, it is owned by the County of San Diego, but it is operated by the Correctional Corporation of America. That would be one example off the top of my head.

Ms. WATERS. Correctional Corporation of America is a private entity?

Mr. MEAD. Yes, ma'am.

Ms. WATERS. And they use a local facility?

Mr. MEAD. I believe it is owned by the county and leased to them. There is some arrangement between the two.

Ms. WATERS. So you could have a raid some miles from that facility. How do you get the detainees? Do you just transport them to the nearest facility? Or how does that work?

Mr. MEAD. Yes, ma'am. Wherever the site is, we try and move them to the closest detention facility.

Ms. WATERS. And then they are held there until the official proceeding takes place?

Mr. MEAD. If they are going—yes, if they are going to an immigration proceeding, yes.

Ms. WATERS. And you could have someone there who is illegal, undocumented, maybe been in the country for 35 years, and they could be immediately deported?

Mr. MEAD. It just depends on the circumstance. Everybody's case is different. The average length of stay in detention for us is approximately 40 days.

Ms. WATERS. Just for example, if someone was picked up at a worksite, determined by the officers probably to be illegal, taken to the center, detained for 20 or 30 days, is there a process by which their families are contacted or they have the ability to connect with their families and let them know what is going on?

In all of that, do you have a host system that works that way?

Mr. MEAD. Yes. Particularly in the worksite, when they are taken to the initial processing prior to going to a detention facility, we provide them free phones. We provide them the opportunity to call relatives. If they have an attorney, they can call them. If they don't have an attorney, we provide them the names of free legal services. They can call their consulate. And that is all done before they ever go to detention.

Once they get to detention, they have the same access to free telephones there. And, again, we provide them access to the numbers of law firms that provide free legal services, to consular officials. We provide them the phone number of the Inspector General if they feel——

Ms. WATERS. Thank you. I think my time is up. Could you tell me about how many people we have in this country who are being detained at this period, right now?

Mr. MEAD. We have approximately 30,000 people in custody today.

Ms. WATERS. 30,000?

Mr. MEAD. Yes, ma'am.

Ms. WATERS. In various facilities?

Mr. MEAD. Yes, ma'am.

Ms. WATERS. Some up to 40 days?

Mr. MEAD. Yes.

Ms. WATERS. We feed and clothe and give medical care to them?

Mr. MEAD. Yes.

Ms. LOFGREN. The gentlelady from Texas, Miss Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Madam Chairperson.

And let me also thank the witness and, frankly, thank your service for its service.

And certainly, I believe you understand the oversight responsibilities of Congress. And to do that, we must be pointed and provocative and probative on how our government is working.

Now, part of the fault lies in the lack of a comprehensive immigration system. And the genesis, I believe, of a lot of the work that you are now doing has come in a misguided way, not by way of, necessarily, your actions of following orders, but the whole surge or onslaught of the necessity of being oppressive and being aggressive

as it relates to enforcement when we have no balanced comprehensive system that will go along with it.

Because we have always acknowledged that we are a Nation of law, but we are also a Nation of immigrants. And so when the debate began, I remember very distinctly, it was a cry-out for internal enforcement, which, when it trickled down to officers on the ground, I know there is an extensive burden of the numbers, of the cases, of the number of arrests. That generated into these raids that occurred in places such as the Carolinas, North and South Carolina, that occurred with the Swift Meat Packing entity.

Though they may have been law enforcement necessities or orders, I, frankly, put it squarely at the feet of the previous Congress and the dilatory actions of this Administration in failing to put forward a comprehensive immigration reform package.

For that reason, you now have a series of incidents that show that the enforcement has now come down heavy on citizens, legitimate, hard-working citizens. And so I raise these questions, and we will be hearing from a number of individuals. And I would like to understand.

Do you recall the Swift, if you will, raid, and can you tell me why in the Swift Meat Packing raid, you put—or someone has given me the information that you asked or your officers asked all the brown people to stand on one side and all the other people to stand on another side? Is that accurate? Or do you have a report on that?

Mr. MEAD. I am not aware of a report on that. I am sorry.

Ms. JACKSON LEE. Can you investigate that one particular question that I have just asked you?

Mr. MEAD. Yes.

Ms. JACKSON LEE. I would like to know how your ICE officers went in. Did they ask for all the brown people on one side and all the other people on the other side?

The other question I want to know is do you have training to explain to officers that immigrants come in all racial backgrounds or country backgrounds?

Mr. MEAD. Yes. We do provide training on cultural differences, cultural awareness, yes.

Ms. JACKSON LEE. Do they understand that there are European undocumented individuals that may not be brown in the United States?

Mr. MEAD. Yes, ma'am.

Ms. JACKSON LEE. Are they trained enough to be able to determine that person's status, or are they looking only for color?

Mr. MEAD. We deport people based on their legal status and their right to be here, not their color.

Ms. JACKSON LEE. So you wouldn't go into a meat packing or a Home Depot store—forgive me, Home Depot. I am just using various examples. But in any event, to go into a store and round up all the brown people?

Mr. MEAD. No, ma'am. We do not——

Ms. JACKSON LEE. What about all the people with turbans?

Mr. MEAD. We——

Ms. JACKSON LEE. Headgear on their head?

Mr. MEAD. We do not racially profile.

Ms. JACKSON LEE. Okay. I would like to get a direct response back in writing on the training that you do as it relates to people of different ethnic backgrounds.

Let me, quickly, just say you have given increased funding. I would like to know why you are turning your attention to U.S. citizens, and how do you explain detaining U.S. citizens?

And lastly, what remedy do you use to provide a remedy to wrongly detained U.S. citizens?

And I want to bring to your attention—we will hear from them shortly—Justine Mancha, Michael Graves, and Pedro Guzman, who have their own stories to tell about being detained unfairly.

Mr. MEAD. The short answer is we do not knowingly or willfully detain or remove U.S. citizens. And since the inception of ICE, we can only find one case where a U.S. citizen was removed from the country, and that is Mr. Guzman.

And of the more than 1 million people that passed through our custody in the past 4 years, he is the only we can find that was a U.S. citizen that was removed. And we believe that the circumstances there explain that it was definitely not willful or intentional on our part.

Ms. JACKSON LEE. Well, quickly, you went into Miss Mancha's house, and this young lady is a U.S. citizen. Her mother was not home. You didn't have a warrant, and you started questioning that individual who is a U.S. citizen.

Was there any reason for busting into a U.S. citizen's house and questioning a minor?

Mr. MEAD. I wish I could talk to you about that case, but it is under litigation, and I can't talk to you about it.

Ms. JACKSON LEE. All right. Well, I think these examples are disturbing, and I just want to make sure that if I didn't hear it correctly—please give me, in writing, the remedy that you are providing those wrongly-detained U.S. citizens. And I would appreciate that.

And I believe my time is expired.

Ms. LOFGREN. The gentlelady's time has expired.

We have been called for a series of votes. What I would like to do, Mr. Mead, is to thank you for your testimony.

Note that without objection, Members of the Subcommittee will have 5 legislative days to submit questions to you which we will forward. And we ask that you answer these questions as promptly as you can, and we will actually suggest a deadline for the answers as we forward them to you.

We will now excuse you, and I would like to introduce the panel that will be next. And then we will go, if the Ranking Member agrees, and vote and come back.

I will call over to the staff so that they can give an announcement and an estimate of time so people are not prisoners here in this hearing room.

There is a cafeteria downstairs. You can get a cup of coffee because I think it is several votes.

If you could vacate your spot, Mr. Mead, we will ask the other panel to come forward to be introduced.

First, I am pleased to welcome James J. Brosnahan, one of the Nation's most respected and recognized trial lawyers with expertise

in both civil and criminal trial work. He was inducted into the State Bar of California's "Trial Lawyers Hall of Fame" in April 1996 and was awarded the "Samuel E. Gates Award" by the American College of Trial Lawyers in October 2000.

Mr. Brosnahan has served as special counsel to the California Legislature's Joint Subcommittee on Crude Oil Pricing, the lawyers' representative to the Ninth Circuit Judicial Conference and Chairman of the Delegation, and president of the Bar Association of San Francisco.

Next, I would like to introduce Marie Justine Mancha. Justine is a junior and an honor roll student at Tattnall County High School in Reidsville, Georgia. Justine was born in Texas and is the first-named plaintiff in the lawsuit *Mancha v. ICE.*

In her spare time, she enjoys participating in the Future Farmers of America. And her mom, Tina, is here with her today. We welcome her mom.

Our next witness is Michael Graves, born and raised in Waterloo, Iowa. Michael Graves works for Swift Company Plant in Marshalltown, Iowa for 22 years in production on the kill floor. He is a member of Local 1149 of the United Food and Commercial Workers International Union and is currently a business agent for the Union.

He is the proud father of three children; two sons and a daughter. On December 12, 2006, he, along with thousand of other Swift workers, was detained during the ICE raid on six Swift plants.

Next on our witness panel, we have Kara Hartzler. Kara Hartzler is an attorney at the Florence Immigrant and Refugee Rights Project in Florence, Arizona. She first became involved in immigration issues at an Asylum Clinic on the U.S.-Mexican border in 1994 and has, since then, worked with migrant farm workers, the United Nations High Commissioner for Refugees, indigenous communities in Chiapas, Mexico, and the Human Rights Delegation to Iraq and El Salvador.

Miss Hartzler currently works as a criminal immigration consultant, advising state and Federal defense attorneys on the immigration consequences of criminal convictions.

Our next witness is Rachel E. Rosenbloom. Rachel Rosenbloom is a human rights fellow at the Center for Human Rights and International Justice at Boston College and supervising attorney at the Center's Post-deportation Human Rights Project.

She is a graduate of New York University School of Law where she was a Root-Tilden-Kern Public Interest Scholar. She holds a bachelors degree in history from Columbia University and a masters in history from the University of California Berkeley where she was a Regent Scholar and Human Rights Fellow.

And our final witness is Dan Stein. Dan Stein is the executive director of the Federation for American Immigration Reform, otherwise known as FAIR, a Washington-based nonprofit organization founded in 1979.

He has over 15 years experience in the field of immigration law and law reform including a prior position as executive director of the Immigration Reform Law Institute. Mr. Stein is an attorney licensed in Washington, D.C. and Maryland.

He has a degree in economics from Indiana University and a law degree from the Columbus School of Law. He is a native of Washington, DC and has previously appeared before Congress on behalf of FAIR.

Now, at this point, we are going to recess our hearing so that we can go cast our votes on the floor of the House. And we will call over to the staff and will give you a little announcement and an estimate of when we will be able to reconvene as soon as we find that out.

So this hearing is in recess.

[Recess.]

Ms. LOFGREN. The Subcommittee is back in session. As I mentioned to the witnesses when I walked in, welcome to Congress' world. These disruptions do occur when we have votes on the floor. But we are eager to hear your testimony.

This hearing is being webcast, so it is not just the people in this room who will be seeing the testimony.

Your full statements will be made part of the official record of this hearing, and we do ask that your testimony be summarized in about 5 minutes to that we can have time for questions.

We are starting with Mr. Brosnahan and working that way—is that correct, staff? All right.

Mr. Brosnahan, if you would begin. Your microphone needs to be on. Thank you very much.

TESTIMONY OF JAMES J. BROSNAHAN, SENIOR PARTNER, MORRISON & FOERSTER, LLP

Mr. BROSNAHAN. Thank you so much, Madam Chairwoman Lofgren and Ranking Member King.

I appreciate very much the opportunity to tell you what happened to Peter Guzman today, who I represent with the Southern California ACLU.

Very simply, on May 11, 2007, he, being a U.S. citizen born in the United States, living in Lancaster with his fairly-large family, having gone to lower California schools, having worked as a cement finisher, and having developed, over the years, only to the level of about a second grade reading ability.

He is a person of limited mental capacity. He was arrested in connection with a sort of odd trespass, and he was given 120 days under the sheriff's aegis and a very low-level clerk as part of a program which is instituted by ICE.

They interviewed him and asked him if he was a citizen, and he said he was. And she said, But your parents were born in Mexico, you can't be a citizen, and sent him back to a holding cell and then brought him back again.

Now, that happened, and it happened as part of a program that I understand is in 400 local police jurisdictions.

On May 11, 2007, he was sent to ICE, who had in their records, knowledge that he was a U.S. citizen. The sheriff's office knew he was a U.S. citizen. This they took his driver's license when he was arrested.

They had it in their record. They had it in their computers, but they didn't look, evidently, so they say, I guess.

And they put him on a bus with $3. They took him to Tijuana. They opened the door, and they put him out. No family, no job, no place to go, nobody to support him, nothing, zero. And he was a U.S. citizen.

Now, I heard Mr. Mead, if I may, come here today, and I heard that he has a degree in management. And I asked myself as a person, Madam Chairwoman, that doesn't come back here very often, where is it in America that he could manage anything and he would be allowed to do it.

Where is it that the boss would be the Chairperson and the Ranking Member would tolerate answers about notorious newspaper events that he knows nothing about? It is not in corporate America, which I do represent; not in educational institutions. It is not anywhere.

So, yes, Peter was put out there. And what happened to him? For 3 months, he tried to get back into his country where he was born and where he was allowed and entitled to come.

He had to eat out of garbage cans. He had to wash himself in the Tijuana River. And his mother, who we also represent, went to the morgues of Tijuana.

Sometimes, I think it must be hard, and I mean this sincerely, to sit here and talk about policy and not visualize a woman, a mother, in the morgues of Tijuana, looking for her son because the government has put him off a bus.

Did they call their house in Lancaster? They did not.

Did they check their records? They did not.

Did they ask themselves any questions? They did not because they have the power.

And those who have given them the power have oversight, and that is this Committee. What should you do based on my view?

I am a layperson here. My grandfather was in the Immigration Service. And I have had cases involving them, and I know what they do well, and I know what they do wrong.

They separate families. That is wrong.

I don't know what district any congressperson can go and say, We have got a policy; we are going to go and separate families. I don't know where you can go and do that.

But here is what I think is the issue.

First of all, if there is any question about it, there should be a right to a lawyer. I heard Mr. Mead say that they supply that and they suggest it and all that.

That is news to an awful lot of Americans. That is big news.

Yes. They should have a lawyer, certainly. The 400 local jurisdictions—I didn't hear a word today—I didn't even hear a question about are they trained. Are they trained in the sheriff's office in Los Angeles to do this work?

It is not fun work. The head sheriff is not going to do it. It is low-level stuff. And mistakes are being made; you are going to hear about them today. And it was made in this case.

So the oversight has to demand answers to these questions. And I would suggest that the idea of using the local law enforcement is not a good idea. If you are going to have quality education, it would have to be with the ICE to do that.

So I applaud the increased oversight by this Committee. It is much-needed, and I think decent people in the United States want you to do it and hope that you do do it.

Thank you so much for allowing me to speak.

[The prepared statement of Mr. Brosnahan follows:]

PREPARED STATEMENT OF JAMES J. BROSNAHAN AND MARK D. ROSENBAUM

The government—whether it be federal or local—lacks any discretion to deport citizens of the Unites States. Citizenship is the constitutional birthright of every individual born within our national borders, and surely the first obligation of government is to preserve at any cost the liberty and security of its citizens to remain within their homeland.

On May 11, 2007, immigration officials and agents of the Los Angeles District of the United States Immigration and Customs Enforcement ("ICE") Division, under the Department of Homeland Security, in concert with officials of the Los Angeles County Sheriff's Department, unlawfully deported Peter Guzman, a 30-year-old United States Citizen born and raised in Los Angeles County, to Tijuana, Mexico, a city with which he was utterly unfamiliar, having been there only once, at the age of 14, on a brief trip with his mother. Peter Guzman knew no one in Mexico and had not been there for over a decade. At the time of his deportation, Mr. Guzman had no resources by which he could purchase food or shelter, and only the clothes he was wearing when ICE officials placed him on the bus to Tijuana. His family in nearby Lancaster, California was not notified of his deportation, although officers of the Sheriff's Department had within just weeks prior to the deportation contacted his brothers on a number of occasions to discuss arrangements for his imminent release from the County Jail system. Mr. Guzman did not have a cell phone or other means to contact his family to bring him back from Mexico.

As result of his illegal deportation, Mr. Guzman spent nearly three months wandering on foot in Mexico between Tijuana and Calexico. He frequently ate out of garbage cans and for the most part slept outside without adequate shelter or warmth, bathing in rivers. Mr. Guzman lived in constant fear. That he survived is a matter only of his will to live and fortuity. His suffering from this nightmarish ordeal continues to this day.

Mr. Guzman is cognitively impaired and is unable to read at more than a second grade level. At the time of the deportation, he was under the care and supervision of his mother. He is unable to remember his home telephone number or that of anyone else in his life.

The illegal deportation of Peter Guzman was not an innocent mistake by ICE officials or agents, but rather the predictable consequence of policies, practices and procedures which rely upon racial and ethnic stereotypes to presuppose undocumented status and lack even rudimentary safeguards against erroneous determinations. Mr. Guzman told personnel processing him for deportation that he was a United States citizen, and Los Angeles County Sheriff's Department records, compiled at the time of his arrest and booking, and from an earlier incarceration, and readily available to ICE, confirmed his assertion. ICE processed Mr. Guzman for voluntary departure, although official law enforcement records also available to ICE made clear that he would not have been eligible whether or not he had been illegally present within the United States. In addition, medical records of treatment of Mr. Guzman while incarcerated at the Men's Central Jail ought to have immediately alerted ICE personnel that Mr. Guzman should not have been subjected to administrative processing without at minimum the presence of family members or counsel. These records unquestionably demonstrated that Mr. Guzman was not capable of exercising a voluntary, knowing and intelligent waiver of his rights at the time of his deportation, or, indeed, at any time thereafter.

The circumstances that resulted in Mr. Guzman's illegal deportation originated in a January 25, 2005 Memorandum of Understanding ("MOU") between the Department of Homeland Security and the Los Angeles County Board of Supervisors creating a pilot project by which Sheriff's Department personnel interview and process presumed or suspected foreign-born inmates confined within the Los Angeles County jail system to determine the inmates' immigration status and whether, in their judgment, the inmates are deportable. The personnel within the Sheriff's Department assigned this responsibility are not deputies, but are described as custody assistants ("CA's"). These CA's have received only brief training by ICE, are not versed in immigration law and yet pursuant to the MOU, have been granted federal authority to obtain consents to voluntary departures and to make referrals to ICE for deportations. For all intents and purposes, ICE exercises no meaningful super-

vision or monitoring of immigration processing by local CA's within Los Angeles County.

BACKGROUND

Peter Guzman was born on September 25, 1977 in Los Angeles, California. He is the second of seven children. Mr. Guzman grew up in Lancaster, California. He attended elementary, middle and high schools in Lancaster.

On March 31, 2007, Mr. Guzman was arrested for the misdemeanor offense of Trespassing upon Land Under Cultivation in violation of California Penal Code § 602. He pled guilty to misdemeanor vandalism and was sentenced on April 19, 2007. The judge suspended imposition of the sentence and placed Mr. Guzman on three years probation with a condition that he serve 120 days in County Jail, of which he received credit for 30 days of combined good time and time served.

Some time after his sentencing, Mr. Guzman was transferred to the Men's Central Jail in downtown Los Angeles and was processed thereto at the Inmate Reception Center. In response to a question relating to his citizenship, he stated that he was born in California. Department personnel recorded his response in official records relating to his arrest and detention.

During the course of the next weeks, Sheriff's Department personnel contacted Mr. Guzman's family on at least two occasions, at one point seeking to verify information for purposes of arranging an early release to his residence. At no point did these personnel or ICE agents question whether Mr. Guzman was a United States citizen or attempt to verify citizenship.

Other law enforcement records available also recorded that Mr. Guzman was a United States citizen. By reason of an earlier conviction and incarceration, there ought to have existed serious question as to whether Mr. Guzman would have been eligible for voluntary departure even if he had been illegally within the United States.

County medical records relating to Mr. Guzman disclose that on April 7, 2007, just one week after his arrest, he was prescribed 5mg of Zyprexa to be taken daily. Their documents state:

> He has been in jail for more than one week. He was at LCMC for AMS and he is sent back with Zyprexa 5mg daily for voices. He told the ER doctor at LCMC that he hears voices of and on, telling him 'bad things' but there is no other specifics of 'voices' documented or asked. Further voices increased when he came to jail.

DEPORTATION AND DISAPPEARANCE

On or about May 10, 2007, a Custody Assistant processed Mr. Guzman and obtained a signature waiving his legal rights and agreeing to be voluntarily deported to Mexico. ICE personnel did not undertake any reasonable inquiry into the circumstances of the processing or as to why Mr. Guzman was then questioned about citizenship. Nor did ICE inquire as to Mr. Guzman's eligibility for voluntary departure or as to why law enforcement records consistently stated that he had been born in California.

As result, Mr. Guzman was placed on a bus to Tijuana and illegally deported to Mexico.

On May 11, 2007, Mr. Guzman, utilizing a borrowed cell phone and a slip of paper with his brother's telephone number, called the residence of his brother and spoke to his sister-in-law, Victoria Chabes. The call lasted no more than a minute and the slip of paper was lost shortly thereafter. Mr. Guzman stated that he had been placed on a bus at the jail and that he did not have money or clothes with him.

Ms. Chabes called at once Mr. Guzman's mother, Maria Carbajal, and relayed the conversation. Fearing for her son's safety and well being, Ms. Carbajal returned to her home, obtained Mr. Guzman's birth certificate and drove with one of her sons to Tijuana to begin to search for him.

Over the next three months, Ms. Carbajal, Mr. Guzman's brothers, his sister-in-law, and other family members searched in Tijuana and adjoining cities for Mr. Guzman. Ms. Carbajal often walked through the city. She and family members regularly searched morgues, hospitals, jails, shelters and along rivers and alleys. Ms. Carbajal arranged to temporarily leave her job as a cook at Jack in the Box to devote virtually all of her time to the efforts to find her son. Because the family had very limited resources, Ms. Carbajal stayed at times in a room no larger than a closet in a banana warehouse where she slept on the floor. She cooked in exchange for the room.

A usual day would begin at 6:00 a.m. and not finish until late at night. Ms. Carbajal and family members circulated hundreds of flyers with a picture of Mr. Guzman and information about him.

Mr. Guzman wandered on foot over hundreds of miles for eighty-nine days between Tijuana and Calexico. He physically survived by begging and picking food from garbage. He bathed in the Tijuana River and typically slept outside.

Until a habeas action was filed in federal court, and worldwide attention was brought to the case, the United States government offered no assistance to Ms. Carbajal and her family despite repeated pleas for help. When prior to the filing of the habeas, counsel for the family informed a Los Angeles ICE official of the circumstances of the deportation, and faxed a copy of the birth certificate, the official stated that upon proof of the validity of the certificate, ICE would amend its records to correctly reflect Mr. Guzman's United States citizenship, but would take no additional steps to find and return him to the United States.

Upon his return to the United States, Mr. Guzman was unable to speak and physically incapable of stopping from shivering. He is currently receiving psychological treatment as result of the illegal deportation. Ms. Carbajal stated shortly after his return that "he left complete but they took half my son."

Ms. LOFGREN. Thank you very much, Mr. Brosnahan.

Now, we have our honor student, Marie Justine Mancha.

Justine, if you would give your testimony now, we are eager to hear it.

TESTIMONY OF MARIE JUSTEEN MANCHA, STUDENT, TATTNAL COUNTY HIGH SCHOOL

Ms. MANCHA. Hi. My name is Marie Justine Mancha. I go by Justine. I am 17 years old, and I am a junior at Tattnall County High School in Reidsville, Georgia.

I am originally from Texas where I was born, but moved to Reidsville with my family when I was about 7. So I consider Reidsville my hometown.

I have grown up in Reidsville, gone to school, and hanging out with my friends. Everyone in my family was born in the United States. We are all known as Mexican-Americans.

Never did I expect my family or me to go through this terrible experience we all went through in September of 2006.

It all started because I was running late and Mom went uptown to run an errand while I got dressed for school.

I was home alone. I was in my bedroom when I first heard the noises outside. It sounded like car doors slamming. So I looked outside my window but didn't see anyone.

So then I went to the living room, made sure the door was unlocked for Mom but also made sure it was closed because, if not, Mom would pitch a fit.

So I walked back in my room and started watching TV while I waited. Not too long after that, I heard male voices coming from inside of my house. I was so scared. I had no idea what was going on.

I got up and started walking down the hallway toward the living room and I started to hear the words "police" "illegal." It seems as if those words still ring in my head today giving me that fear of them busting in my home.

I walked around the corner from the hallway and saw a tall man reach toward his gun and look straight at me. I saw a group of agents standing in the living room blocking the front door. My heart just dropped.

I didn't know what was about to happen. It just about brings tears to my eyes to think what if my little sister was there. What if she had seen this or felt what I felt? I didn't know what to do.

When the tall man reached for his gun, I just stood there feeling so scared. I could have busted out into tears, but I had to be strong and hold it in. I looked around, and there were about four or five men in my house and more coming up the stairs.

They began asking questions. I started to feel closed in like I couldn't say no or not answer them because they were blocking the front door. They were asking me if there was anyone else in the house, and if my mom had worked at Cotter, and why she had quit.

Also, they asked if my mom was a Mexican and if she had her papers or a green card. I felt so awful and low that they were asking me all these question because I am Mexican.

At the time, I didn't want to be Mexican because of what we go through and how people look at us different and treat us and assume we are all illegal.

But just going through all this made me see how strong Mexicans can be, and I wouldn't change that for anything. I am proud to be Mexican.

I answered all their questions, telling them my mom didn't need a green card because she was born in Florida. Finally, I got the courage to ask them why they were in my home.

One of the agents just said they were looking for illegals. They began to walk outside and I heard them telling each other they should all go to the gas station because they would find a lot of Mexicans there.

I asked if they were leaving, and they said they would be in the area looking for the rest of them. I walked outside and they were everywhere. Luckily, they all got in their cars and started to drive off.

About that time, Momma pulled in, and I ran to her and started crying telling her what had just happened. I was so scared. I still am. I carry that fear with me every day wondering when they will come back.

Thank you.

[The prepared statement of Ms. Mancha follows:]

PREPARED STATEMENT OF MARIE JUSTEEN MANCHA

Hi, my name is Marie Justeen Mancha, but I go by Justeen. I'm 17 years old and am a Junior at Tattnall County High school in Reidsville, Georgia. I'm originally from Texas where I was born, but moved to Reidsville with my family when I was about seven years old. So, I consider Reidsville my hometown. I've grown up in Reidsville going to school and hanging out with my friends. Everyone in my family was born in the United States. We're known as "Mexican-Americans." Never did I expect my family or me to go through the terrible experience we all went through in September of 2006.

It all started because I was running late, and Momma went up town to run an errand while I got dressed for school. I was home alone. I was in my bedroom when I first heard the noises outside. It sounded like car door slamming, so I looked outside my window but didn't see anyone. So then I went to the living room and made sure the door was unlocked for momma, but also made sure it was closed because if not Momma would pitch a fit. So I walked back in my room and started to watch T.V. while I waited. Not too long after that I heard male voices coming from inside my house. I was so scared. I had no idea what was going on.

I got up and started walking down the hallway towards the living room and I started to hear the words, "Police! Illegals!" It seems as if those words still ring in my head today giving me that fear of them busting into my home. I walked around

the corner from the hallway and saw a tall man reach toward his gun and look straight at me. I saw a group of law enforcement agents standing in the living room blocking the front door. My heart just dropped. I didn't know what was about to happen. It just about brings tears to my eyes to think, "what if my little sister was there?" "What if she had seen this, or felt what I felt?" I didn't know what to do. When the tall man reached for his gun I just stood there feeling so scared. I could've busted out in tears, but I had to be strong and hold it in. I looked around and there were about four or five men in my house and more coming up the stairs.

They began to ask me questions. I started to feel closed in, like I couldn't say no or not answer them because they were blocking the front door. They were asking me if there was anyone else in the house and if my momma had worked at Crider Poultry and why she had quit. Also, they asked me if my mom was a Mexican and if she had her papers or a green card. I felt so awful and low that they were asking me all these questions because I'm Mexican. At times, I didn't want to be Mexican because of what we go through and how people look at us different and treat us and assume we're all illegal. But, just going through all this made me see how strong Mexicans can be and I wouldn't change that for anything. I'm proud to be Mexican.

I answered all their questions—telling them my momma didn't need a green card—that she was born in Florida. Finally, I got the courage to ask them why they were in my home. One of the agents just said that they were looking for illegals. They began to walk outside and I heard them telling each other that they should all go to the gas station because they'd find a lot of Mexicans there. I asked if they were leaving and they said they'd be in the area looking for the rest of "them." I walked outside and they were everywhere. Luckily, they all got in their cars and started to drive off.

About that time momma pulled in and I ran to her and started crying—telling her what just happened. I was so scared. I still am. I carry that fear with me everyday—wondering when they'll come back.

I have also attached a copy of the complaint in the lawsuit in which I am a plaintiff, which I would like to be considered as part of the record before this Subcommittee.

Ms. LOFGREN. Thank you very much. You did a wonderful job of testifying.

Mr. Graves?

TESTIMONY OF MICHAEL GRAVES, MEMBER UNITED FOOD AND COMMERICAL WORKERS UNION LOCAL 1149

Mr. GRAVES. Thank you, Madam Chairwoman. Thank you, Members of the Subcommittee for holding this important hearing.

I am here today representing 1.3 million members of the UFCW Local 1149 and thousands of other Americans who have been treated and abused by our government, outraged by the institutional immigration sweep at worksites across the country.

I will never forget on December 12th when heavily-armed ICE agents surrounded the Swift Meat Packing Plant at the Swift Company in Marshalltown. The plant where I worked——

Ms. LOFGREN. Could you move the microphone a little bit closer to you so we can hear all of your—thank you.

Mr. GRAVES. On that day, my civil rights was violated and my faith in this country was taken.

At 6 o'clock that morning, our supervisor came to our floor. I was on the kill floor. He came around and told everybody that they have to report to the cafeteria.

They didn't give us a reason why we had to report to the cafeteria, just that we had to report to the cafeteria.

So we proceeded to go out to the cafeteria to the main floor. Me and two other Hispanics, co-workers, started going to the cafeteria at our normal route.

We met up with ICE agents. He came to us and asked us where we was going. We said we was reporting to the cafeteria as we were supposed to. He came to us and said, Well, you are not going the right direction. I said, "This is our normal route."

So anyway, he came to us and asked did we have any weapons on us—we wear white t-shirts, white pants, no long sleeves or nothing; no weapons on us. He still searched us and told us to get up against the wall.

He asked us if we kept them in our locker. He put us against the wall and handcuffed us. He took us to our locker in the men's locker room and—the two down. My locker was down there on the other side of the aisle.

So one of the ICE agents took me to my locker, still in handcuffs, and asked me about where I was living. And I told him I lived in Waterloo, Iowa. He asked me again where I lived. We are here in Waterloo, Iowa because it is a good place to work, and I have been here for 21 years—so many years. So I didn't want to change my job.

So he asked me for my combination. He asked me to open my locker. He opened up my locker and asked me if I had any weapons inside. I said, no we don't carry weapons to work. So he searched my locker anyway.

He asked for my ID. He got my identification, looked at it, and asked me questions about my identification and asked me about my parents. And I said they lived in Mississippi.

He asked me do I know my route to Mississippi. And I said, well yeah, but I don't know the exact route in detail.

So he kind of looked at me and told me to sit down. So he took my identification to another agent that was down from the aisle where I was sitting and told me to sit down. And he looked at my identification and the other agent did, too. They looked at it, said something to each other, and started laughing.

So they took my identification with them, and I was still sitting there waiting for them to come back. When they did come back, he told me to go to the cafeteria where everybody was still sitting there waiting.

The cafeteria holds about 50 people, but they crammed about 150 people in the cafeteria. So they blocked off all the food supply, all the water in the cafeteria. They unhandcuffed me at the entrance of the cafeteria and told me to go in there and wait——

We was in there for about, at least, 3 or 4 hours in the cafeteria with no food, no water, no means of telephone to call our lawyers or—they did not give us a chance to get our union rep there to talk to us about the situation either.

So we was there with no food, no water, nothing.

When they came, they got us by tens of people and then they took us to go to another area to process. After that, we were processed. We went to another area outside the plant and walked about 400 yards to another building where 400 people were in there where they still cut off all our food supplies, no water, no phones, no nothing.

We were there for about 8 hours with no means of getting outside contact, no food or water till the whole process was over and done with.

Myself, you know, it is just horrible how they treated us. They herded us like animals going to the other building—agents denied them to call their loved ones and let them know what was going on.

I am not just the only one. I am here with a friend of mine, another friend from Brent Island. He is one of the persons that was violated at his plant, also. So I mean, it is not me at my plant; it is another plant that they had victimized, also.

At that time, I felt that the raid was unjust. It didn't do the proper procedure when they did. I mean, they checked who I was. They found out who was illegal and who wasn't illegal, but they still detained us there for 8 hours with no food and water.

And after that, after 8 hours, they sent us home. After that, everything was over and done with.

Again, thank you.

[The prepared statement of Mr. Graves follows:]

PREPARED STATEMENT OF MICHAEL GRAVES

Thank you Chairwoman Lofgren, Ranking Member King, and Members of the Subcommittee for holding this hearing and for the opportunity to testify. I am here today representing the 1.3 million members of the United Food and Commercial Workers International Union (UFCW), my Local 1149 in Marshalltown, Iowa, as well as the tens of thousands of American citizens who have been abused by our government's outrageous and unconstitutional immigration sweeps at worksites and homes across this country. It is indeed a privilege to be here in Washington to testify today and to tell my story.

My name is Mike Graves, and I am from Waterloo, Iowa. For the last 21 years, I have worked at the Swift and Company plant located in Marshalltown, Iowa. During those years, I have worked on the kill floor of the plant. I am also active in the union.

In all 21 years on the job, there is one day I will never forget. On December 12, 2006, hundreds of heavily armed ICE agents stormed six meat packing plants across America's heartland. The Marshalltown plant where I work was one of those targeted and attacked.

And it did feel like an attack. I will never forget that day. Because it was on that cold December day, that I had my civil rights violated and my faith in my country shaken.

I was working on the kill floor doing my usual job when the line was stopped and my supervisor told me and my coworkers to go immediately to the cafeteria. As we walked to the cafeteria, using the regular route, a man in full SWAT uniform with a gun stopped us. His uniform had no nametag to identify him as a government agent. He asked me why I was running away. I politely told him I was not running away from anything or anybody, but that I, along with my colleagues, had been instructed to go to the cafeteria. He asked for identification, which I told him was in my locker. You see, when you work on the kill floor, you do not carry identification to the floor because you can be splattered with blood. He told me we had to go to the locker room.

Once there, the agent told me to get against the wall and he handcuffed me. He then began to interrogate me about where I was born, where I now lived, where my parents live, and whether I was a U.S. citizen. I told him I was born in Waterloo, Iowa, and that was where I still live. I answered each question honestly and politely although I was uncomfortable in the handcuffs and not sure why I was being interrogated in this way.

He asked me why I live in Waterloo and drive all the way to Marshalltown for work. It's more than an hour drive each way, but my Swift job is a good job and it helps me provide for my family. The agent then asked where my parents were from. I told him Mississippi. He asked me how to drive from Waterloo to Mississippi. To be honest, I didn't know the exact route, why should I? Do you each know the precise route to your parents' house? When I didn't answer the questions to his satisfaction, he continued to aggressively interrogate me. Was I scared? Yes, wouldn't you be?

He asked me for my locker combination and if I had any weapons. By now, I was getting angry. I am a U.S. citizen. I am the son of U.S. citizens. I am a father of

U.S. citizens. I live in the same state in which I was born. I have worked in the Swift plant for more than two decades. It is not easy work, so with all due respect to the Subcommittee, I found his questioning insulting and offensive. And, quite frankly, regardless of my status, his interrogation, the handcuffs, the guns, and the agents in SWAT uniforms were all incredibly unnecessary and intimidating—and, I had done nothing wrong.

Why would he ask and suggest that I have a weapon? Why would I bring one to work? Because I'm black? Because I work in a packing plant? It just wasn't right. I have worked at this plant for more than 20 years and I was not only being asked if I had a weapon but for my locker number. I couldn't even open my own locker because of the handcuffs.

The ICE agent opened my locker and checked my ID. He showed it to another agent. They started laughing. I was then escorted outside, still in the binding handcuffs, to the cafeteria. It is about a 400 yard walk. It was December in Iowa. It was cold and snowing and I had no coat or gloves. There were armed agents everywhere guarding the perimeter of the Swift building.

By the time I got into the cafeteria, I had been in the handcuffs for an hour. The agents finally removed the cuffs and I was forced to sit in the cafeteria for the next seven hours with hundreds of my coworkers. We had no food and no water. We weren't allowed to use the restrooms by ourselves. We couldn't use the phone to contact our families, union representatives or lawyers. ICE held me there for eight long hours. There was no legitimate reason. There was no probable cause. Our plant—our workplace—had been transformed into a prison or detention center. We were turned into prisoners because we went to work that day.

Again, for the record, I am a U.S. citizen. I was born and raised in this country—in the same state I work and have never been overseas in my life. But on that December day, I and all my coworkers, were treated by our government like criminals. All we did was wake up and go to work. It was a day that was nothing out of the ordinary. We just went to work to help provide the food for this country and the support for our families. But it wasn't a normal day after all. What happened to us that day was simply wrong. No one in this country, regardless of their status, should be treated the way we were treated at the Marshalltown Swift plant or any of the Swift plants. Working is not a crime, and workers do not leave their constitutional rights at the plant gate.

Imagine the outrage if this happened at one of these fancy downtown Washington office buildings. Imagine if thousands of innocent people were detained for more than eight hours just because the government suspected a handful of undocumented workers in the building? It would not matter who was in the building at the time, everyone would be detained. This would cause a huge uproar and outcry. You think it wouldn't happen in Washington but we thought it wouldn't happen in Iowa either. We thought it couldn't happen in America's heartland, but it did. Innocent workers were handcuffed and detained by our government. It would be wrong in Washington, DC and it was wrong in Marshalltown, Iowa.

What happened to me—and to thousands of others of U.S. citizens and legal residents on that December day—was a complete violation of our rights. And, it did not end there. It can happen at any workplace—at any time—in this country if we do not do something now to change the way these immigration raids are conducted.

My story is not unique. I wish you could hear all of the stories from that day. Perhaps then you would understand the fear that people were subjected too. You would hear first hand how we were mistreated and how we were treated like a herd of animals. You would hear from people whose children were left stranded at schools and daycares, who had no idea where their parents were. You would hear from women who were frisked by male agents because no female agents were available. You would hear from handcuffed women, who were escorted into bathroom stalls by agents when they needed to use the facilities. You would hear from the woman who was at a local hospital having a miscarriage, but ICE would not allow her to contact her husband in the Swift plant because he was detained.

You would also hear from Darryl Harrington, a Korean War veteran, who was detained and compared the experience to his time at war. You would hear from Walter Molina, another U.S. citizen, who was taken from his plant to a detention area more than 6 hours from his home and was later released only to have to find his own way home.

You would hear the story of Delphina Arias, a U.S. citizen. She has a son in Iraq and a daughter in ROTC. Delphina was also detained by ICE agents. What is happening in this country that we are detaining a mother, a mother who is a U.S. citizen, while her son is putting his life on the line right now in Iraq? On that day, Delphina thought the ICE agents dressed in black who invaded her plant were ter-

rorists intent on killing us. She actually thought about pretending she was dead if they opened fire on her and her co-workers.

You would also hear the story of Pasqual Talamantes, who is here with me today. Pasqual is a U.S. citizen. But the ICE agents didn't believe his story because he does not speak English very well. Pasqual was educated in Mexico. He was at the Swift plant in Grand Island the day of the Swift raids. He showed his driver's license to the agents but although it is current, it is old and he is thinner than his picture. The agents did not believe it was his license and yelled racial slurs at him. Pasqual insisted that he was a U.S. citizen and that he had a U.S. passport at home. He pleaded to be released so he, a single parent, could go home to his children. ICE detained him for six horrific hours. Could there be a more concrete example of racial profiling and to what end? Was any of this necessary?

These are just a few of the stories you would hear from Swift workers who were abused, traumatized, and mistreated in the guise of immigration reform by the U.S. government. Members of this Subcommittee, something has to be done so that this never happens to anyone in this country again. It was horrible to watch how we were treated that day. It was hurtful to see the fear in my co-workers eyes and to understand the trauma we all experienced. Again, all we did was go to work that day. The raids hurt our community. It hurt our company. And it is hurting our country still.

Thank you again for the opportunity to testify today and tell you my story and my co-workers' stories. I urge you to use the power of your offices to correct this injustice and to fight to end these discriminatory, un-American practices by ICE. Again, thank you for your time and I would be pleased to answer any questions that you may have.

Ms. LOFGREN. Thank you very much, Mr. Graves.

Miss Hartzler?

TESTIMONY OF KARA HARTZLER, ATTORNEY, FLORRENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT

Ms. HARTZLER. Madam Chairwoman and Ranking Member King and Members of the Subcommittee, thank you for inviting us here today.

My name is Kara Hartzler, and I am an attorney at the Florence Immigrant and Refugee Rights Project in Arizona.

The Florence Project is a nonprofit organization providing free legal services to persons in Arizona who are detained by ICE.

We do this by conducting legal orientation presentations to detainees before their first deportation hearing and by providing individual follow-up services to those who do not have lawyers but maybe eligible to remain in the United States.

In the course of my work with the Florence Project, I have talked to thousands of people who are in the process of being deported. And I would like to tell you a few of those stories today.

About a month ago, I spoke with a man named Thomas Wozniak in Florence, Arizona on the morning of his deportation hearing. When I asked Mr. Wozniak where he was born, he replied, "Minnesota."

He told me he was raised in the south and that he had never left the United States in his life. When I asked if he knew why the U.S. was trying to deport him, he said that someone had told him he had a foreign-sounding name.

Because he was detained, he did not have access to his birth certificate nor did he have any family or friends who could obtain a copy.

He had heard it cost $30 to order a copy of his birth certificate, so he was working in the prison kitchen for a dollar a day until he had the money to order one. So far, he had $8 and he hoped

to earn the remaining $22 before his next court date in several weeks.

In my experience, stories like that of Mr. Wozniak are not rare. Under immigration law, a person is a citizen of the United States by birth, naturalization, or because the person automatically acquired or derived citizenship through a parent.

On average, our organization is currently seeing 40 to 50 cases per month in which individuals with potentially valid claims to U.S. citizenship are being detained and deported.

Why aren't we hearing about these cases? Because as is often the situation, it is happening to the most vulnerable in our society; to racial and ethnic minorities, the mentally ill, people who cannot afford to hire a lawyer, people who are homeless and have no access to documents, people with no family to help them.

In immigration court, unlike criminal proceedings, the government does not provide a lawyer to those who can't afford one.

One of our clients named Anna, who suffers from psychosis and schizophrenia, represented herself before the immigration judge.

Anna consistently maintained three things: That she was born in France; that former President John F. Kennedy was her father; and that the Pope was also her father.

Despite the obvious unreliability of the latter two statements, ICE used the former statement to argue that she could be deported to France. ICE presented no evidence, apart from her statement, that she was born outside the United States, and the French consulate denied that she is a citizen of that country.

Anna has been detained for 5 months in Eloy, Arizona.

Sometimes, persons who are born at home for religious or other reasons were never issued a birth certificate and are subsequently detained and deported.

Javier was born at home in El Paso, Texas and never obtained a birth certificate. After completing probation for a misdemeanor, his probation officer informed him that she would have to report him to ICE.

When Javier told her that he was born in Texas, she replied, "I know, I am sorry. But I have to cover my ass."

In some cases, the detention and deportation of U.S. citizens is the result of inexcusable error. About a year ago, I met a man named Joseph who was detained in Eloy, Arizona.

Joseph was born in the Sudan and had automatically derived U.S. citizenship from his parents because he had turned 18 after they naturalized. To prove this, Joseph submitted a copy of his original birth certificate in Arabic and a translation of it to the judge that showed that he was born on October 2, 1985.

However, ICE submitted a competing translation that incorrectly interpreted the date on the certificate as February 10, 1985, based on the assumption that the first number in the date represented the month rather than the day, which is not the practice in the Sudan where the birth certificate was issued.

The judge, nevertheless, accepted ICE's translation, rejected Joseph's, and ordered him deported.

When I talked to Joseph, he was disgusted and wanted to give up. I convinced him to let me try and reopen his case. And with

a new translation from an Arabic expert, the judge finally acknowledged that Joseph was, indeed, a citizen.

Even after the judge's ruling, Joseph was not released for another 40 days, a full year and a half after he was first detained.

Following my conversation with Mr. Wozniak, the man born in Minnesota, I contacted a reporter who was able to find a record of his birth within several hours. After being incarcerated for over a month, Mr. Wozniak was finally released.

Ironically, he is one of the lucky ones.

Another man I am assisting with a valid claim to citizenship has been detained for over 4 years. It is my observation that these cases are surprisingly, painfully common; that U.S. citizens are being detained and deported from the United States not monthly or weekly, but on a daily basis.

Thank you.

[The prepared statement of Ms. Hartzler follows:]

PREPARED STATEMENT OF KARA HARTZLER

Written Testimony
Kara Hartzler, Esq.
Florence Immigrant & Refugee Rights Project
U.S. House of Representatives
Subcommittee on Immigration
February 13, 2008

I. INTRODUCTION

This written testimony addresses the subject of Due Process Violations during the detention and removal of immigrants and U.S. citizens by Immigration and Customs Enforcement. The observations and opinions contained herein are solely those of the Florence Immigrant and Refugee Rights Project and do not necessarily reflect the views of any other organization, foundation, or contributor.

A. About the Florence Project

The Florence Immigrant and Refugee Rights Project ("the Florence Project") is a non-profit organization dedicated to protecting the rights of immigrants, refugees and U.S. citizens detained by Immigration and Customs Enforcement in Arizona. In 2007, the Florence Project provided legal orientation presentations and other services to over eight thousand people in removal proceedings. The following written testimony reflects the stories of our clients, the observations of the Florence Project staff, and our subsequent conclusions.

B. Due Process in Removal Proceedings

As a branch of the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") is responsible for providing interior enforcement of the nation's immigration laws. This enforcement often takes the form of detaining and deporting individuals

suspected of being in violation of immigration laws. In order to determine whether an individual has violated immigration laws, some immigrants are put into "removal proceedings" before an immigration judge, while others are statutorily deported or excluded by DHS. Those who are put into removal proceedings have the opportunity to contest their removal or apply for relief from deportation before an immigration judge, while others may be summarily removed by DHS without such an opportunity. It is the opinion of the Florence Project that many of the policies, regulations, and practices used in the detention and removal of persons from the United States represent a systemic violation of the constitutional guarantee of due process

In *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), the U.S. Supreme Court emphasized that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." However, the Florence Project has noted the continual erosion of this constitutionally-mandated right. In its efforts to provide national security in insecure times, ICE has not only swept up persons who are present in the U.S. in violation of immigration laws, but also persons who are not deportable, persons who are U.S. citizens by virtue of birth or derivative status, and persons who are otherwise eligible to remain in the U.S. While some of these individuals have access to resources that allow them to reclaim these rights, many do not, and, as always, due process remains most elusive to vulnerable populations such as children, the mentally ill, racial and ethnic minorities, people who cannot afford lawyers, and those without family support.

This testimony uses the stories of our clients to illustrate some of the most common and disturbing due process violations that the Florence Project has witnessed in the context of the arrest, detention, and deportation of immigrants and U.S. citizens in Arizona. Except where permission has been given, all names have been changed.

II. DUE PROCESS DURING APPREHENSION AND ARREST

A. Profiling

When enforcement resources are stretched thin, profiling is sometimes used as a shortcut to apprehend subjects perceived to be non-U.S. citizens. The intense pressure on ICE to enforce the nation's immigration laws often leads to the arrest of persons on the basis of race, language, surname, or other factors that are unreliable in determining immigration status.

> Javier Rodriguez was born at his parents' home in El Paso, Texas and grew up in the U.S. but was never issued a birth certificate. After a minor criminal conviction, he was told by his probation officer that she would have to report him to ICE for deportation. When Javier informed her that he was, in fact, a U.S. citizen, the probation officer replied, "I know, I'm sorry, but I have to cover my ass." Javier was detained in Eloy, Arizona for six months while he sought to prove his citizenship.

While individuals with strong resources and support systems are often able to secure their release from detention (or avoid incarceration altogether), those without assistance from family or friends – or even those who are unable to contact family or friends – are at a severe disadvantage. If persons with no access to outside support are incarcerated as a result of profiling, it is often extremely difficult for them to access the resources necessary to ensure their constitutional protections.

> Thomas Warziniak was born in Minnesota, grew up in the South, and never traveled outside the U.S. After serving a sentence in a Colorado county jail for a minor criminal conviction, he was told that he would be transferred to Florence, Arizona for deportation, reportedly because he had a "foreign-sounding name." Thomas had lost touch with his family and did not have a copy of his birth certificate. While in Florence, he was told that it cost $30 to order a copy of his birth certificate. When a Florence Project attorney first spoke with Thomas, he reported that he was working in the kitchen for a dollar a day to earn enough money to order his birth certificate. He had accumulated eight dollars and was hoping to earn the rest before his next hearing.

B. Enforcement of Federal Immigration Law by Local Authorities

When local law enforcement untrained in immigration issues attempt to enforce complex immigration laws,[1] errors often result. Sometimes these errors can lead to the detention of persons who are not deportable; other times, these mistakes can cause grave, long-term harm to the person involved.

> Rosa has been a lawful permanent resident since 1989. In the fall of 2006, local police went to her house on a report of a domestic disturbance and asked to see proof of her immigration status. When Rosa produced her permanent resident card, the officer pronounced it a "fake" and arrested her on charges of forgery. After ICE confirmed that Rosa was indeed a permanent resident, charges were dropped and Rosa was released. However, the local police department maintained that the card was forged and refused to release it. Rosa was unable to apply for a job or demonstrate eligibility for low-income housing for over a year. Due to lack of income, Rosa could not afford to pay the $370 fee to replace the card. Only after aggressive advocacy by the Florence Project did local officials confirm with ICE that the card was in fact valid and release it to Rosa.

C. Expedited Removal

Under a practice known as "expedited removal," some persons apprehended within a certain distance of the border after illegally entering the U.S. are only entitled to see an immigration judge if they express a fear of returning to their country.[2] However, people who meet these criteria are frequently subject to intense pressure from ICE and the Border Patrol to waive their right to apply for political asylum.

> Brenda fled El Salvador after being threatened by gangs and was arrested by Border Patrol after crossing the U.S./Mexico border. During her interrogation, Border Patrol presented her with a paper that had two statements written on it: one expressing a fear of returning to El Salvador and a desire to see an immigration judge, and the other stating no fear of returning to El Salvador and a waiver of her right to see an immigration judge. When the officers presented her with the paper, there was already an "X" marked in the box before the sentence stating that she was not afraid to return to El Salvador. The officers told her to sign the paper at the bottom. Brenda lied and said she could not read

[1] Under section 287(g) of the Immigration and Nationality Act, the Attorney General is permitted to enter into written agreements with states that allow a state officer or employee to perform the functions of an immigration officer.
[2] 8 C.F.R. § 235.3(b)(4).

> or write, and she repeatedly expressed a fear of returning to El Salvador. The officers kept pressuring her to sign, even showing her how to make an "X" with the pen on the signature line. They told her she would spend a long time in jail if she tried to fight her case. Eventually Brenda relented and signed the form.

D. Transfer of Custody

If a person in criminal custody is believed to be subject to deportation, ICE may issue a detainer requesting that the facility notify ICE when the person is scheduled to be released.[3] Under federal regulations, a facility may hold an individual for up to 48 hours beyond his or her scheduled release in order to give ICE a chance to assume custody.[4] However, this 48-hour rule is routinely violated when ICE fails to show within the allotted time and the person continues to be held by the facility, sometimes for extended periods of time.

> Paul was scheduled to be released from the Yavapai County Jail in Arizona on November 7, 2008. ICE filed a detainer and was required to assume custody of Paul on November 9. However, Paul continued to be incarcerated by the state until November 14, when ICE finally arrived to pick him up. During this week, Paul repeatedly asked to be released but was told that he was being held for ICE, even though the authority to hold him had long expired.

III. DUE PROCESS IN DETENTION

A. Transfer to Isolated Areas

While many immigrants live in heavily-populated urban areas on either coast, ICE detention centers are often located in central, isolated portions of the country far from an individual's home. As a result, persons may be arrested by ICE in one place and transported thousands of miles away to a detention center in which the person has limited access to legal counsel, documents, witnesses, and family and friends. In most cases where a person is

[3] 8 C.F.R. § 287.7(a).
[4] 8 C.F.R. § 287.7(d).

presenting a claim to citizenship or other forms of relief, immigration cases are heavily dependent on documents such as birth certificates, tax receipts, pay stubs, and school records – all of which are difficult to obtain when a person is incarcerated in a remote area far from home. While most civil parties have the option to move for a change of venue based on witnesses, convenience, or other factors, immigration judges routinely deny motions for a change of venue based on cost and inconvenience to ICE, rather than to the person being deported. If the person is transported thousands of miles away from home and later released from ICE custody, she or he will merely be dropped off at a local bus station, with no resources to pay for the return trip.

> John is a lawful permanent resident who lived in Fresno, California with his U.S. citizen wife and three U.S. citizen children, all under the age of ten. After John was convicted of being under the influence of drugs, he was transferred directly to an ICE detention center in Eloy, Arizona. John was eligible to apply for a waiver of deportation based on hardship to his family. However, without John's income, John's family was struggling financially and faced foreclosure on their house. John's wife could not get time off from her job at Safeway and didn't have money to travel to Arizona with her three children. With no witnesses to testify at his hearing, John could not prove sufficient hardship and was denied the deportation waiver.

Frequently, ICE will begin removal proceedings in one state and later transfer detainees to remote locations in other states. This often occurs despite the fact that the person has already hired a local attorney to represent him or her in court. Immigration judges commonly deny motions to return venue to the original location, requiring the lawyer to either withdraw from the case or make frequent, expensive trips to the new location, with limited access to the client between visits.

> In November 2007, approximately 350 people were transferred from the San Pedro facility in California to Arizona and Texas. Many of these transferees had already retained counsel from the Los Angeles area, and their attorneys were not notified of the transfer beforehand and were subsequently unable to contact their clients. In one case, a mentally ill client with a history of psychosis attempted suicide soon after his transfer and was put into special segregation, where he was unable to contact his family or receive any visits, calls, or letters from his attorney for over a month.

Immigration law contains subtle variations between different circuit courts of appeal. The determination of whether or not a person can be deported may ultimately depend on the circuit in which the person is located. Immigration attorneys often advise clients on legal strategies based on the law in their particular circuits, and clients act in reliance on this advice. However, since a person is subject to the circuit law in which he or she is located during removal proceedings, a transfer to another circuit will render this legal advice ineffective, if not outright harmful.

> Jim is a lawful permanent resident who was charged with a crime in Queens, New York. Based on his public defender's discussion with an immigration lawyer, Jim was informed that he would not be deported if he accepted the offered plea, and he did so in reliance on this advice. When Jim was transferred to Eloy, Arizona, however, the case law was unfavorable to his legal argument, and an immigration judge ordered him deported.

B. No Preliminary Hearing

When a person is detained in criminal custody, most courts require that a preliminary hearing be held within 48 hours of the arrest to determine whether there is probable cause to believe that the person committed the crime in question.[5] By contrast, immigration law requires no such preliminary hearing, and persons in Arizona immigration courts commonly wait several weeks or even a month before seeing a judge for the first time. Although a person may request a bond hearing to challenge his or her placement in immigration custody,[6] even a finding by the judge that the person is not subject to deportation may fail to result in the individual's release.

> Michael was detained in Eloy, Arizona despite the fact that he had automatically acquired U.S. citizenship through his father. When Michael asked for a custody hearing, the judge agreed that Michael was a citizen and granted him a $1500 bond, stating that he did not have the power to release Michael on his own recognizance. Michael could not pay the $1500 bond and remained in detention for seven months during ICE's appeal of the judge's decision.

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[5] *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991).
[6] *See Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999).

C. Inability to Obtain Legal Documentation

Presenting a case in immigration court usually requires the submission of extensive documentation, including birth certificates, letters from family and friends, tax returns, pay stubs, school records, affidavits, articles on country conditions, and other evidence. Even with the assistance of family and friends, gathering these documents can be nearly impossible for a person who is detained thousands of miles from home.

> Gerardo sought asylum in immigration court based on his fear of return to his country. The judge told Gerardo that he would be required to present evidence based on the alleged persecution he had suffered.[7] Gerardo repeatedly attempted to call his family from the detention center to get copies of his medical records demonstrating that he had been physically abused. However, every time he tried to call, the facility's phone dropped the call.

D. Lack of Access to Basic Legal Necessities

Approximately 90%[8] of detained persons in removal proceedings do not have sufficient funds to hire an attorney, leaving them to prepare documents and make complicated legal arguments on their own. However, detainees often lack access to even the most basic of materials required to prepare and present their legal cases. This problem is especially prevalent in contract facilities holding both immigration detainees and inmates serving prison sentences.

> In Pinal County Jail in Florence, Arizona, which currently holds approximately four hundred and fifty immigration detainees, individuals were not permitted to have pens pursuant to jail rules. Lack of access to pens made it impossible to fill out the application forms for relief from deportation as required by the immigration judge. After several months, jail officials permitted detainees to "check out" writing instruments, but detainees are still prohibited from keeping pens in their cells. One detainee was recently placed on disciplinary lockdown for 24 hours when authorities discovered a pen in his cell.

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[7] Under the Real ID Act of 2005 (Pub. Law No. 109-13), immigration judges and even ICE attorneys can require an asylum applicant to produce corroborating evidence of his or her asylum claim unless the judge is convinced that such evidence is unavailable.

[8] Elizabeth Amon, *INS Fails to See the Light,* National L.J., March 5, 2001.

Similar problems exist with lack of access to copy machines, working telephones, and legal reference materials.

> In early February 2008, David was ordered by the immigration judge to present a supplemental brief on the legal issues in his case. Although ICE detention standards mandate access to a law library, when David sought to make use of the facility's library in order to prepare his brief, he was told that it had been "shut down."

Even when a facility maintains a law library, certain persons within the detention center often have little or no access to it.

> In Pinal County Jail in Florence, Arizona, detainees have limited access to legal reference materials on immigration law. In facilities in Florence and Eloy, Arizona, persons detained in medical and segregated custody are not permitted to use the law library. Although children are frequently expected to represent themselves in court, they have no access to law libraries. In Eloy, Arizona, over two hundred women are severely restricted from using the law library since it is being used by male detainees.

Detainees often have legal documents when they arrive at the facility and are frequently served with an immigration charging document, known as a "Notice to Appear," soon after their arrival. However, these documents are regularly kept in the individual's property in a separate part of the facility and are difficult to access by the detainee. These legal documents may ultimately prove vital to the person's case.

> Isaac was charged with entering the U.S. without having been inspected or admitted. He conceded this charge but maintained that he had since been granted lawful permanent residence and was entitled to remain in the U.S. Isaac insisted that his permanent resident card was being kept in his property and repeatedly tried to gain access to it. After six months of detention, he was finally allowed to access his property, at which time it was confirmed that his permanent residence card was in his property. Only after much prodding by Florence Project attorneys did ICE verify through their database that Isaac was a permanent resident and concede that he was not deportable.

At the appellate level, detainees frequently conduct their cases by mail, with limited access to overnight delivery services such Fed Ex. Errors in the mail system of the immigration appeals court, along with delays in many detention facilities, can be fatal to a client's case.

> Alfonso filed an appeal with the Board of Immigration Appeals and was awaiting a transcript of his proceedings in order to write his brief. Although transcripts and due dates are usually sent out three weeks before the briefing deadline, Alfonso's mail was delayed. When he finally received the transcript and due date for his brief, he discovered that the brief was due in Virginia the next day. Due to the fact that he was detained, Alfonso could not submit his brief on time and was unable even to ask for an extension before the deadline expired.

E. Lack of Access to Attorneys

Even when persons hire attorneys or have the opportunity to receive advice from other legal providers, delays and limited access are common. Detention officials regularly deny access to lawyers if the facility is on lockdown or the individual is confined in a medical unit, in solitary confinement, or on suicide watch. The Florence Project often encounters obstacles in its requests to provide orientation presentations and conduct legal visits.

> In November 2007, several Florence Project attorneys attempted to present their scheduled legal orientation to individuals who were attending their first court the next day. Facility officials refused to permit the detainees to walk through the prison yard to attend the orientation, claiming that they could not allow the detainees to walk unsupervised through the morning fog.

F. Detention without Charges

A bedrock principle of American law holds that it is unconstitutional to detain individuals without charges. However, the practice of incarcerating immigrants without a Notice to Appear or other charging document is common in immigration proceedings.

> In Arizona, ICE policy interprets immigration law to mean that refugees who have not adjusted their status to that of a lawful permanent resident within one year of their arrival can be detained while their applications for resident status are pending with the U.S. Customs and Immigration Service. Until recently, no expedited track for the processing of applications from these detained refugees existed, and refugees were commonly detained without any immigration charges for a year or more while their applications were adjudicated. While an expedited track has since been established, unadjusted refugees are still routinely held for six months or more without charges or the ability to receive a bond determination from an immigration judge.

Even a decision by the immigration judge that a person is not deportable or has been granted relief may not result in a person's release. If ICE is unable to sustain the lodged charges, it frequently moves to dismiss the case without prejudice and detains the person for days or weeks before filing new charges. In Eloy and Florence, a person who has had his or her deportation proceedings terminated or has been granted asylum or other forms of relief from deportation can continue to be detained if ICE chooses to appeal or even reserves the right to appeal.

> Victor is a lawful permanent resident who was suspected of drug trafficking. After the immigration judge at Eloy determined that there was no evidence to support this charge, ICE filed an appeal of the judge's decision. While in detention, Victor's nine-month old son was discovered to have a hole in his heart and was hospitalized in intensive care in Tucson. Despite having won his case, Victor desperately tried to abandon both his case and his permanent residence so he could be deported and illegally reenter to see his son in the hospital.

Even after a deportation case has been dismissed, ICE frequently continues to hold individuals for days or even weeks without charges if they believe they will be able to bring new charges or evidence in the foreseeable future.

> Charlie is a lawful permanent resident detained at Eloy, Arizona who argued that ICE had presented insufficient evidence to prove that he was deportable. After six months, ICE filed a motion to dismiss the case without prejudice, which the immigration judge granted. Instead of being released, Charlie spent a month being detained with no charges. Eventually, ICE refiled the same charges but presented no new evidence in support of them. Charlie was detained for an additional month until the immigration judge terminated proceedings for the second time.

G. Children

Despite the landmark *Flores* settlement that established minimum standards for the treatment of minors during detention and deportation,[9] children are routinely detained and removed in violation of due process considerations. Children as young as six months old may be

[9] *Flores v. Meese*, No. 85-4544 (C.D. Cal. 1997).

placed in shelters; on average, their cases last between one and one-and-a-half years. During this time, they have no right to appointed counsel, nor to a guardian ad litem. Minors may also be subject to practices such as reinstatement of removal and voluntary return in which they have no right to see an immigration judge. When they do see an immigration judge, many children are forced to represent themselves on complicated legal issues with no access to law libraries or legal advice. Even when the child is able to retain a lawyer, the lawyer may not be permitted to accompany the child to certain interviews with ICE officials, such as interviews regarding whether the child is eligible to apply for various forms of political asylum.

> Miguel is a 15 year-old indigenous boy from Guatemala who speaks limited Spanish. He was interviewed to determine whether he was eligible to apply for political asylum by an ICE official who did not speak Spanish. He asked his case worker at the shelter to write on his deportation paperwork that he wanted to see a judge. Instead of seeing the judge, Miguel was deported several days later.

It is common for minors who are apprehended by ICE to be wrongly labeled as adults and detained in adult detention facilities, often alongside persons with criminal histories. Once a child has been deemed to be an adult, ICE usually requires a birth certificate in order to transfer the child to juvenile custody; however, such transfers rarely occur since most children do not travel with their birth certificates. Furthermore, children who are put in adult proceedings are unable to take advantage of certain procedural safeguards, such as the right to avoid a form of accelerated deportation called "expedited removal" in which there is no right to apply for relief from an immigration judge.

> Carlos came to the U.S. at the age of sixteen, fleeing severe and ongoing physical and sexual abuse. After he was transferred to an adult facility, he informed an official that he was not an adult. Instead of being moved to a juvenile facility, he was placed in solitary confinement. Although Carlos was eligible to apply for asylum as well as a special visa for children who have been abused, neglected or abandoned, he was never taken to see an immigration judge. He had no money and was unable to make phone calls or otherwise seek assistance. Carlos was eventually deported and ended up in the same abusive situation from which he originally fled.

Even when children are accompanied to the U.S. by their parents, they are often separated and detained in different locations with no way to communicate with one another. This is particularly problematic since a child's deportation case may be dependent on the parent's, yet no avenues exist for the child to agree to the parent's legal decision or even be made aware of it.

> Gabriela crossed the border with her mother, but after their arrest, they were detained at facilities sixty miles apart with no ability to communicate. Gabriela informed a Florence Project attorney that she wished to apply for political asylum; however, her mother had already signed paperwork accepting deportation for them both. They were eventually deported together and Gabriela had no opportunity to apply for asylum.

H. ICE Denial of Bond

In certain cases, regulations allow ICE to overrule an immigration judge's decision to grant bond.[10] Called "automatic stays," these regulations effectively allow ICE to disregard the traditional hierarchy of U.S. courts and exercise a "veto power" over the decision of the judge.

> Daniel was granted a waiver of deportation in 2004 after being convicted of several minor but deportable crimes. In 2007, ICE again detained Daniel, claiming that he could be deported for the same crimes for which he was already granted a waiver. When ICE failed to submit evidence of any new convictions since 2004, the judge granted Daniel a bond. ICE subsequently filed an "automatic stay" that deprived Daniel of the right to pay the bond.

Even when ICE does not file an automatic stay, it may arbitrarily decide to reject a person's efforts to pay his or her bond, even a bond imposed by a federal judge.

> Adam was detained in Eloy, Arizona for over four years while his case was on appeal. During this time, the U.S. District Court of Arizona granted his petition for habeas corpus and ordered ICE to provide Adam with a bond hearing in front of an immigration judge. After the immigration judge granted Adam a bond, ICE refused to allow him to post the bond and be released, arguing that the District Court had only ordered ICE to *provide* a bond hearing, not to accept the bond when it was actually paid.

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[10] 8 C.F.R. § 1003.19(i)(2).

I. Coerciveness of Detention

The physical, financial, and emotional strains on a detainee and his or her family often become so intense that many people choose to accept deportation rather than endure weeks, months, and even years in immigration custody. This frequently happens in spite of the fact that the individual is not deportable or is eligible for relief from deportation under the law.

> Kim was a lawful permanent resident charged with removability for the conviction of two crimes involving moral turpitude, one of which involved stealing ham for a sandwich. He was granted a waiver of deportation by the immigration judge, and ICE appealed. During the appeal, the immigration judge granted Kim a bond and his local church gathered the money to pay it; however, ICE placed an automatic stay on the bond, which prevented him from being released. Although represented by a Florence Project attorney on appeal, Kim could no longer tolerate being incarcerated and wrote several letters directly to the appeals court asking to abandon his lawful permanent resident status and be deported immediately. His attorney was not aware of these letters and had already submitted a brief when she was informed that the appeals court was granting his request to abandon his permanent residence.

IV. DUE PROCESS IN IMMIGRATION COURT

A. Persons Detained who are Not Removable

Although ICE may charge that a person is deportable, many people are able to successfully rebut this charge by proving they have a right to remain in the U.S. One of the most common ways immigrants can remain in the U.S. is by proving that they are, in fact, U.S. citizens. U.S. citizenship is conveyed by birth, naturalization, or acquisition or derivation through a U.S. citizen parent. ***On average, the Florence Project encounters between forty to fifty cases a month of people in immigration detention who have potentially valid claims to U.S. citizenship.*** These individuals will commonly be detained for weeks, months, and even years while attempting to prove their citizenship. While some are ultimately successful, others often abandon their cases in the face of what can feel like indefinite detention.

> Joseph was born in the Sudan and had a claim to derivative U.S. citizenship based on the fact that his parents had naturalized before his eighteenth birthday. When Joseph submitted his original birth certificate from the Sudan along with a translation from the original Arabic, ICE requested the right to submit its own Arabic translation. While Joseph's translation correctly interpreted the date of "2/10/85" as "October 2, 1985" based on the Arabic practice of listing the day first, the ICE translation incorrectly interpreted the date as "February 10, 1985," despite the fact that this contradicted another part of the birth certificate that listed the "Date of birth in letters" as October 2, 1985. The judge accused Joseph of "playing fast and loose with numbers" and ordered him deported after over a year in removal proceedings. Disgusted, Joseph waived his right to appeal. Only upon the insistent urging of a Florence Project attorney did Joseph agree to be represented by an attorney and file a motion to reopen his case. Upon submitting a new translation from an Arabic professor, the judge finally recognized the error and terminated deportation proceedings. Despite the ruling, ICE did not release Joseph until forty days after the judge's decision.

Even if a person does not have a claim to U.S. citizenship, he or she may still be able to assert a right to remain legally in the United States. For instance, while lawful permanent residents can be deported for committing certain crimes, ICE is often overly aggressive in charging which crimes can actually result in deportation. In 2007, at Eloy alone, the Florence Project assisted 73 permanent residents who were ultimately found not to be removable despite being charged with removability by ICE.

> Nicholas was arrested for a DUI and sentenced to a work furlough program. One day when he was scheduled to return to serve his time, he had to take his son to the emergency room and reported to the jail fifteen minutes late. He was ultimately convicted of Escape from Jail and transferred to ICE custody. ICE charged that his offense was an aggravated felony and that he could be deported for life with no chance to remain in the U.S. An immigration judge determined that Escape from Jail was not an aggravated felony and terminated his deportation proceedings; ICE appealed. Although the appeals court ultimately agreed with the judge, Nicholas was detained for a total of ten months. During these ten months, Nicholas lost his job, his U.S. citizen wife and five children were evicted from their home, and his two oldest sons were forced to drop out of school in order to take jobs and support the family.

Sometimes deportation proceedings are merely the result of an egregious error. While such errors can often be resolved quickly with the help of an attorney or outside support, the

consequences for detainees and their families who do not have access to such resources can be permanent and devastating.

> Ming Duch was a lawful permanent resident who was put into deportation proceedings on the basis of two alleged convictions for domestic violence against his wife, Judy. Throughout his deportation proceedings, Ming insisted that he was never convicted of domestic violence and did not have a wife named Judy. The immigration judge found Ming deportable and denied his application for a waiver of deportation based on Ming's failure to take responsibility for his crime and lack of rehabilitation. When Ming turned to a Florence Project attorney for help, the attorney discovered that the dot-matrix print on Ming's papers made an "O" look like a "D" and that the conviction documents actually referred to a person named "Ming Ouch." ICE had argued that Ming should still be deported, maintaining that "Ouch" was simply Ming's alias. However, an investigation revealed differences in dates of birth, Social Security numbers, and handwriting samples between the two people. The judge finally agreed to reopen Ming's case after an official in California confirmed that a person named Ming Ouch had been reporting for probation in San Francisco during the five months that Ming Duch was detained in Arizona.

B. Judges Barred from Making Individualized Determinations on Custody

In determining whether an individual should be released on bond, judges have historically relied on the twin considerations of flight risk and danger to society. However, certain categories of persons in removal proceedings may be denied bond based on factors entirely unrelated to these considerations. Persons detained at the border, known as "arriving aliens," are ineligible for bond even if they can prove that their entire family resides in the U.S. and there is a very small chance that they will abscond.[11] Furthermore, section 236(c) of the Immigration and Nationality Act mandates that an individual convicted of certain nonviolent crimes be denied bond regardless of whether the crime is an indication of flight risk or danger to society.

> Raymond is a lawful permanent resident who was put into removal proceedings for a single possession of drug paraphernalia. Raymond's family all live in the U.S., and his son, Shawn, is a third-grader with severe autism. Shawn is enrolled in a special school but has frequent bouts of uncontrollable behavior; when this occurs, Raymond is the only

[11] 8 C.F.R. § 1003.19(h)(1)(i)(B).

> person who can usually calm him down. Raymond was eligible for a waiver of deportation and had strong chances of winning this waiver. However, despite the fact that Raymond's conviction did not suggest that he would be a flight risk or a danger to society, and despite the hardship to Shawn and the rest of Raymond's family, the immigration judge was statutorily bound to deny Raymond's request for bond. He was detained for a total of eight months before ultimately winning his case.

C. Lack of Legal Competency

Over 90% of persons detained in immigration custody are unable to afford a lawyer to represent them.[12] The majority lack English skills, have limited formal education, and have received no training in immigration law. Nevertheless, they are responsible to enter pleadings, contest charges, gather evidence, cross-examine witnesses, write motions and briefs, and make legal arguments before an immigration judge. Not surprisingly, many of them are at a painful disadvantage when trying to present their cases to judges and opposing counsel who possess years of experience in immigration law. Immigration law is often compared in its complexity to the tax code, and there are many issues on which case law does not yet exist. When a novel legal issue arises, busy and overworked judges often rely on ICE attorneys to brief the issue without the benefit of an opposing point of view.

> Sara grew up in a small indigenous village in Guatemala, had a second grade education, and suffered years of abuse and domestic violence from her U.S. citizen husband. A Florence Project attorney informed Sara that she was eligible to apply for a less-common form of immigration status based on the abuse she had suffered from her husband, and the attorney even wrote down the name of the relief for which she was applying so she could repeat it to the judge. In court, Sara was so terrified of offending the judge that she was unable to ask for an application for the status and instead went along with everything the judge said. Only after three hearings did Sara work up the nerve to ask for the application, at which time the judge told her that such a form of relief didn't exist.

D. Persons with Mental Illness

[12] Elizabeth Amon, *INS Fails to See the Light,* National L.J., March 5, 2001.

A significant percentage of persons in immigration custody suffer from mental illness, at times so severe that the person is periodically transferred to psychiatric hospitals between hearings. The mere fact that a person is ruled "incompetent" does not prevent removal proceedings from going forward. Mentally ill persons do not receive appointed counsel and are forced to represent themselves before an immigration judge. The only provision made for mentally ill detainees is the right to have a friend, caretaker, or custodian appear in court with the detainee. In most cases, this consists only of the detainee's Notice to Appear being served on the warden of the facility and does not result in the appearance of anyone in court on the detainee's behalf.

> Anna suffers from psychosis and schizophrenia and is currently representing herself before the immigration judge. She repeatedly states that she was born in France, that former president John F. Kennedy is her father, and that the Pope is also her father. Despite the obvious unreliability of the latter two statements, ICE has used the former to charge her with removability. ICE does not claim to know when and where she entered the U.S. and has presented no evidence – apart from her statement – that she is a citizen of France.

E. Lack of Interpretation

While interpreters are available to facilitate communication with non-English speaking persons during immigration hearings, immigrants are commonly served with a Notice to Appear, application forms, and other documents in English without an accompanying translation. Despite local court rules mandating that documents be served in advance, ICE often submits key evidence the day of the hearing, forcing the person to make crucial legal decisions based on documents that the individual cannot read or otherwise have interpreted to him or her in court.

> Martha was a lawful permanent resident who was allegedly convicted of several counts of shoplifting. She denied the allegation and charges of removal. The day of her final hearing, ICE submitted documents supposedly proving her conviction, which she was unable to read and to which she did not object. Based on these documents, the immigration judge ordered her deported. When she was represented by a Florence

> Project attorney on appeal, the appeals court found that the documents were, in fact, insufficient to prove that she was deportable for the conviction.

At times, an immigration court may not be able to obtain an interpreter for the court proceedings at all. Failure to obtain this interpreter does not prevent the removal hearing from going forward.

> Robert was born in the Marshall Islands and only spoke Marshallese. When he appeared in immigration court, the interpretation service used by the court was unable to find a Marshallese interpreter. Robert's case was reset every month, despite the fact that the interpreter service had repeatedly informed the judge that it would not be able to obtain a Marshallese interpreter. After eight months of incarceration, Robert agreed to try to conduct his hearing in broken English and was ordered removed by the immigration judge.

F. Extreme Delays

As pressure mounts to remove people found in violation of immigration laws, the dockets of immigration judges have become increasingly packed, forcing detainees to be incarcerated for longer and longer periods of time while their cases are being decided. Although the Supreme Court has found that six months is a reasonable period of time to complete removal proceedings, including an appeal,[13] the average application for a waiver of deportation at Eloy will commonly last ten months, without appeal. Compounding the delays is a requirement for background checks on all persons applying for relief from deportation, which can easily add several more months to a person's time in detention.

> Frank is a lawful permanent resident in his sixties who suffers from jaundice and liver failure. He was placed in removal proceedings for a conviction of simple drug possession. The judge informed Frank that he would grant him a waiver of deportation, but the judge was required to wait for the completion of background checks before releasing Frank. Because of Frank's medical condition, the FBI could not verify the ink impression made from his fingerprints despite taking his fingerprints on three separate occasions. Due to the fingerprint problems, Frank was detained an extra six months following the judge's grant of his waiver.

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[13] *Demore v. Kim*, 538 U.S. 510, 530 (2003).

Due to the complicated nature of immigration law, even seemingly straightforward cases can require years to sort out in appellate court. During this time, ICE may sometimes employ dilatory tactics despite the fact that the person in question is incarcerated.

> Eric is a lawful permanent resident from the Philippines who was convicted of joyriding. His case is currently pending at the Ninth Circuit and he has been detained in immigration custody for four and a half years. During his case at the Ninth Circuit, ICE has requested a total of eleven continuances, some based on potential writs of certiorari to the Supreme Court that have not yet been filed. Eric's father lives in California and has been diagnosed with terminal cancer. Eric's one wish is to be released in order to see his father before he dies.

G. No Release during ICE Appeal

Even if an immigration judge decides that a person is not deportable or grants the person relief from deportation, the individual will continue to be detained if ICE files an appeal of the judge's decision. In certain types of cases, such as protection under the Convention Against Torture, ICE appeals almost every case. Frequently, persons who are otherwise eligible to fight their cases and have strong claims for relief are discouraged from doing so given the probability of continued detention even after their case is granted.

> Bertrand fled Haiti after a military coup ousting former president Jean-Paul Aristide and applied for asylum based on the fact that his father, a personal bodyguard for Aristide, was shot. He has been granted protection under the Convention Against Torture once and political asylum twice. Every time he is granted relief by the immigration judge, ICE has appealed. As a result, he has been detained in immigration custody for a total of four and a half years.

V. RECOMMENDATIONS

In light of these consistent and widespread violations of due process that are occurring in the U.S. system of detention and deportation, the Florence Project makes the following recommendations:

- ***Implement and mandate existing ICE detention standards***

  ICE has created an extensive and comprehensive set of standards for the treatment of persons who are detained during removal proceedings.[14] Many of these standards address the lack of access to telephones, basic legal necessities, and other concerns expressed in this testimony. However, these standards are not currently enforceable and thus are widely ignored, particularly when persons are detained in local and county jails. Implementation and enforcement of ICE detention standards would provide significantly more protection for immigrants and U.S. citizens in deportation proceedings.

- ***Explore more cost-effective alternatives to detention***

  The widespread use of detention is a recent phenomenon and reflects political pressure rather than necessity. Feasible and cost-effective alternatives to detention, such as ankle monitors, currently exist and provide similar levels of security without the exorbitant costs and due process concerns of detention.

- ***Immediately provide appointed counsel in immigration proceedings for children and the mentally ill, and consider the development of a "public defender system" for persons who are detained while their cases are before an immigration judge***

  Current policy holds that persons in removal proceedings are not entitled to free legal counsel since immigration proceedings are "civil" rather than "criminal." However, this distinction is illusory since the right to free counsel in criminal proceedings only attaches when a person is subject to a punishment of imprisonment.[15] Since persons in removal proceedings are subject to weeks, months, and even years of incarceration, it is unclear why they should not be afforded a similar right to free counsel.

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[14] *See* http://www.ice.gov/partners/dro/opsmanual/index.htm.

- ***Repeal section 236(c) on the Immigration and Nationality Act to reinstate power to immigration judges to make individualized determinations on custody issues***

  The passage of section 236(c) stripped immigration judges of the discretion to grant bond to detainees based on the traditional considerations of danger to society and flight risk. Since bond is more appropriately determined using these considerations, and since the bases for denial of a bond in section 236(c) do not necessarily bear any relation to whether a person is a danger or a flight risk, section 236(c) should be repealed.

- ***Require ICE to present evidence of removability at the time a person is detained***

  Similar to criminal rules of procedure, ICE should be required to present evidence that a person is removable at the time he or she is detained. This requirement would also save significant funds in housing costs since people would not be required to stay in detention while ICE is preparing a case against them.

- ***Set deadlines for compliance with the Flores settlement and exempt children from coercive practices such as reinstatement of removal and voluntary return***

  Many of the provisions of the landmark *Flores* settlement have yet to be fully implemented, subjecting minors to continued hardship in their detention conditions. Furthermore, children should not be made to endure the inherently coercive practices of reinstatement of removal, pressure from ICE to sign orders of voluntary return, or the expedited removal that can result from children being wrongly classified as adults.

- ***Repeal section 287(g) of the Immigration and Nationality Act allowing local authorities to enforce immigration law***

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[15] *See Argersinger v. Hamlin*, 407 U.S. 25 (1972) and *Scott v. Illinois*, 440 U.S. 367, 373-74, 59 L.Ed. 2d 383, 99 S.Ct. 1158 (1979)

Without meaningful and ongoing training in immigration law, it is impossible for local law enforcement to avoid committing significant numbers of due process violations. Section 287(g) should be repealed in order to restrict the complicated enforcement of immigration law to those who are adequately trained to do it.

- ***Require ICE to detain individuals and file charges in the state where the person resides***

  ICE's preference of transferring people to large detention facilities in remote locations for their removal proceedings should not trump the rights of individuals to have their cases heard in a more appropriate venue with access to witnesses and family support. Since ICE has the option to file removal charges in any of over two hundred immigration courts located throughout the country, it is unclear why ICE would be unduly burdened by initiating and maintaining a person's case in the court closest to his or her home.

- ***Implement mandatory custody review by an immigration judge for cases that have exceeded six months***

  Due to overwhelmed dockets and lack of resources, the practice of concluding removal proceedings during the presumptively-reasonable six-month period established by the Supreme Court is uncommon for those who contest removability or apply for relief from deportation. Immigration judges should be required to conduct a mandatory custody review every six months in order to assure that cases that stretch on for years will not violate the principles set out in *Demore v. Kim.*[16]

[16] *Demore v. Kim*, 538 U.S. 510, 530 (2003).

VI. CONCLUSION

The stories above represent a small fraction of the troubling cases that Florence Project staff members encounter on a regular basis. In confronting these cases, we have come to a disturbing and inevitable conclusion – that under the current detention and deportation system, immigrants and U.S. citizens are frequently denied access to Due Process under the Constitution of the United States. While the current wave of fierce sentiment surrounding the issue of immigration may make it difficult to advocate for more rights for immigrants, the genius of our Constitution lies in its objective and dispassionate defense of the rights of *all* persons within the United States. We recognize that this Subcommittee faces very difficult decisions on the issue of immigration; however, we publicly affirm our clients' inherent dignity and worth and remain staunchly committed to the principle of due process for all persons subject to U.S. law.

Ms. LOFGREN. Thank you very much.

Miss Rosenbloom?

TESTIMONY OF RACHEL E. ROSENBLOOM, HUMAN RIGHTS FELLOW, CENTER FOR HUMAN RIGHTS AND INTERNATIONAL JUSTICE AT BOSTON COLLEGE

Ms. ROSENBLOOM. Madam Chairwoman, Ranking Member King, Members of the Subcommittee, thank you for holding this hearing and for inviting me to appear here today.

My name is Rachel Rosenbloom. I am here on behalf of the Center for Human Rights and International Justice at Boston College.

The main point that I wish to emphasize today is that these cases that you have heard, the deportation of U.S. citizens, are not isolated incidents.

The Center for Human Rights and International Justice at Boston College has documented at least eight cases in recent years in which U.S. citizens have been removed.

We believe, based on anecdotal evidence, that there are additional cases that have not been publicly reported, and we are currently researching those.

Rather than describe these cases, I want to focus on the systemic problems that allow such egregious errors to occur. Over the past decade, our deportation system has increasingly come to rely on fast-track removal processes that bypass our immigration ports entirely.

A case such as Mr. Guzman's makes visible to the public something that is obvious every day of the year to people facing removal; that entrusting high-stakes decisions to low-level officers with little or no review creates conditions that are ripe for error and even sometimes coercion.

One such process is expedited removal introduced in 1996 which allows immigration officers to summarily exclude foreign nationals who lack proper documentation.

Those subject to expedited removal have no right to counsel and no right to a hearing before an immigration judge.

Initially, it was used only at ports of entry, but it is now increasingly being use in the interior. And although a person is supposed to be referred to an immigration judge if they make a citizenship claim, the Center is aware of at least two cases in which U.S. citizens have been removed through this process without ever being referred to immigration court and others who have been threatened with jail time and detained for weeks on end through this process.

Another fast-track removal process is administrative removal, introduced in 1994, which applies to noncitizens who are not permanent residents and have been convicted of certain types of crimes.

Again, this is done by an immigration officer, not an immigration judge. There is no right to a hearing, and if you make a citizenship claim, you are supposed to be referred to a judge.

But, again, we are aware of cases in which this hasn't happened; where people have been removed through this process, citizens like Linda Smith Wilmore, a 71-year-old, partially blind, lifelong resident of New York State who was born in Albany, New York in 1931 and had a birth certificate on file there.

The third fast-track removal process involves immigration officers and, increasingly, law enforcement officers who obtain the consent of U.S. citizens for their removal. This may occur through a stipulated order of removal or by the person accepting pre-hearing voluntary departure.

The people sign away all of their rights inherent in their citizenship without ever consulting with an attorney and without an immigration judge ever determining that such an admission is voluntary, knowing, and intelligent or that deportation is warranted.

So when considering how these processes affect U.S. citizens, consider the following statistics. Seven percent of U.S. citizens do not have ready access to proof of their citizenship such as a U.S. Passport, naturalization papers, or a birth certificate.

Among U.S. citizens who earn less than $25,000 person year, 12 percent lack ready access to such proof of citizenship.

So for a person who is on the margins of our society due to a disability, a drug addiction, or even just due to poverty, getting picked up at an ICE raid or getting turned over to ICE after a minor brush with the law can mean entry into a system that can truly be called——

I just want to—in closing, I want to highlight three factors that really magnifies these problems associated with this system. The first is lack of access to counsel.

Ninety percent of detainees lack legal representation, and it can be crucial in citizenship cases. Sometimes, particularly, if you derive citizenship from a parent, it can take sophisticated legal analysis necessary to prove that.

The second factor is mandatory detention which brings people all over the country far from their friends and family who might be able to help them with their case, far from free or low-cost legal services.

And the third factor is the lack of accommodation for individuals with disabilities as I think has become evident from many of the stories that have been told today.

And finally, although my principle focus is on the deportation of U.S. citizens, I want to say that these systemic problems lay out in a much wider arena. The Center is aware of a large number of cases in which long-time legal residents, green card holders, have been removed on the basis of criminal conviction that do not actually trigger removal or convictions that don't bar discretionary relief.

Faced with the prospect of lengthy detention and lacking the financial ability to hire an attorney, many simply concede removability.

The costs of this system are borne not only by those supported by their loved ones who are left behind, including many U.S. citizens' children who have been senselessly deprived of the presence and support of a parent. And there is also a great cost to all of us and to the system itself, to our legal system, when the rule of law just fails within these situations.

Thank you.

[The prepared statement of Ms. Rosenbloom follows:]

PREPARED STATEMENT OF RACHAEL E. ROSENBLOOM

Testimony of

Rachel E. Rosenbloom

Human Rights Fellow and Supervising Attorney

Center for Human Rights and International Justice at Boston College

Before the

Subcommittee on
Immigration, Citizenship, Refugees, Border Security, and International Law
Committee on the Judiciary
United States House of Representatives

Hearing on Problems with ICE Interrogation, Detention, and Removal Procedures

February 13, 2008
2:00 p.m.
2141 Rayburn House Office Building

Madam Chairman Lofgren, Ranking Member King, and members of the Subcommittee:

Thank you for the opportunity to appear before you today. My name is Rachel Rosenbloom. I am a Human Rights Fellow at the Center for Human Rights and International Justice at Boston College and Supervising Attorney at the Center's Post-Deportation Human Rights Project. I am honored to be here today.

The Center for Human Rights and International Justice at Boston College addresses the increasingly interdisciplinary needs of human rights work. Through multidisciplinary training programs, applied research, and the interaction of scholars with practitioners, the Center aims to nurture a new generation of scholars and practitioners in the United States and abroad who draw upon the strengths of many disciplines and the wisdom of rigorous ethical training in the attainment of human rights and international justice. The Center is built upon the university's deep religious and ethical tradition of service to others and its broad scholarly reach in graduate programs in Arts & Sciences and professional programs in Law, Business, Education, Social Work, and Nursing.

The Center offers a multi-tiered approach to addressing the harsh effects of U.S. deportation laws. Through the Boston College Immigration and Asylum Project (BCIAP), the Center provides "know-your-rights" presentations and legal representation to detained immigrants. Through the Post-Deportation Human Rights Project (PDHRP), the Center represents individuals who have been deported and promotes the rights of deportees, those under threat of deportation, and their family members through human rights advocacy, legal and policy analysis, media outreach, training programs, and participatory action research. The goals of the PDHRP are to introduce legal predictability, proportionality, compassion, and respect for family unity into the deportation laws and policies of this country, and to harmonize U.S. deportation policy with international human rights law.

My testimony today concerns the erroneous removal of United States citizens.

In February of last year, the media reported the removal of Pedro Guzman, an American-born United States citizen. While in the custody of the Los Angeles County Sheriff's Department on a misdemeanor trespassing charge, Mr. Guzman signed a document stating that he was a citizen of Mexico and had no legal status in the United States. Mr. Guzman, twenty-nine years old at the time of his removal, has a cognitive disability. He attended special education classes as a child, cannot read or write, and has difficulty processing information. The Sheriff's Department administrator who obtained Mr. Guzman's signature on the document checked a box indicating that Mr. Guzman had read the statement himself, in Spanish. On the basis of his signature on this document,

Mr. Guzman was transferred to the custody of Immigration and Customs Enforcement, which transported him to Tijuana. No attorney or family members were present at any time during the process that led to his removal.

The first point I wish to make to you today is that the removal of Mr. Guzman is not an isolated incident. The Center for Human Rights and International Justice is aware of at least eight cases in recent years in which United States citizens have been removed. I will describe some of these cases to you – cases that are every bit as troubling as Mr. Guzman's. The Center is currently undertaking an extensive survey of attorneys and community groups because, based on anecdotal evidence, we suspect that there are many more such cases that have not been publicly reported.

My second point is that such mistakes are virtually *inevitable* under our current deportation laws. Cases such as Mr. Guzman's are indicative of systemic problems in the detention and deportation system. These deficiencies raise serious due process concerns under the United States Constitution and contradict U.S. obligations under the International Covenant on Civil and Political Rights, which the United States has ratified.

The English jurist William Blackstone famously stated that it is "Better that ten guilty persons escape than that one innocent suffer."[1] This principle informs many aspects of American criminal law, from the right to counsel to the colloquy that takes place between a judge and a defendant before a guilty plea may be entered.

In the realm of deportation, our current policies seem designed to err in the opposite direction: to ensure that deportation laws are applied as broadly as possible to those who are removable, even at the cost of ensnaring United States citizens and others with the right to remain in this country in a vast net of enforcement. For a person under threat of deportation, there is no right to government-appointed counsel. Indeed, there is no right to the assistance even of paid counsel in certain types of removal proceedings. Moreover, an individual who admits to being removable in the streamlined processes that I will describe is not even entitled to a determination by a judge that such an admission is voluntary, knowing, or intelligent.

The deportation system had developed certain due process protections over its hundred year history. However, during the last decade, many of these procedural protections have been eroded by the introduction of new fast-track removal systems. To understand just how few due process protections remain, consider the following procedures, which together account for an increasingly large proportion of removals.

[1] William Blackstone, 4 Commentaries on the Law of England 358.

"Voluntary" Removal

Some United States citizens, such as Mr. Guzman, concede removability and sign away their right to a hearing before an immigration judge. They may do so through a stipulated order of removal, under § 240 of the Immigration and Nationality Act (INA), or by accepting pre-hearing voluntary departure.

With increasing cooperation between local and state law enforcement agencies and the Department of Homeland Security, the review of an individual's immigration status is now frequently made by law enforcement officers with minimal training in immigration law. Because deportation is considered to be a civil rather than criminal proceeding, none of the Sixth Amendment protections apply. Individuals such as Mr. Guzman regularly sign away the panoply of rights inherent in citizenship without ever consulting with an attorney, and without any determination by a judge that an admission is knowing, voluntary, and intelligent, or that deportation is justified.

Expedited Removal

The second process that can easily lead to erroneous deportation is expedited removal, which was established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and is codified at § 235 of the INA. Expedited removal allows Customs and Border Patrol officers to summarily remove foreign nationals who are deemed inadmissible for lack of a valid entry document, fraudulent procurement of an immigration benefit, or a false claim to United States citizenship. Those subject to expedited removal have no right to counsel and no right to a hearing before an immigration judge. Expedited removal grants unprecedented—and largely unreviewable—authority to immigration officers to issue orders of removal.

Expedited removal was originally applied only to those arriving at United States ports of entry. It has since been expanded, however, to cover those encountered in the interior under certain circumstances. Expedited removal accounted for over one third of removal orders issued in Fiscal Year 2005.[2]

The INA creates exceptions to the expedited removal process for those who establish a credible fear of persecution and those with claims to United States citizenship or other legal status. Under either of these circumstances, a case is supposed to be referred to an immigration judge. Numerous commentators have argued that these

[2] Migration Information Source, Spotlight on Immigration Enforcement in the United States (March 2007), available at http://www.migrationinformation.org/USfocus/display.cfm?id=590 (last visited Feb. 10, 2008).

supposed safeguards have been grossly inadequate with regard to those fleeing persecution.[3] So, too, has the system failed with regard to citizenship claims.

In 2000, for example, Sharon McKnight, a United States citizen of Jamaican descent, was subjected to expedited removal upon her return to the United States from Jamaica, where she had been visiting her grandfather. Ms. McKnight, age 35 at the time of the removal, is developmentally disabled and has the mental capacity of a young child. Immigration officers took her into custody under suspicion of carrying a fraudulent U.S. passport. Family members who were awaiting her arrival discovered that she was being detained, and secured a copy of her U.S. birth certificate. Nevertheless, Ms. McKnight was left overnight in a room at the airport, handcuffed and shackled to a chair. She was neither fed nor permitted to use the bathroom. In the morning she was deported to Jamaica. Upon her arrival there, baggage porters at the airport donated money to her for bus fare. She was permitted to return to the United States only after the intervention of a Member of Congress. Later describing her ordeal, Ms. McKnight said she had been treated like an animal and suffered from continuing nightmares as a result of the experience.

Administrative Removal

The final fast-track process I would like to bring to your attention is administrative removal, established by Congress in 1994 and codified at INA § 238. Administrative removal applies to those convicted of an "aggravated felony"[4] who are not admitted for permanent residence or are conditional permanent residents who have not yet completed statutory requirements for lifting the conditions on their status. Fifty-five percent of those removed in 2006 on the basis of an aggravated felony conviction were processed through administrative removal.[5]

Individuals who are subject to administrative removal are provided with notice of the charge and the opportunity to be represented by counsel at no cost to the government. In practice, however, this right is largely meaningless given the speed with which the process occurs and the fact that those subject to administrative removal are detained.

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[3] According to one estimate, since 1996 expedited removal has been used wrongly to deny entry into the United States to approximately twenty thousand genuine asylum seekers. See Michele R. Pistone and John J. Hoeffner, No Admissions: Bureaucratic Denial and the Expansion of Expedited Removal, 11-14 Bender's Immig. Bull. 3 (2006).

[4] The definition of "aggravated felony," a term of art under the INA, encompasses many minor convictions classed as misdemeanors under state law. See Nancy Morawetz, Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms, 113 Harv. L. Rev. 1936 (2000). The precise contours of the aggravated felony definition are still in flux. In recent years the government has lost two Supreme Court cases (one of them decided unanimously, the other an 8-1 decision) on the reach of the term. *Lopez v. Gonzales*, 549 U.S. ___, 127 S.Ct. 625, 166 L.Ed. 2d 462 (2006) (drug possession conviction that does not qualify as a felony under federal law is not an aggravated felony); *Leocal v. Ashcroft*, 543 U.S. 1, 125 S.Ct. 377, 160 L.Ed.2d 271 (2004) (DUI conviction is not an aggravated felony).

[5] Transactional Records Access Clearinghouse (TRAC), Syracuse University, New Data on the Processing of Aggravated Felons (2007), available at http://trac.syr.edu/immigration/reports/175/ (last visited Feb. 10, 2008).

Although the statute as originally drafted in 1994 provided the right to an interpreter in such a proceeding, Congress eliminated this right in 1996. Administrative removal cases are adjudicated by an immigration officer rather than an immigration judge. As in the case of expedited removal, a claim to United States citizenship is supposed to trigger review by an immigration judge, but this ostensible safeguard can easily fail.

Deolinda Smith-Willmore, a partially blind, seventy-one-year-old United States citizen with schizophrenia, was processed through administrative removal in 2001. For reasons that appear to have been related to her mental illness, Ms. Smith-Willmore identified herself as Dominican while serving time in prison for assaulting a neighbor. In fact, she was born in Ossining, New York in 1931, the daughter of an African-American father and a mother who emigrated from the Dominican Republic in 1923. Ms. Smith-Willmore was placed in administrative removal and deported to the Dominican Republic. According to Ms. Smith-Willmore, she informed immigration officers of her United States citizenship while detained, but no attempt was made to verify her claim, and she was not referred to an immigration judge. Upon her arrival in the Dominican Republic, the Dominican government housed her in a nursing home and obtained a United States attorney for her who easily obtained a copy of her birth certificate. Even after the government admitted its mistake in deporting her, it refused to issue her documents that would permit her to return to the United States under her real name until the media took interest in the case.

* * * * *

I have endeavored here to demonstrate how stipulated orders of removal, expedited removal, and administrative removal greatly increase the potential for United States citizens to be deported. There are a number of additional factors that also contribute to errors within the deportation system, including mandatory detention, lack of access to counsel, and lack of accommodations for individuals with disabilities.

Lack of Access to Counsel

Over sixty percent of all respondents in removal proceedings before an immigration judge are *pro se*. Among detained respondents, ninety percent are unrepresented.[6] The lack of counsel in removal proceedings is particularly troubling in light of the fact that administrative and judicial review of removal determinations has been severely curtailed. Moreover, the Board of Immigration Appeals is struggling under heavy caseloads with a reduced number of judges.

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[6] See Christopher Nugent, Towards Balancing a New Immigration and Nationality Act: Enhanced Immigration Enforcement and Fair, Humane and Cost-Effective Treatment of Aliens, 5 U. Md. L. J. Race, Religion, Gender & Class 243, n.43 and accompanying text (Fall 2005).

Studies have shown marked disparities in immigration court outcomes for those who are represented by counsel versus those who are *pro se*.[7] Having access to competent legal counsel can be critical in citizenship cases. A recent study reported that seven percent of United States citizens – and twelve percent of citizens earning less than $25,000 per year – do not have ready access to proof of their citizenship, such as a United States passport, naturalization papers, or a United States birth certificate.[8] As the cases of Mr. Guzman, Ms. McKnight, and Ms. Smith-Willmore show, even those with U.S. birth certificates on file can end up being removed. For those who have obtained citizenship upon the naturalization of a parent, or have acquired citizenship at birth abroad from a United States citizen parent (as well as for those born in the United States who lack a birth certificate because they were not born in a hospital), the chance of error in a removal proceeding is infinitely higher. The laws relating to acquired citizenship are complex and have changed numerous times over the past decades. Some such claims depend on the domestic relations laws of foreign nations. Determining whether someone not born in the U.S. acquired citizenship from a parent can thus require both substantial factual investigation and sophisticated legal analysis.

Immigration judges, who have extensive training in immigration law and are mandated to inform *pro se* respondents of all available forms of relief, are undoubtedly better positioned than immigration officers to spot a potential citizenship claim for a *pro se* respondent. However, because of the complexity of such claims, it can be difficult to prove – or even to identify – a citizenship claim even within immigration court proceedings.

Mandatory Detention

The mandatory detention provisions of the 1996 amendments to the INA greatly increased the number of detained immigrants. Detainees are often transferred across the country, far from friends or family who might be able to assist them in gathering the facts necessary for their case or in obtaining legal representation. Many are detained in remote areas far from free or low-cost legal services that could make a crucial difference in an indigent respondent's ability to prove a citizenship claim or otherwise defend against removal. Moreover, detention deprives respondents of the ability to earn money that could be used to hire an attorney.

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[7] A study of 2003 statistics found that represented detainees obtained relief from removal in 24 percent of cases, versus 15 percent of cases for unrepresented detainees. Donald Kerwin, Revisiting the Need for Appointed Counsel, MPI Insight (April 2005), available at http://www.migrationpolicy.org/insight/Insight_Kerwin.pdf (last visited Feb. 10, 2008).

[8] Brennan Center for Justice, Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification (November 2006), available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf (last visited 2/10/08).

Lack of Accommodations for Individuals with Disabilities

Researchers have noted the propensity of those with cognitive disabilities to say whatever their questioners want to hear.[9] It is not uncommon for someone who is mentally ill and suffering from delusions to state that he or she was born abroad.

Under the Americans with Disabilities Act, law enforcement agencies are required to make reasonable accommodations for people with disabilities. As the cases I have cited illustrate, our current deportation system lacks even the most basic safeguards for someone who is delusional, has difficulty communicating or processing information, or is otherwise unable to effectively state a citizenship claim or other defense to removal.

* * * * *

Although my principal focus today is the deportation of United States citizens, the systemic problems I have noted play out in a much wider arena.

Many United States citizens who ultimately prevail in removal proceedings languish in detention for weeks, months, or even years before their citizenship claims are recognized. The following are just two examples of the scores of such cases that have been documented.[10] One native-born U.S. citizen, accused of making a false claim to U.S. citizenship upon arriving on a flight from Mexico, was threatened with twenty years imprisonment, left to sleep on the floor in a detention area at the airport, and then imprisoned for over six weeks before his claim to citizenship was validated by an immigration judge.[11] Another United States citizen, a refugee of the Ethiopian civil war whose parents' naturalized before his eighteenth birthday, was detained for a year and a half before an immigration judge recognized his citizenship. The delay was due to ICE's transposition of two numbers in its translation of his birth certificate, an error that made it appear that he was over eighteen at the time his parents had naturalized.

Moreover, many of the same problems that lead to the removal of United States citizens can also lead to the erroneous removal of lawful permanent residents. The Center is aware of a large number of cases in which longtime legal residents have been removed on the basis of criminal convictions that do not actually trigger removal, or convictions that do not bar discretionary relief. Faced with the prospect of lengthy

[9] See generally, Robert Perske, Unequal Justice: What Can Happen When Persons with Retardation or Other Developmental Disabilities Encounter the Criminal Justice System (Abingdon Press, 1991).
[10] See Marisa Taylor, Zeal to Deport Sometimes Catches U.S. Citizens in its Net, News & Observer (Raleigh, NC), Jan. 25, 2008 at A3 (citing unpublished 2006 study by Vera Institute for Justice documenting 125 such cases in twelve detention sites).
[11] The Expedited Removal Study: Report on the First Three Years of Implementation of Expedited Removal, 15 Notre Dame J.L. Ethics & Pub. Pol'y 1, 83-84 (2001).

detention and lacking the financial ability to hire an attorney, many simply concede removability, or let stand a Board of Immigration Appeals decision that could – for a significant legal fee – have been presented to a federal appeals court for judicial review. Without the benefit of counsel, many *pro se* respondents have no idea that their case even raises a reviewable legal question.

One such person is Martin Rosillo, who was deported to Mexico in 2003 on the basis of a 1999 simple assault conviction. Mr. Rosillo, a lawful permanent resident, left behind his U.S.-born wife Chiara and their two U.S.-born children, Martin Jr .and Alejandra. Prior to his removal, Mr. Rosillo was steadily employed as a landscaper and laborer and was in the process of training to be a heavy equipment operator. Mr. and Mrs. Rosillo have been married for fourteen years. Mrs. Rosillo has serious medical problems and has suffered greatly since her husband's removal. Because of the financial strain wrought by her husband's deportation, she has been unable to undergo necessary medical treatment.

Mr. Rosillo's conviction should not have triggered removal. Moreover, even if Mr. Rosillo had been subject to removal, he would have been eligible for relief. Yet Mr. Rosillo, overwhelmed by the thought of long-term detention and unable to afford an attorney, conceded removability.

Once outside the country, it can be nearly impossible to reopen a proceeding in which a legal error has occurred. Agency regulations bar reopening of a proceeding subsequent to departure. One federal appeals court has found the so-called "post-departure bar" invalid, and others are currently considering this question, but for the time being many individuals who have been erroneously removed have no legal recourse. Even if they are able to get around the jurisdictional bar to post-departure review imposed by the regulations, they still face strict time limits of 30 days for motions to reconsider and 90 days for motions to reopen. Those removed through administrative or expedited removal have no such post-removal review mechanisms available. In effect, if mistakes are made in their cases, they are simply without legal recourse.

The Costs of This System

As Supreme Court Justice Stephen Field commented in *Fong Yue Ting v. United States in* 1892, "As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family, and business...." Many legal commentators have argued that the classification of deportation as a civil rather than a criminal matter is a legal fiction that ignores the grave

consequences of removal, consequences that often far outweigh those of many criminal convictions.[12]

For Martin Rosillo, removal has meant a potentially lifelong separation from his wife and children. For Pedro Guzman, removal meant 89 days eating out of garbage cans and bathing in canals while seeking to return to the United States. Mr. Guzman told his family that he had tried to reenter the United States at San Ysidro but had been repeatedly turned away. He then walked 100 miles east to reach the border crossing at Mexicali. Mr. Guzman returned to the United States fearful, stuttering, and no longer able to communicate in English.

The costs of this system are borne not only by those deported, but by their loved ones who are left behind, including U.S. citizen children senselessly deprived of the presence and support of a parent.

Finally, there is a great cost to all of us, and to our legal system itself, when the rule of law is undermined by a system that permits such egregious errors regularly to occur.

[12] See generally, Daniel Kanstroom, Deportation Nation: Outsiders in American History (Harvard University Press 2007)

Ms. LOFGREN. Thank you very much.

Mr. Stein?

TESTIMONY OF DAN STEIN, PRESIDENT, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. STEIN. Thank you, Madam Chairman.

My name is Dan Stein. I am president of the Federation for American Immigration Reform.

I very much appreciate the opportunity to be here today to talk about the subject of the hearing.

I, first, would like to say that I think everyone can agree, and I am sure that we all agree that the inadvertent deportation of U.S. citizens ought to be an extremely rare occurrence, nothing that we would ever want to tolerate.

And, certainly, FAIR has been, I believe, as supportive as anyone else in the efforts to try to improve detention and removal proceedings over the years to try to ensure that these sorts of things don't happen.

Certainly, all of us feel compassion and concern for someone who, in the case of Mr. Guzman, lacking, I guess, the mental capacity, to assert his citizenship, wasn't able to assert his rights effectively.

And changes should be made to try to improve those procedures.

At the same time, in my testimony, I talk a good deal about the recent increases in detention, deportation; how these increases, while these amount to several billion dollars a year more, nevertheless, are necessitated by a rapid increase in illegal immigration.

And there still have been, nevertheless, declines in enforcement personnel in—states which declined by 3 to 6 percent between 2002 and 2004.

The public is demanding dramatic increases in interior enforcement in response to unprecedented levels of illegal immigration. FAIR supports that very strongly. We have been one of the major forces pushing for an increase in interior enforcement.

A couple of things I want to point out during my brief statement is—and I have been working on this now for 26 years. Been here a long time at this.

I can remember how many Committee meetings focused on the problem of false claims to citizenship. False claims to citizenship are a very difficult problem in ICE enforcement procedures.

Let us be honest about it, we are asking the government to do an impossible job.

The main reason is, of course, that there is no easy way to verify citizenship. It is not simply that many Americans do not have ready access to proving their citizenship. In fact, I think the numbers are dramatically higher than what we heard earlier.

But that there have been persistent efforts over the years by many of the organizations which are concerned about, apparently, the deportation of U.S. citizens; many of those same organizations that stand in the way of much-needed improvements in developing things like machine-readable driver's licenses to verify birth records and/or naturalization records to enable U.S. citizens to quickly and easily prove citizenship.

I have no privacy interest in the fact that I am a U.S. citizen. And yet sitting here today, I can't verify it easily. I would have an

easier time verifying my shopping record or my Internet browsing history than I would the fact that I am a U.S. citizen.

So in the end, we, as a Nation, have created an impossible situation. Surely, no one can say that we are devoting too many resources to interior enforcement given the fact that ICE deported approximately 135,000 people in formal removal proceedings last year, but there are an estimated 12, 13 million illegal aliens in the United States. Arguably, if anything, our enforcement procedures remain far too laxed.

And I believe that in the average point of view of today's American voter could concur that, in fact, we are not enforcing the law anywhere near the shape or form of what we ought to be in this country.

We believe that Congress ought to concern itself with asking the question: Why is it that we are not able to enforce the law more effectively in the interior? Why have we allowed this Byzantine document structure and the failure, including state and local enforcement force multipliers, to be established to enable worksite enforcement to happen more routinely and smoothly rather than this once every 20-year event that we see going on?

So I would suggest that we very strongly believe that we should look at these problems more as an opportunity to look at what kind of resources are needed over time. We have allowed our interior enforcement apparatus to atrophy for many, many years.

It has happened as a result of aggressive lobbying by private special interests in the United States who seek to use immigration to control labor costs. We should enforce these laws in the interior because they benefit U.S. citizens by improving bargaining leverage which leads to an increase in wages and working conditions.

We believe it is time to change direction. Vigorously enforcing our immigration laws fairly, certainly humanely, but at the same time effectively, is clearly going to have a negative impact on people who have broken our law.

At the same time, however, we believe the basic principles of fairness and justice require that we not provide special benefits to those who have chosen to jump the line and break the law in front of millions of people who wait patiently and respect our system.

Thank you very much. And I would be happy to answer any questions.

[The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF DAN STEIN

Madame Chair, members of the subcommittee, thank you very much for the opportunity to testify here today on behalf of the Federation For American Immigration Reform (FAIR). I have included information on FAIR at the end of my statement.

FAIR strongly supports the principle that U.S. immigration law is just as important as any other law in the United States Code, and that the enforcement of these laws is vital to maintenance of a sense of fairness and justice to all Americans who work hard to respect all the laws of this nation. Basic principles of fundamental fairness and respect for law are the cornerstones of citizenship in this highly diverse society. There many who argue that violating an immigration law lacks any negative moral connotation. We disagree. One reason why many immigrants want to come to the United States is because here "the system works."

Congress has passed laws and the Executive Branch maintains a series of procedures governing the arrest, detention and removal of aliens illegally inside the United States. They are under constant review. We support the effective and hu-

mane administration of these laws and procedures, consistent with the process that is due at all points of apprehension, detention and removal.

In the administration of these complex laws and procedures, mistakes will occasionally be made. This is especially true given the scope and complexity of these procedures, the demands of limited resources and the fact that human beings are fallible. The effective and judicious administration of all phases of these procedures will require a continued and growing infusion of resources: the management of immigration process is an extremely expensive proposition if it is to be done right.

But when mistakes are made by ICE in the administration of these laws, it is a serious matter. Our nation's commitment to fairness and the rule of law dictate that all instances of misconduct be investigated thoroughly and, where criminal conduct is proved, a full prosecution should invariably follow. Where rules and procedures are not followed, such as in the inappropriate administration of sedation drugs, the willful failure to identify sole caregivers in the course of an interior enforcement operation and similar events, an investigation should follow from the Inspector General to ascertain why procedures were not followed.

Madame Chair, we understand at FAIR that immigration policy involves sensitive and emotional issues—the very real impacts on real people are factors that must be considered in the establishment of any enforcement policy. We must be true to our principles as a people and work to ensure that immigration enforcement—vigorous and effective—nevertheless respects basic human rights and the dignity of all involved.

At present, the Department of Homeland Security's Immigration and Customs Enforcement Program (ICE) program for detaining and removing illegal aliens is undergoing rapid expansion. The Bush Administration's most recent budget request seeks an additional $3 billion for internal enforcement, including work-site raids conducted by Immigration and Customs Enforcement officials. The President will ask for $1.8 billion more to expand ICE's capacity to detain illegal immigrants by providing 1,000 more detention beds.

This rapid funding increase is necessitated by a rapid increase in illegal immigration, by declines in enforcement personnel and funded bed space (which declined by 3 percent and 6 percent, respectively between 2002 and 2004), and by public demands that interior immigration enforcement be dramatically expanded. Despite an increase in overall resources, bed space and personnel levels have failed to keep pace with the growing number of alien apprehensions.

According to a 2006 audit report issued by the Department of Homeland Security's Office of Inspector General, "of the 774,112 illegal aliens apprehended during the past three years, 280,987 (36 percent) were released and largely due to a lack of personnel, bed space, and funding needed to detain illegal aliens while their immigration status is being adjudicated." Further, an astounding 62 percent of the aliens released "will eventually be issued final orders of removal by the...Executive Office of Immigration Review (EOIR) and later fail to surrender or abscond." We now have over 600,000 alien fugitives in the United States.

According to DHS, three major problems facing the Detention and Removal Office (DRO) are "(1) the propensity of illegal aliens to disobey orders to appear immigration court; (2) the penchant of released illegal aliens with final orders to abscond; (3) the practice of some countries to block or inhibit the repatriation of its citizens; and (4) two recent U.S. Supreme court decisions which mandate the release of criminal and other high-risk aliens 180 days after the issuance of the final removal order except in 'Special Circumstances.'" DRO says major problems carrying out large-scale removal include lack of "sufficient resources," a lack of "political will, and the [lack of] operation of foreign governments." Department of Homeland Security Office of Inspector General, *Detention and Removal of Illegal Aliens,* OIG–06–33 (April 2006).

FAIR calls on Congress and the national political leadership of this nation to demonstrate the political will to dramatically increase the enforcement of US immigration laws in a manner consistent with credible deterrence. We would also like some broader recognition of the tremendous hidden processing and enforcement costs associated with the administration of laws associated with the use of so-called "inexpensive" foreign labor.

At present, specific problems with individual enforcement operations are properly subject to internal investigations by DHS. Every one of these allegations is worthy of serious consideration, all the while keeping in mind that many of the underlying facts are omitted from news reports. Further, we would suggest that overall policy changes not be made on the basis of one or two isolated instances of agent misconduct. Rather, we should be looking at the entire set of objectives in the aggregate and work to fashion an enforcement strategy that will operate to serve the nation as a whole.

Furthermore, we are concerned that these isolated incidents are being used to try to build political support by those who oppose immigration enforcement generally. The reaction to the recent increases in interior enforcement—welcomed by the overwhelming majority of the American people—has been negative among those organizations traditionally opposed to robust enforcement strategies.

With an estimated population of illegal aliens ranging from 12 to 13 million, one can hardly argue that this nation is too aggressive in its enforcement of immigration law. In 2005, DHS's Immigration Enforcement Actions report 135,610 formal removals—perhaps 1% of the illegal immigrant population in the United States. Clearly, the government has only begun to initiate which promises to be a multiyear effort.

Commonly we hear the red herring, "What you want, mass deportations?" To which I respond that 135,000+ formal removals is already a form of mass deportation. Moreover, the sort of large-scale interior enforcement operations contemplated by the term "mass deportations" are unnecessary. This problem was not created overnight. It will not be solved overnight. Stepped up interior enforcement, when combined with the aggressive enforcement of employer sanctions, dramatically increased detention space, and streamlined removal proceedings will achieve the deterrence that will encourage most illegal aliens to return home.

Madame Chair, we believe it is possible to enforce our immigration laws in a manner that is both effective and consistent with our values. We see the effects of state-based policy changes now: deterrence sets in quickly once it becomes clear that remaining unlawfully in the United States is not a viable option.

Our immigration law enforcement is notoriously lax. While we understand that there are organizations and interests that seek to abolish nearly all forms of immigration enforcement, we believe that is a minority view. Even under today's relaxed standards, the United States deports well over 100,000 aliens from the interior of the country each year. While it will be costly to dramatically increase detention and bed space to bring about true deterrence, such costs can be reduced through expedited removal and similar streamlining techniques. The United States utilized expedited removal to repatriate over 70,000 aliens in 2005, and last year the Administration started using expedited removal for non-Mexicans apprehended near the border.

The administration has more authority to use expedited removal than it has exercised to date. Current law allows the administration to utilize expedited removal for any alien who entered illegally and has been in the United States for less than two years. FAIR has previously supported provisions of the House-passed version of the Intelligence Reform and Terrorism Prevention Act of 2004, which require the use of expedited removal for all aliens who enter the US illegally and have been here for less than five years. This is the sort of creative and innovative thinking we would like to see expanded.

Madame Chair, this nation has allowed its interior enforcement apparatus to atrophy for years. It has happened as a result of the aggressive lobbying of private, special interests in United States who seek to use immigration to control labor costs. We believe it is time to change direction. The simple truth is that vigorously enforcing our immigration laws will have a negative impact on illegal aliens. However, we believe that the basic principles of fairness and justice require that we not provide specific benefits to those who have chosen to jump the line and break the law.

About FAIR

FAIR is the nation's oldest and largest national public interest organization working to reform U.S. immigration laws. Bound by a common purpose and broad sense of mission, we seek to advance forward-thinking immigration policies that serve the wide array of U.S. domestic priorities that, in our view, are fundamentally inconsistent with today's mass and poorly-regulated immigration system.

FAIR seeks to end illegal immigration through improved enforcement strategies, and we seek to reduce overall immigration levels to those more consistent with 400 years of history—to reduce levels from well over one million a year today to around 300,000 a year over a sustained period of time.

FAIR has a wide base of support that includes nearly 50 private foundations and nearly 200,000 individuals. Unaligned with any major party or financial interest, FAIR is noteworthy on two counts:

1) We are bipartisan. Our Board of Directors, Advisors and members include Democrats, Republicans and Independents. We also have a broad constituency that includes members of all ethnic and racial communities in the United States. We have members, activists and affiliated organizations that

include strong representation from the African American and Latino communities.

2) We *have always sought to ensure that immigration policies never discriminate for or against persons on the basis of race, religion, gender* or other invidious basis.

Over the years, FAIR has played a major role in virtually all major immigration policy changes. As champion of an enlarged and long-range national interest, FAIR seeks to advance America's understanding of the role of immigration to the U.S. in the 21st Century. We fought for policy improvements in the landmark 1986 Immigration Reform and Control Act, in asylum laws in the Refugee Act of 1980 as well as in legal reforms in 1990 and 1996. From 1993 onward, FAIR was intimately involved in examining, exposing and closing loopholes that might be exploited by international terrorists. After the 9/11 terror attacks, FAIR was instrumental in fashioning important legislative and policy changes that have helped advance U.S. national security in major ways.

Perhaps most importantly, FAIR has always sought to fashion a workable immigration system that considers the downstream impacts of today's policies on tomorrow's generations. Looking ahead fifty years, FAIR has been one of the few voices in the nation to ask: What will it mean to move from a crowded society of *300 million today to nearly one billion by the end of this century*? FAIR—unattached by party loyalties and special interest affiliations—simply seeks to help Americans consider the full dimensions of how immigration policies affect, and will affect, the nation's welfare over time.

Long considered the most credible voice on U.S. immigration policy in America today, FAIR has been asked by Congress to testify on a wide range of issues—well over 100 times—and is a routine voice on national television. FAIR and its law firm affiliate the Immigration Reform Law Institute routinely submit both popular and scholarly articles for publication and our research division puts out some of the best fact-based immigration analysis in the country.

Madame Chair, thank you very much for the opportunity to offer the views of FAIR.

Ms. LOFGREN. Thank you, Mr. Stein.

Thank you to all of the witnesses. Now is the time when we have an opportunity to ask questions, and I would like to invite the Ranking Member to ask his questions.

Mr. KING. Thank you, Madam Chair.

I appreciate all the witnesses' testimony, and I have a series of places to start here.

But maybe I would go to the statement made by Mr. Brosnahan. The mother who went for days in Mexico searching from morgue to morgue.

Mr. BROSNAHAN. Yes.

Mr. KING. And I am going to make a statement here. I am not sure I will have a question, Mr. Brosnahan, on that.

Mr. BROSNAHAN. Surely.

Mr. KING. I would point out that there are mothers, fathers, brothers, and sisters that go to morgues every day in America because of failure to enforce immigration law; and that 27 percent of the inmates in our Federal penitentiaries are criminal aliens.

There are numbers that support that being a representative, also, in state in local prisons.

If even a fourth of the murders in the United States are committed by those individuals that fit that category, that is over 4,000 a year. That means there hasn't been a single day go by in this country that there hasn't been a mother, father, brother, or sister going to a morgue in the states, too.

Mr. BROSNAHAN. But are you saying——

Mr. KING. My point——

Mr. BROSNAHAN [continuing]. It is, therefore, justified?

Mr. KING. My point is, Mr. Brosnahan——

Mr. BROSNAHAN. Yes, sir.

Mr. KING [continuing]. Is that if we—we have one single case here that we know about. There are others that have been gathered in the testimony of Miss Hartzler which I intend to ask her a question in regard to that.

But if there is a factor involved in this kind of hearing that says we should never have a single exception out of maybe even one out of a million is one of the numbers that was produced by Mr. Mead, it may end up being more American lives in the process.

So I would just ask you if you could quickly answer, do you expect it to be without exception? Can we be a hundred percent right? And I think there were points that were made here about some lack of respect and strong-arm tactics. I think they are valid.

So I hope you don't address that.

But are you asking that this be without exception even in spite of the risks that I have pointed out?

Mr. BROSNAHAN. Here is what I know that might be helpful, and it is a point of view.

As a Federal prosecutor for 5 years and a defense lawyer for too many years, any police agency—and this agency that you supervise is a police agency in large part. They do other things, too; administrative things. But they are a police agency. It requires total discipline. That is true of the FBI, all those agencies.

And if they don't——

Mr. KING. [OFF MIKE]

Mr. BROSNAHAN. But please; you asked me. Did you want an answer?

Mr. KING. And I said——

Mr. BROSNAHAN. Do you want an answer?

Mr. KING. Do you expect this to be without exception?

Mr. BROSNAHAN. Yes.

Mr. KING. That was my question.

Mr. BROSNAHAN. Yes. Put me in charge of the ICE.

Mr. KING. Okay.

Mr. BROSNAHAN. There would be new administration, and there will not be U.S. citizens—you won't have this problem. And you can get much better people than that if you want to exercise the oversight with which you——

Mr. KING. Thank you. I do have your answer, and my time is limited. So I appreciate——

Mr. BROSNAHAN. Okay.

Mr. KING [continuing]. Your testimony.

I would turn to Mr. Graves at this point, and I want to make sure I welcome him as a fellow Iowan and I appreciate your testimony in coming here today as well as all of you.

And that is not a case that I am unfamiliar with. My question first is what is the temperature on the kill floor?

Mr. GRAVES. Excuse me?

Mr. KING. What is the temperature on the kill floor?

Mr. GRAVES. On the kill floor, it is about a hundred degrees, maybe 95 degrees on the kill floor.

Mr. KING. Even in December when this case took place?

Mr. GRAVES. Yes.

Mr. KING. So that is why you are in there in t-shirts. I just had to clarify that. I haven't been on the kill floor in a while.

Mr. GRAVES. Yeah.

Mr. KING. And when you walk out of there into 20-degree temperature, it is a long walk.

Mr. GRAVES. Yes.

Mr. KING. The individuals that were with you when you walked over to the cafeteria, they had two individuals with you? Your testimony said other Hispanics, but I presume—how were they processed?

Did they come back to work with you?

Mr. GRAVES. I never seen just that day it happened. But——

Mr. KING. Were they deported then, Mr. Graves?

Mr. GRAVES. I don't know. I don't know if they quit or whatever, but after that day, they never came back. When they took me to my locker; that was the last I saw of them.

Mr. KING. They were either deported or intimidated out of a job, most likely?

Mr. GRAVES. Exactly.

Mr. KING. Are you aware of a couple that, an African-American couple, that drove up from Dallas when they heard this in the news, American citizens, to apply for jobs and went to work there as a man and a woman that had been looking for jobs in Dallas that were attracted to come to Marshalltown?

Mr. GRAVES. No. Never heard about that one.

Mr. KING. I picked that up from a local legislator that was working a soup line at the church, and I thought that was the happy story about this; that any time Americans can go to work, people that are lawfully present in the United States, legal to work in the United States, to fill those slots, I thought that was a good story.

Mr. GRAVES. Yes.

Mr. KING. And I wanted to pass that along. So, again, I appreciate your testimony, but I wanted to turn to Miss Hartzler in the limited time that I have.

And you talked about—let us see—the language that you used was U.S. citizens are being deported or detained on a regular basis, not monthly or weekly, but daily.

And that deported or detained is two different categories. And it would be detentions of American citizens for a lot of different reasons, and ICE can probably, despite Mr.—position on this, can probably avoid detaining American citizens in the process of doing their job.

So can you break that down for me and give me the number that you think are those that were being deported on a regular basis? And I would ask you if you can produce the names of those people so that we could do a more comprehensive analysis of that because I am working with one name right now.

Ms. HARTZLER. I think there are a lot of categories of people within the montrose of a U.S. citizen who are being detained or deported.

First of all, they are native-born citizens, and we have heard the story of Pedro Guzman. However, there is along a very, very large group of people who were not necessarily born in the United States,

but have acquired or derived citizenship even those that were born outside the United States.

Those are the cases that I most often see being deported. And a lot of times, they are being deported because the process of them being able to prove their citizenship before an immigration judge is so difficult, particularly without family support, that it can often take weeks, months, years.

So when I see people who are citizens who are deported, it is often because they are so frustrated over the length of time they have to spend incarcerated that they essentially give up and they allow themselves to be deported even though they have a valid claim to U.S. citizenship.

And the ones who don't give up, who stay, will often be detained for years at a time.

Mr. KING. Do you actually have a case for them, and when a judge has heard your assertions, now, these cases, have they been before the judge?

Ms. HARTZLER. Yes. And I would also—I would clarify that because of large numbers, our organization generally doesn't represent people in court. We are helping assist people to represent themselves before an immigration judge.

Mr. KING. Okay. So you wouldn't be talking about cases that have been adjudicated and the court has denied their claim to citizenship?

Ms. HARTZLER. There are some of those, but there are also quite a few cases where the judge has actually said, Yes, this person is a citizen; and ICE will appeal. And that appeal will last 6 to 8 months.

Mr. KING. What do we do, then, when the individual alleges and may well have been born in the United States, not in the hospital without a birth certificate, maybe near the border, who may or may not have been raised in the United States; how do we resolve an issue when it is the family making an allegation and there are no other witnesses that can testify or verify that particular case?

I just——

Ms. HARTZLER. Well, I think it is a very difficult situation. But I would point to the law that says that it is ICE's burden to prove born birth. And ICE, first of all, has to say, We have some sort of information showing that this person was born outside of the United States.

If ICE does not meet that burden, or if ICE does meet that burden, then, indeed, the burden shifts to the person who is claiming citizenship to prove.

Mr. KING. Has ICE ever proved foreign birth? Other than—has ICE ever proved a foreign birth that wasn't supported by a birth certificate document in a foreign country? How would they prove—how would they prove that an individual was born in a foreign country?

Ms. HARTZLER. They will often use the person's statement. And, as my testimony highlighted, if you have a person with mental illness, they will often say that they were, sometimes, born outside of the United States.

So those statements are, in my opinion, are inherently unreliable in terms of proving alienage. And yet they are used by ICE. So that is one of the situations.

I think it is a very difficult situation, but in my experience, ICE has shown less interest in objectively determining citizenship than in disproving and rebutting claims to citizenship.

Mr. KING. Just one brief question.

Ms. LOFGREN. Certainly.

Mr. KING. I think my clock ran out a while ago. But I just—I am curious about how you would view this, revealing with this huge haystack of humanity. And ICE has a big mission, and national security is wrapped up in it. That is why they are part of the Department of Homeland Security.

The level that has been charged here for them, this hundred percent, never fail, never-cross-the-line level that Mr. Brosnahan has laid out—and I know he has conviction in that. And there is probably some validity in his viewpoint.

Do you think that could ever be reached practically? Or are we going to have exceptions no matter what we do?

Ms. HARTZLER. I am sorry. Could you—I know we are getting out of time, but could you restate that question?

Mr. KING. Yes. The standard of not making mistakes and not being abusive, which I will certainly hold them to that standard as well—but do you think that that level of efficiency at ICE could ever be reached?

Do you think that no matter who is running the operation and what kind of personnel we have that we wouldn't be back here in 5 or 10 years with at least one or a few cases like have been brought forward today?

Ms. HARTZLER. No. I think that it is very, very difficult to ensure that no citizen is ever deported. But I think the point of my testimony would be that our current procedural safeguards are so lacking in the numbers that I personally am seeing border on routine deportation and detention of U.S. citizens.

Mr. KING. I get your point, and I appreciate it. Thank you.

Thank you, Madam Chair.

Ms. LOFGREN. Thank you.

Let me ask Justine—I want to go through and make sure I understand how events unfolded in your house.

Now, you were in your room when you heard the voices of the Federal agents in your home; is that right?

Ms. MANCHA. Yes.

Mr. KING. Yes. Is that correct?

Ms. MANCHA. I had heard car doors slamming. I looked out the window and didn't see anything. So then I start—I was in my room and then I started hearing police.

Mr. KING. Did they knock?

Ms. MANCHA. They were already in my house when I walked to the living room.

Mr. KING. And they didn't ask if they could enter?

Ms. MANCHA. Uh-uh.

Mr. KING. Did they show you a warrant?

Ms. MANCHA. No, ma'am.

Mr. KING. Once they saw you, did they ask you if it was okay that they were in your house?

Ms. MANCHA. They just started asking me questions.

Mr. KING. Now, they came in and asked you specifically about your mother; is that right?

Ms. MANCHA. Yes, ma'am.

Mr. KING. But your mother was born in Florida?

Ms. MANCHA. Yes.

Mr. KING. She wasn't even a nationalized citizen. Did they offer any why they thought you or your family were undocumented?

Ms. MANCHA. They just started asking me questions about my mom and if she had a green card or not. I said she doesn't need a green card. She was born in Florida.

Mr. KING. Yes. Mr. Graves, you gave compelling testimony and actually painted a pretty vivid picture of what that day was like. I wanted to ask you about Walter Molino, one of the U.S. citizens who was caught up in the ICE raid.

As I understand it, even though he was a United States citizen, he was detained and then driven to a detention center 6 hours away, and then simply released when ICE realized he was a U.S. citizen.

Did they take him back to where they picked him up, or did they offer to give him a ride back? Or did they just dump him?

Mr. GRAVES. From what I understood, somebody had to come pick him up from there.

Ms. LOFGREN. Mr. Brosnahan, you have spoken with tremendous passion about Mr. Guzman's situation. And as I understand your testimony, all the information was available had they had just bothered to check on——

Mr. BROSNAHAN. All of it was right there in the records in the sheriff's office and in ICE. All they had to do was look at the booking sheet, which I have read. I have read all the documents. That is all they had to do.

And the problem in terms of your going forward with it is the question that should be asked today is what is going on in the 400 local police agencies that have been deputized by ICE people to do these kinds of interrogations.

Is that being done well? Is that to your satisfaction, Members of the Committee? Or is it as I believe, logically, a terrible delegation of an enormous power to very low-level—I don't mean to demean them, but very low-level——

Ms. LOFGREN. But they are not a judge.

Mr. BROSNAHAN. They are not at all trained to do it. And immigration is very difficult. If they were trained in some other area of sheriff's activities, maybe that would be different.

But immigration is—you have heard today how very complicated it is. And that has happened to Peter, and that is what is happening to other people.

Ms. LOFGREN. There are a number of issues that have been presented here today. I voted against the deputization of local police agencies as well as the expedited removal procedures.

I remember saying in the Homeland Security Committee, we are going to end up deporting Americans here because there is not anybody with the skill set to make the important judgment.

So there is the training issue. There is also, you know, the delegation issue. I have a personal belief that many lawsuits are being filed. And L.A. County has to pay, I think it may chill their passion for participation in this particular program.

The estimates are that between 25 and 40 percent of the inmates held in county jails have a mental health problem in this country.

And if that is the case, there desperately needs to be special protocols for individuals who are impaired.

And I guess the question would be either for Miss Hartzler or Miss Rosenbloom, who specialize in this, are those protocols in place. And if not, you know, I am going to be following up with ICE on this, but don't you think that that would be a pretty obvious thing to do?

Ms. ROSENBLOOM. It is absolutely essential. In the Guzman case and many of the other cases that we have documented show just how easy it is for someone to admit to being—to not being from this country and not having any legal status. It is completely untrue.

And if either of the—or it is something that they think their questioner wants to hear, and for, you know, a mental disability patient to simply go along with that.

And we absolutely need to—they are required under the Americans with Disabilities Act. And there is just simply no oversight.

I think if someone like Mr. Guzman had gone before a neutral adjudicator like an immigration judge who had really questioned him, if he understood the weight of what he was admitting to right there, I think we would have—I don't think that his mother would have been wandering through the morgues of Tijuana for 3 months looking for him.

Ms. LOFGREN. Well, I know my time is up, but I would like to—as Ranking Member, I am going to take a little bit more time.

But on the Guzman case, in a way, it is the poster child for this situation. I saw an article in the newspaper was how I first found out. And I was just stunned to think that this young man who has an impairment in terms of I.Q. would be basically just dumped in a foreign country.

This is a Federal court's order, the Border Patrol, to be on the lookout for him?

Mr. BROSNAHAN. Yes. And ICE, in this one case that I do know about, up to that point, was of no help. It is not their department to try to rectify it nor today.

I mean, when you heard this gentleman come here, and I understand he has got a job to do, there is no note of apology. There is no note that the rest of us have to do. We didn't do well yesterday. We have got to do a better job. I am awfully sorry, Oversight Committee. We are going to really do——

Here is the plan. Here is the plan. You heard no plan.

So, yeah. They did nothing. There is a deep-seated—I have observed this before in my litigations. There is a deep-seated psychological resistance to the kind of management that you need in this agency.

And I am just ecstatic, delighted, that this Committee thinks that you need to do this. You really need to do it.

And you are going to have to send your questions, get your answers, and all of that. But they were no help at all.

Very compelling case, a Federal judge got into it and started issuing orders.

Ms. LOFGREN. Well, my time actually has expired. So I am going to turn to Mr. Ellison for questions that he may have.

Mr. ELLISON. Thank you, Madam Chair. And also let me thank you for having a hearing.

One of the great things about having the authority and power to call a hearing is that you can really bring to light issues that desperately need greater scrutiny.

Mr. Graves, I am from Minnesota. And when the Swift raids hit, it sent a shock wave throughout the state. And it wasn't just our Latino community members who were upset, it was really everybody. And you know that because you were there.

Let me ask you this: I mean, were people who were Latino in their background or appearance, even though they were American citizens, impacted by the officers who conducted this raid?

Mr. GRAVES. I mean, you know, we work by them every day. And we don't know if they are legal or illegal. So we can't tell by the way they dress or how they talk. So, I mean, it is all up to—they know we don't know anything about them.

Mr. ELLISON. Yes. And so it really was just this was a group of Latinos; we will sort them out later. That is the way it seemed to me.

Mr. GRAVES. Well, at first, ICE did come there with a list of names that they knew who they were coming for.

Mr. ELLISON. Yes.

Mr. GRAVES. They could have went to HR and told them to come down one by one in that way. But they shut the whole plant down and—everybody, no matter who they were or what status they were.

They shut the whole plant down.

They did get the people that they were looking for, but they still had us detained until they processed everybody to see if they were still U.S. citizens or not. But, you know, the ones that was U.S. citizens, we were still stuck there until everything was all over and done with.

Mr. ELLISON. Well, that is an important point to make here. I mean, you know, I was, you know, sort of trying to get at that issue when I was speaking to Mr. Mead and didn't seem to really get very far.

Thank you for your testimony.

Mr. Brosnahan, is there a racially different impact with the ICE raids? I mean, it seems to me that——

Mr. BROSNAHAN. Yes, sir.

Mr. ELLISON [continuing]. Mr. Mead said there wasn't one and it is all about the employers.

Mr. BROSNAHAN. Well, I think—being of Irish extraction going back to the old days, I think when they set out after a group and the group thinks that there is an impact, then the government has to slow down.

Listening today, that is the great tragedy of this. Our fellow citizens who are Hispanic, who contribute so much to this country, to

say nothing of the undocumented Hispanics who contribute, you know, the 9,500 members of the Arizona Farm Workers who pick those lemons that go into the drinks in Washington—I don't know what is going to happen there.

There is a reality out there in the world, and we are out in it, and yes, there is a war going on, and it is aimed at, certainly, the Hispanic community in a way that they feel it. And if they feel it, that should be enough for the government to say we have to figure out different ways than just taking over a factory, or whatever it might be, or a processing plant. We have to do something about this.

You may have noticed recently, there are an awful lot of Hispanics in this country. And they have to be respected. And you get the idea from ICE that there is not that level of respect in what they are doing for the community.

They think it is okay to hold people for 4 hours or whatever it is. That is what they think. Yes. I think there is a problem there.

Mr. ELLISON. Miss Mancha, could you describe for us just how you felt when you saw these strange men walking in your house? I mean, you are a young lady.

I mean, what were some of the things that you were thinking as you saw these guys tramping in your house without a warrant? Invading your home?

Ms. MANCHA. I was really scared. I thought that they were going to take me. I didn't know what was going to happen. I was really scared.

Mr. ELLISON. Does it change the way you see strangers when they knock on your door? I mean, is it something that sort of still bothers you?

Ms. MANCHA. I am not—my mom is the same way, too, now. She keeps the doors locked at all times and everything. It not only hurt me, but it hurt my family a lot, too.

Mr. ELLISON. And Miss Mancha, you know, I am sure you were brought up to respect police and respect law enforcement and be cooperative and work with them. But it seems like this experience sort of made that a little harder for you; is that true?

Ms. MANCHA. It hurt me that they were supposed to, like, protect me, but they kind of hurt me.

Mr. ELLISON. Yes.

Ms. MANCHA. Like, busting in my house like that.

Mr. ELLISON. Yes. That wasn't right. That wasn't right. And I want you to know that even though I didn't have nothing to do with that, I am sorry they did that.

Ms. MANCHA. Thank you.

Ms. LOFGREN. Thank you very much. The Ranking Member has a request.

Mr. KING. Thank you, Madam Chair.

I have a couple of documents that reference the incident in Chicago that our witness, I believe, should have been familiar with. I would ask unanimous consent to introduce them into the record.

Ms. LOFGREN. Without objections, those documents will be entered into the record.

At this point, our hearing will be coming to an end. I would just like to say a few things in closing.

First, for Miss Rosenbloom and Miss Hartzler, you are doing ongoing work here. And I am wondering if we could ask, as you are continuing your studies, would you keep us posted on what you are finding? I think that you are in a unique position to give us very valuable information that is comprehensive and very helpful?

And for the rest of the witnesses, a lot of people don't realize that the witnesses before Committees are volunteers. They come here to help inform us so that we can make better public policy for our country.

I do thank you, Mr. Graves and Miss Mancha, for your testimony, sharing what was really a very dreadful personal experience. And as Mr. Ellison has mentioned, we didn't do it, but I would like to offer an apology on the part of our government.

What happened to you wasn't right, and certainly, you will have an opportunity in another forum, I think, to be heard.

Mr. Brosnahan, thank you for coming all the way out from San Francisco.

Mr. Stein, it is always good to see you.

I would just note that I have about five pages of questions for ICE that I did not have an opportunity to ask today, but I will not only post them to ICE, but I will post them on the Web site so that others can see what we want to discover.

Finally, I would just say that I think, clearly, no one can disagree with the need to enforce our laws, but the government must also comply with our laws as we enforce them.

I have some very serious concerns in that latter regard based on the testimony we have had today. If the estimates of 12 million undocumented individuals in the U.S. is correct, we don't know for sure, at the current rate of deportation, they would all be deported in 88 years.

So I don't think the current program is really effective nor is it creating the kind of climate for Americans to feel that their rights under the Constitution are being respected and they are being treated with fairness.

So this is an important hearing for us and for the Congress. I appreciate your willingness to be here. We will have 5 legislative days for each Member of the Committee to pose additional questions. If we have them, we will forward them to you, and we ask that you answer as promptly as you are able to do.

Thank you very much.

This hearing is concluded.

[Whereupon, at 5:59 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Six months ago I first heard about a U.S. citizen deported from United States—Pedro Guzman who had to get himself caught by the Border Patrol in order to get back into his own country.

At that time, I had hoped this case was one isolated incident. I asked the Immigration and Customs Enforcement (ICE) for answers on his case and specifically for procedures to help prevent another deportation of a U.S. citizen. Instead, I received a perfunctory response more than a month later, with no answers, and, at best, an apathetic attitude towards protecting U.S. citizens from deportation. Without objection, I would like to enter my letter and the ICE response into the record.

There is never a justification for the deportation of a U.S. citizen, let alone the negligent attitude towards helping to locate and return a U.S. citizen when he or she is erroneously deported.

Six months ago I feared this nation might be entering another era that would become one more blight in our nation's history. Based upon the witness testimony I have read for today and a long list of other individual cases, I fear we have arrived at that era where an overzealous government is interrogating, detaining, and deporting its own citizens while treating non-citizens even worse.

It is true that ICE's enforcement capacity has grown exponentially in the last several years. But, based upon today's testimony, it appears training and oversight at ICE has lagged far behind. I am hopeful that this hearing will not only show us where the problems lie, but also lead us to solutions.

I have many questions, beginning with the long list I asked in my June 26, 2007 letter to ICE that were essentially ignored. I would like to know specifically what procedures are in place to train and oversee ICE agents during detention, interrogation, and removal processes. I would like to know exactly how ICE ensures it is not interrogating, detaining, or deporting U.S. citizens. And I would like ICE to explain how it is that its policies, procedures, and management allowed for each of the situations described today by our U.S. citizen witnesses or their representatives.

I respectfully request that our first witness, Mr. Gary Mead, the Assistant Director for Detention and Removal at ICE, remain after his testimony and questioning is completed on the first panel. It is imperative to hear first hand the stories of U.S. citizens caught up by ICE and the questions by Members of this subcommittee so that you may appropriately address these very serious concerns in writing after the hearing. Thank you.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

I'm disturbed by the reports I'm hearing that Immigration and Customs Enforcement (ICE) is deporting Americans. ICE can't go on deporting American citizens.

There's no excuse to deport Americans. It's never right. It's always wrong.

Over the past couple of years, ICE has grown dramatically in size and its activities have accelerated. ICE's Fugitive Enforcement Teams have dramatically increased from just 15 teams in 2005, to 50 teams in 2006, to 75 teams in 2007, with funding for 104 in 2008.

Based on reports I'm hearing, it seems ICE has been unable to keep up with the necessary training and oversight of its agents.

I've heard disturbing accounts of ICE agents acting in an inappropriate and possibly illegal manner throughout the United States during its raids and enforcement activities. ICE agents have entered houses without warrants or even an announcement; have interrogated children without their parents present; and have searched the private property of U.S. citizens without probable cause.

ICE also appears to be detaining U.S. citizens, and in some cases, deporting them.

If ICE is intruding into the homes of Americans without warrants, if they are interrogating U.S. citizens without cause, and if they are going so far as to deport American citizens, what does that mean ICE is doing to non-U.S. citizens?

In its zeal to rid America of the cooks, house cleaners, yard workers and construction workers who make up our shadow economy, ICE has taken an "OK-at-any-cost-approach" that is inimical to America's values. Caught in the crossfire are the innocent, many of whom are unable to protect themselves.

That's inexcusable.

I look forward to getting answers today. I am anxious to hear what ICE is and should be doing to adhere to the rule of law, to the very principles that make America the light of freedom and liberty to which others look as an example.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Madam Chair, thank you for your leadership in convening today's important hearing on the problems with U.S. Immigration and Customs Enforcement (ICE) interrogation, detention, and removal procedures as applied to U.S. citizens. I would also like to thank the ranking member, the Honorable Steve King, and welcome our distinguished group of witnesses, which include: Mr. Gary Mead, the Assistant Director for Detention & Removal with the U.S. Immigration and Customs Enforcement; Mr. James J. Brosnahan and Mark D. Rosenbaum of Morrison & Foerster, Counsel for Mr. Peter Guzman; Ms. Marie Justeen Mancha, a student at Tattnall County High School; Mr. Michael Graves from the United Food and Commercial Workers International Union, Local 1149; Mr. Kara Hartzler with the Florence Immigrant & Refugee Rights Project; Ms. Rachel E. Rosenbloom of the Center for Human Rights and International Justice at Boston College; and Mr. Dan Stein, President of the Federation for American. To each of you, welcome.

Madam Chairwoman, how a government treats its citizens is a critical test that measures its civility and maturity. How we treat immigration detainees, especially the most vulnerable among them - minors, mentally-disabled, or those with medical conditions, is an important measure of how humane our entire immigration system really is. When our immigration system targets legal American citizens and interrogates, detains, and forcibly removes them from the United States, it is a clear indication that our immigration system is fundamentally flawed and has gone awry.

Madam Chairwoman, one would think that a person born in the United States and a U.S. citizen, or a naturalized U.S. citizen, would have virtually no dealings with the U.S. immigration system. Recent events have come to show that this assumption is wrong. Indeed, recent reports demonstrate that U.S. citizens have been illegally detained, interrogated, and removed from the U.S. under the pretext that these citizens are illegal aliens. Citizens subjected to this treatment have included some of the most marginzalized and victimized members of our society—youths and the mentally ill. This is atrocious and inexcusable behavior by a civilized government.

Madam Chairwoman, this behavior is being exhibited by the main executive agency with jurisdiction over immigration detainees, DHS' Immigration and Customs Enforcement. One of the primary functions of DHS is to protect the United States and to ensure the safety and wellbeing of U.S. citizens.

In today's hearing, the witnesses will testify that ICE is not living up to its mandate. The witnesses will provide testimony demonstrating that our immigration system is flawed and needs to be reformed.

Madam Chairwoman, as one of the principal and long-standing supporters of comprehensive immigration reform in the US Congress and an author of a comprehensive immigration reform bill, the SAVE AMERICA Act, I do hope that today's hearing will serve as a catalyst for closer scrutiny of our immigration detention system and the immigration enforcement functions of DHS.

There are approximately 30,000 immigrants in detention on any given day and nearly 300,000 each year. These individuals are scattered across the country in hundreds of county jails as well as a handful of facilities run by DHS or by private prison companies. Some of these individuals have been detained. Others have been deported. The common denominator among all of these individuals is that they are U.S. citizens.

Recent articles in USA Today, Washington Post, and New York Times have unveiled shameful and inexcusable inadequacies regarding the treatment of U.S. citizens by ICE. The USA Today and Washington Post articles detail the wrongful deportation of a mentally-ill U.S. citizen, Mr. Peter Guzman, who is also represented today on this panel.

The New York Times article details extreme failures in ICE enforcement where ICE officials raided a home with guns drawn on a mother and her children in a raid that was part of a series of antigang sweeps in Long Island, New York. The raids, which resulted in 186 immigrant arrests, were denounced by officials in Nassau County as "riddled with mistakes and marked by misconduct."

Perhaps the most inexcusable, is that the mother had been a U.S. citizen since 1990. The article details other accounts of raids and detention of U.S. citizens. Some of these illegal raids resulted in lawsuits against DHS and ICE.

Madam Chairwoman, both ICE and its Office of Inspector General are not in a position to fix these problems. Instead, Congress must step in to help set this agency back on track. ICE cannot fix itself without our intervention.

The DHS Office of Inspector General recently issued a report of an audit done on five ICE facilities and noted that ICE frequently fails to inspect even its own facilities sufficiently. This finding was further supported by a report released by GAO in July of 2007. adam Chair, we cannot turn a blind eye to ICE's enforcement measures and sit and hope that ICE corrects itself. Given the findings in DHS's own report, it is unlikely that ICE will correct its wrong enforcement.

Congress has a responsibility to investigate these issues and call for reforms to ensure that dignity and respect for all human beings in our immigration detention system is preserved.

Madam Chair, I cannot stress enough that detention and deportation are major enforcement issues and ICE enforcement needs to be reformed. Even where ICE attempted to do the right thing - a failure resulted. Take, for example, the detention facility at the T. Don Hutto Correctional Center in Williamson County, Texas. Corrections Corporation of America (CCA) operates the 512-bed facility under a contract with Williamson County. The facility was opened in May 2006 to accommodate immigrant families in ICE custody. As history has shown us, even the best of intentions can go astray, which is what happened at the Hutto Detention Center.

Due to the increased use of detention, and particularly in light of the fact that children are now being housed in detention facilities, many concerns have been raised about the humanitarian, health, and safety conditions at these facilities. In a 72-page report, *"Locking Up Family Values: The Detention of Immigrant Families,"* recently released by two refugee advocacy organizations, the Women's Commission for Refugee Women and Children and the Lutheran Immigration and Refugee Service concluded that the T. Don Hutto Family Residential Center and another family detention center, the Berks Family Shelter Care Facility, were modeled on the criminal justice system "where residents are deprived of the right to live as a family unit, denied adequate medical and mental health care, and face overly harsh disciplinary tactics."

The American Civil Liberties Union (ACLU) filed a lawsuit against ICE in March 2007 on behalf of several juvenile plaintiffs that were housed in the facility at the time claiming that the standards by which they were housed was not in compliance with the government's detention standards for this population. The claims were, amongst other things, improper educational opportunities, not enough privacy, and substandard health care. The relief being sought was the release of the plaintiffs.

In August 2007, the ACLU reached a landmark settlement with the ICE that greatly improves conditions for immigrant children and their families in the Hutto detention center in Taylor, Texas.

Since the original lawsuits were filed, all 26 children represented by the ACLU have been released. The last six children were released days before the settlement was finalized and are now living with family members who are U.S. citizens or legal permanent residents while pursuing their asylum claims. Conditions at Hutto have gradually and significantly improved as a result of litigation. Children are no longer required to wear prison uniforms and are allowed much more time outdoors. Educational programming has expanded and guards have been instructed not to discipline children by threatening to separate them from their parents. Despite the tremendous improvements at Hutto, the facility still has a way to go.

Chairwoman, I hope that it will not take very many lawsuits and settlement agreements like we had in Williamson County Texas for ICE to cease interrogating, detaining, and deporting our own U.S. citizens. I look forward to hearing the insightful testimony and each of the witnesses' responses. Again, thank you, Madam Chairwoman for holding this hearing.

I yield the balance of my time.

PREPARED STATEMENT OF THE HONORABLE HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

I would like to applaud the Subcommittee, under the leadership of Chairwoman Lofgren, for holding today's hearing about Immigration and Customs Enforcement's (ICE) interrogation, detention, and removal procedures. I am hopeful that this important hearing will highlight the urgency for a legislative solution to the immigration workplace raids that are separating families and instilling fear in our children.

Immigration is one of the toughest challenges our nation faces. Recent workforce operation raids conducted by ICE have been conducted in such a way that resulted in children being left without adult care, unnecessarily risking their safety and well-being and risking health and welfare during detention and processing of persons involved. Estimates suggest that there are approximately five million children in the United States who have one or more undocumented parents. Two-thirds of these children—more than three million—are U.S.-born citizens. Separating families puts children at risk of economic hardship and psychological trauma.

While it is important that our nation's immigration laws be enforced, enforcement must be done in a way that is both humane and protects the children involved. That is why I joined Senator John Kerry to introduce the Families First Immigration Enforcement Act (H.R. 3980). This legislation would protect immigrant detainees and their families from mistreatment and unnecessary separation from their minor children.

Among other things, H.R. 3980 would require ICE to afford access to state social services to screen and interview detainees and arrange for representatives who speak the detainees' first language. Since many detainees are primary caregivers, this bill would also ensure that when possible, those who have been detained are within the jurisdiction of the local ICE field office. In the aftermath of a raid, families are left afraid especially when they do not have contact with their loved ones. This legislation would also require ICE to provide a toll free number for families to use after a raid and to inquire about the status of their family member.

H.R. 3980 is supported by more than 20 organizations such as Catholic Charities USA, National Council of La Raza (NCLR), American Immigration Lawyers Association (AILA), Mexican American Legal Defense Education Fund (MALDEF), and Women's Commission for Refugee Women and Children.

We cannot turn a blind eye to the injustices that are plaguing the immigrant community. Enforcement only solutions are striking fear in immigrant families across the country. I respect the difficult task which lies ahead and urge my colleagues to move forward with a solution that respects human dignity and protects children involved.

Committee on the Judiciary
- Chair — Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
- Subcommittee on Courts, The Internet, and Intellectual Property
- Subcommittee on Commercial and Administrative Law

Committee on Homeland Security
- Subcommittee on Border, Maritime and Global Counterterrorism
- Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology

Committee on House Administration
- Chair — Subcommittee on Elections

Chair, California Democratic Congressional Delegation

Congress of the United States
House of Representatives
Washington, DC 20515–0516

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Co-Chair, Congressional Hazards Caucus

Co-Chair, Bipartisan Congressional Refugee Caucus

Co-Chair, Congressional Vietnam Caucus

June 26, 2007

Michael Chertoff
Secretary
Department of Homeland Security
Washington, DC 20528

Re: ICE removal of U.S. citizen, Pedro Guzman

Dear Secretary Chertoff:

I am writing regarding the attached article which conveys the situation of Mr. Pedro Guzman, a mentally disabled United States citizen whom was erroneously removed from the U.S. by Immigration and Customs Enforcement (ICE). The article mentions that Mr. Guzman has not been located and that various U.S. government agencies contacted on his behalf have been uncooperative in assisting his family in finding him.

If this article is accurate, I am very concerned because, as you know, the Department of Homeland Security (DHS) has no authority to remove U.S. citizens from the United States. I am also concerned about the treatment of the mentally impaired by your department in this case and others.

I would like an immediate status update on this situation. In addition to receiving an update on where Mr. Guzman is, I would like to know what process ICE followed that resulted in this United States citizen being removed to a foreign country and the efforts DHS is taking to help locate Mr. Guzman.

Specifically, I would like to know:

- What process is followed by officers for identifying undocumented individuals?
- What is ICE's formal and informal policy when dealing with suspected undocumented immigrants who are mentally challenged? What additional screening takes place where mental capacity is an issue?
- What screening process took place when Mr. Guzman was taken into ICE custody that resulted in his U.S. citizenship being overlooked?
- What is ICE or the DHS doing to help locate Mr. Guzman?

PRINTED ON RECYCLED PAPER

- What special standards and operating procedures does ICE follow when dealing with individuals who are or may be mentally disabled?

- What considerations are given to individuals whom ICE officers determine to be mentally impaired?

- If ICE relied on the assessment of local law enforcement to determine Mr. Guzman's citizenship, pursuant to INA Section 287(g), what ICE safeguards exist to prevent inaccurate assessment of an individual's citizenship?

- If safeguards to verify local law enforcement assessments do not exist, what kind of measures could be implemented to avoid this type of situation in the future?

Please provide my office any written manuals or materials used directly or indirectly in making determinations of legal immigration status and in training officers for dealing with the mentally impaired. In addition, please provide to my office any written policies that might apply to situations such as this one.

The deportation of a U.S. citizen is disturbing enough, that the person was mentally challenged and possibly unable to assist himself adequately is more than disturbing—it is unconscionable. I am troubled that ICE may not have appropriate screening systems in place and may repeat such errors in the future.

I look forward to your response by July 10, 2007.

Sincerely,

Zoe Lofgren
Member of Congress

ZL:cca

Enclosure
Cc: Julie Meyers, Asst. Secretary USICE

Family sues over mentally disabled man's deportation

By Peter Prengaman
Associated Press

LOS ANGELES — The family of a mentally disabled man who was recently deported to Mexico sued the Department of Homeland Security and the Los Angeles County Sheriff's Department on Monday, claiming the agencies mistakenly removed an American citizen and that the U.S. government should help find him.

Family members said they have been searching for Pedro Guzman in Tijuana for a month, and fear he is living in the streets or possibly worse.

"My worst fear is that he is no longer living," said Guzman's brother, Michael Guzman. "He doesn't know how to read. He often can't remember the family phone number. He even gets lost if he gets off the main street in Lancaster."

It all began when Pedro Guzman, 29, a resident of Lancaster, was sentenced April 19 to 120 days in jail for a misdemeanor trespassing violation, according to the suit filed in federal court. At the Men's Central Jail in Los Angeles, he was asked about his immigration status and responded that he was born in California, according to the suit.

Sometime after that, the sheriff's department identified him as a noncitizen, obtained his signature for voluntary deportation and turned him over to U.S. Customs and Immigration Enforcement, according to the suit.

The American Civil Liberties Union, which helped file the suit, has Pedro Guzman's birth certificate showing he was born at Los Angeles County-USC Medical Center, said spokeswoman Celeste Durant.

Sheriff's spokesman Steve Whitmore said the department correctly followed procedures.

"My understanding is that this individual said he was a Mexican national and was in the country illegally when we interviewed him," said Whitmore. "We turn that information over to immigration officials, who then re-interview him."

On May 11, Guzman called the home of half-brother Juan Carlos Chabes in Lancaster. He spoke briefly with Chabes' wife, telling her he had been deported but didn't know to where.

So he asked a passerby where he was, and Chabes' wife heard a man respond, "Tijuana," said Michael Guzman. The family hasn't heard from him since. In Tijuana, they've put up fliers, visited police stations, jails, hospitals and morgues, but haven't been able to locate him.

The family has asked various U.S. government agencies for help finding him but have been denied, said Catherine Lhamon of the ACLU.

AUG 0 2 2007

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable Zoe Lofgren
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lofgren:

On behalf of Secretary Chertoff, thank you for your letter regarding the deportation of Pedro Guzman. The Department of Homeland Security (DHS) shares your concern for Mr. Guzman's welfare, and DHS's Component, U.S. Immigration and Customs Enforcement (ICE), has begun efforts to locate Mr. Guzman. DHS knows that you appreciate the difficulties that officers face during encounters with individuals who are unwilling or unable to provide accurate or truthful answers to citizenship questions.

ICE agents and officers, trained in accordance with Section 287 of the Immigration and Nationality Act (INA), may conduct interviews to establish if an individual is an alien, and if the alien is in the United States in violation of the INA. A primary question included in this questioning is, "Of what country are you a citizen?" As to an individual's admission of alienage, the individual's statements carry significant weight, and in the absence of evidence establishing otherwise, such statements may establish that the individual is an alien. If an officer establishes that an individual is an alien, then the officer may continue with questioning regarding the date, place and manner of the alien's last entry into the United States to determine whether the alien is present in the United States in violation of the INA and subject to removal.

The family of Mr. Guzman has sued and is in litigation against DHS and the Los Angeles County Sheriff's Department, claiming that the agencies mistakenly removed Mr. Guzman from the United States. Based on privacy concerns and the fact that Mr. Guzman's case relates to a matter in litigation, DHS is unable to provide more case-specific information.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

Department of Justice

United States Attorney
Northern District of Illinois

Federal Building
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 353-5300

Patrick J. Fitzgerald
United States Attorney

FOR IMMEDIATE RELEASE
WEDNESDAY APRIL 25, 2007
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PRESS CONTACTS:
AUSA Michelle Nasser Weiss (312) 469-6201
Randall Samborn (312) 353-5318
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U.S. CHARGES 22 DEFENDANTS IN ALLEGED FRAUDULENT IDENTIFICATION DOCUMENT RING BASED IN CHICAGO'S LITTLE VILLAGE COMMUNITY
Chicago cell leader allegedly ordered murders of competitors in Mexico

CHICAGO – The bustling counterfeit identification document business – which allegedly generates profits between approximately $2 million and $3 million a year for one entrenched Mexican-based crime organization alone – in and around the Little Village Discount Mall at 26th Street and Albany in Chicago's Little Village community has become "competitive and violent," according to federal criminal charges unsealed today. In fact, it turned deadly recently for one of four former members of the organization who apparently stole computer equipment and/or software from the organization to begin their own fraudulent identification document enterprise in Indiana. Yesterday, federal agents led by U.S. Immigration and Customs Enforcement (ICE) arrested Julio Leija-Sanchez, the alleged Chicago cell leader the organization in Little Village, on federal charges for allegedly paying $3,000 and conspiring with co-defendant Gerardo Salazar-Rodriguez, a fugitive believed to be in Mexico, and others to kill two of the fledgling competitors known as "Montes" and "Bruno."

Salazar-Rodriguez allegedly discussed the execution of Montes in Mexico between March 31 and April 3, shooting him 15 times in an effort to portray the murder of Montes, who drove a taxi, as a robbery, according to the charges against both men and 20 other defendants. The complaint alleges that in an April 3 telephone call between Leija-Sanchez and Salazar-Rodriguez discussing the planned murder of Bruno, Leija-Sanchez said, "you know what would be good, to ctach him around where you got Montes, kidnap him, and take him over by Pachuca, far away .... And then you take him to Nabor, so that he can cut him up in pieces."

Julio Leija-Sanchez, 31, of Oak Lawn, was charged with one count of conspiracy to commit murder outside the United States. More than a dozen pages of a 113-page ICE affidavit unsealed today detail a series of telephone calls in which Leija-Sanchez allegedly discussed killing Montes and Bruno with Salazar-Rodriguez, 34, between February 12 and April 18. Their conversations were among numerous calls that agents intercepted pursuant to court-authorized wiretaps since February, during the final months of the investigation, code named Operation Paper Tiger, that ICE began in late 2003.

In all,22 defendants, including Julio Leija-Sanchez and Salazar-Rodriguez were charged in the same criminal complaint with participating in a 3½-year conspiracy to illegally produce identification documents, authentication features and false identification documents. Yesterday, 12 of the defendants were arrested in Chicago, while 10 others are fugitives, including four believed to be in Mexico, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, and Elissa A. Brown, Special Agent-in-Charge of the U.S. Immigration and Customs Enforcement (ICE) Office of Investigations in Chicago.

ICE, FBI and Secret Service agents executed search warrants simultaneously at four locations: a basement apartment at 5366 South Campbell, which allegedly served as the primary office where fraudulent identification documents were produced, and where they seized two computer towers, printers, scanners, a cutting board, hundreds of blank identification cards, including social security cards and approximately $1,300 cash; the residences of Julio Leija-Sanchez in Oak Lawn and another alleged cell leader, Elias Marquez, 51, of West 64th Street, Chicago, where two laptop computers and cash preliminarily estimated in excess of $200,000 was seized; and at Nuevo Foto Munoz, a photo shop inside the Discount Mall at 3105 West 26th St.

The 12 defendants arrested yesterday were scheduled to have their initial court appearances beginning at 11 a.m. today in Courtroom 2541 before U.S. Magistrate Judge Sidney I. Schenkier in U.S. District Court. A list of the defendants and their custody or fugitive status is attached.

"These ICE arrests represent a significant setback to one of the largest and most sophisticated illegal document fraud rings in the United States," Ms. Brown said. "Criminals and even terrorists can use fraudulent documents to conceal themselves in our society, which poses a major homeland security vulnerability. Working with our law enforcement partners, ICE will continue to identify and shut down these vulnerabilities," she added.

Ms. Brown and Mr. Fitzgerald announced the charges together with Tim W. Viertel, Special Agent-in-Charge of the Chicago Office of the U.S. Secret Service; and Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation. The Chicago Police Department and the U.S. Postal Inspection Service also assisted in the investigation, which is continuing, the officials said.

According to the complaint affidavit, the fraudulent document organization originated in Mexico and is affiliated with a Mexican family named Castoreña-Ibarra. ICE agents around the country believe that the organization produces false documents in several U.S. cities, including Denver, Los Angeles and Chicago. Information developed during the investigation indicates that the organization generates millions of dollars in illegal proceeds each year in Chicago alone. Julio Leija- Sanchez allegedly assumed control of the organization in Chicago after his brother, Manuel Leija- Sanchez, 40, who also is among the 22 charged, was deported in May 2006. Manuel Leija-Sanchez allegedly still exercises leadership of the organization from Mexico.

The organization allegedly recruits illegal aliens to come to Chicago and sell false documents on street corners in the Little Village neighborhood, where individuals solicit business for the organization overtly. These individuals sell all sorts of false identification documents – such as driver's licenses purportedly issued by a variety of states, immigration documents such as Resident Alien Cards (Green Cards), and other purportedly government-issued documents. In just one location in the area of Albany and 26th Street alone, there are as many as 15 to 20 illegal aliens at any one time selling false documents, the charges allege. When these sellers locate a customer, they obtain a photograph and personal information, such as name and address that the customer wants on a particular card. Once these sellers have accumulated such information from enough customers, one of the sellers will send that information to a document production facility where the false documents are made.

Members of the organization are primarily of Mexican descent, but the ethnicity of their customers varies, including American, Polish, Indian, Algerian, Arab, Mexican, Nigerian, Canadian, Haitian, Pakistani, and Asian. Law enforcement is unaware of any occasion in which the organization declined selling fraudulent identification documents to a customer who had sufficient money to purchase the documents, the complaint states.

The affidavit describes various positions held by members of the organization, including vendors, customers, runners, lookouts and manufacturers. There may be between two and six manufacturers working in an office at any one time. Approximately eight to 10 street vendors are employed per shift in the parking lot of and inside the Discount Mall, with two shifts per day – about 9:00 a.m. to 3 p.m., and about 1:30 to 8 p.m.

The charges allege that the various positions were held by the following defendants: organization leader in Mexico – Manuel Leija-Sanchez; Chicago cell leader – Julio Leija-Sanchez; office manager and shift supervisor – Elias Marquez; street supervisors – Eduardo Molina- Vasquez, Antonio Marquez and Chispa; street vendors – Miguel Cepeda, Jose Cortez-Perez, Armando Davila, Ricardo Gonzalez-Marquez, Julio Cesar Hernandez-Lopez, Oscar Monteil-Gerrido, Rafael Morales, Alfredo Muniz, Luis Perez, Oscar Perigrino, and Ricardo Quintero-Lopez; runners – Oscar Perigrino and Alfredo Muniz; lookout – Angel Martin Dorantes-Vasquez; and smuggler – Raul Gonzalez-Marquez.

The complaint alleges that the organization is also involved in the smuggling of illegal aliens into the United States from Mexico. Once these individuals arrive in Chicago, the organization provides them false identification, and they then pay off their debt to those who smuggled them here by working for the organization.

It further alleges that the organization also requires technical support and office supplies to maintain the fraudulent document enterprise. The technical support and supplies come primarily through sources in Mexico, with Julio Leija-Sanchez's wife, Cathy, later identified as Caterina Zapien-Ruiz, 28, of Oak Lawn, often coordinating the purchases of supplies from Mexico.

Based on undercover purchases and information obtained from cooperating sources, law enforcement believes the organization sells as many as 50 to 100 sets of fraudulent identification documents each day, charging customers approximately $200 to $300 cash per "set." A set consists of a Social Security card and either an Immigration "green card" or a State driver's license. Each vendor in the organization is obligated to provide approximately $140 cash per set of documents to the organization and keeps the remaining profit, the charges allege. According to an intercepted call from Julio Leija-Sanchez in February, he said: "I'm telling you, we've been here for 20 years, and a couple of times they have caught people. Not us."

The government is being represented by Assistant U.S. Attorneys Michelle Nasser Weiss, Andrew Porter and David Buvinger.

If convicted, conspiracy to produce fraudulent identification documents carries a maximum penalty of five years in prison and a $250,000 fine. In addition, Julio Leija-Sanchez alone faces a maximum penalty of life in prison if convicted of conspiracy to commit murder in a foreign country. Note, however, that the Court would determine the appropriate sentence to be imposed.

The public is reminded that a complaint contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

United States v. Julio Leija-Sanchez, et al.

JULIO LEIJA-SANCHEZ, also known as "Rogelio Garcia-Salazar," "Adrian Perez-Benitez," "Cesar Juarez," "Savino Zapiel," "Rogelio Garcia," "Carlos Becerra Velasquez," "Larry," and "Salivas;" 31, of Oak Lawn; arrested in Chicago;

MIGUEL CEPEDA, aka "Muta," "Cesar Ortiz," and "El Monstro;" 26,of Chicago; arrested in Chicago; J

OSE CORTEZ-PEREZ, aka "Bigotes," "Bigos," "Aramon Montero-Cortel," "Roberto Castro," "Ramon Gomez," "Alberto Gomez-Ramirez," "Spider," and "Tarantula;" 42, of Cicero; fugitive;

ARMANDO DAVILA, aka "Bikini" and "Tanque;" 26, of Chicago; arrested in Chicago;

ANGEL MARTIN DORANTES-VASQUEZ, aka "Angel Dorantes," "Martin," "Botas," and "Vaquero;" 35,of Chicago; arrested in Chicago;

RAUL GONZALEZ-MARQUEZ, aka "Raul Marquez-Gonzalez," "Raul Marquez," "Raul Gonzalez," "Rauline," "Raulin," and "Rulas;" 58, of Wood Dale, believed to be in Mexico;

RICARDO GONZALEZ-MARQUEZ, aka "Rico," "Ricos," and "Chino;" 54, of Wood Dale; arrested in Chicago;

JULIO CESAR HERNANDEZ-LOPEZ, aka "Pabo," "Pablo Hernandez," and "Pavo;" 36, of Chicago; arrested in Chicago;

MANUEL LEIJA-SANCHEZ, aka "Reglas," "Manuel Sanchez-Leija," "Vincente Vince," "Aguilar," "Ricardo Leiba," "Marcos a/k/a "Miguelito," "Moco," and "Enrique Felix;" 40, of Mexico City; believed to be in Mexico;

ANTONIO MARQUEZ, aka "Topo," "Tomatillo," and "Topoillo;" 35, of Chicago; arrested in Chicago;

ELIAS MARQUEZ, aka "Tio" and "Don;" 51, of Chicago; arrested in Chicago;

EDUARDO MOLINA-VASQUEZ, aka "Caracol," "Arturo Vasquez-Laguna," "David Ramirez-Montez," "Edwardo Molina," "Arturo Salizar" and "Rott;" 32,of Chicago; arrested in Chicago;

OSCAR MONTIEL-GERRIDO, aka "Rambo," and "Rambito;" 29, of Chicago; fugitive;

RAFAEL MORALES, aka "Mollejas;" 36, of Chicago; fugitive;

ALFREDO MUNIZ, aka "Chuy," "Lobos," and "Chucas;" 30, of Chicago; fugitive; LUIS PEREZ, aka "Ronas;" 23,of Chicago; fugitive;

OSCAR PERIGRINO, aka "Primate," and "Juan Carlos Sandoval-Hernandez;" 34, of Chicago; fugitive;

RICARDO QUINTERO-LOPEZ, aka "Porki," "El Chato," "Chicharon," "Ramon Cisneros," and "Cochino;" 33,of Cicero; arrested in Chicago;

GERARDO SALAZAR-RODRIGUEZ, aka "Larossa," "Chapulin," and "Labrosa;" 34, of Mexico City; believed to be in Mexico;

CATHY LNU, aka Caterina Zapien-Ruiz, 28, of Oak Lawn; arrested in Chicago;

FNU/LNU, aka "CHATO," age unknown, of Mexico City, believed to be in Mexico;

Claudio LNU, aka "CHISPA," "Dingo," and Claudio Carrillo-Fuentes, 38, of Chicago; arrested in Chicago.

FBI Home Page Press Releases

U.S. Immigration and Customs Enforcement

News Releases

April 25, 2007

U.S. charges 22 in alleged fraudulent identification ring based in Chicago

Cell leader allegedly ordered murders of competitors in Mexico

CHICAGO - The bustling counterfeit identification document business - which allegedly generates profits between approximately $2 million and $3 million a year for one entrenched Mexican-based crime organization alone - in and around the Little Village Discount Mall at 26th Street and Albany in Chicago's Little Village community has become "competitive and violent," according to federal criminal charges unsealed today. In fact, it turned deadly recently for one of four former members of the organization who apparently stole computer equipment and/or software from the organization to begin their own fraudulent identification document enterprise in Indiana. Yesterday, federal agents led by U.S. Immigration and Customs Enforcement (ICE) arrested Julio Leija-Sanchez, the alleged Chicago cell leader the organization in Little Village, on federal charges for allegedly paying $3,000 and conspiring with co-defendant Gerardo Salazar-Rodriguez, a fugitive believed to be in Mexico, and others to kill two of the fledgling competitors known as "Montes" and "Bruno."

Salazar-Rodriguez allegedly discussed the execution of Montes in Mexico between March 31 and April 3. Montes was shot 15 times in an effort to portray the murder of Montes, who drove a taxi, as a robbery, according to the charges against both men and 20 other defendants. The complaint alleges that in an April 3 telephone call between Leija-Sanchez and Salazar-Rodriguez discussing the planned murder of Bruno, Leija-Sanchez said, "You know what would be good, to catch him around where you got Montes, kidnap him, and take him over by Pachuca, far away .... And then you take him to Nabor, so that he can cut him up in pieces."

Julio Leija-Sanchez, 31, of Oak Lawn, was charged with one count of conspiracy to commit murder outside the United States. More than a dozen pages of a 113-page ICE affidavit unsealed today detail a series of telephone calls in which Leija-Sanchez allegedly discussed killing Montes and Bruno with Salazar-Rodriguez, 34, between February 12 and April 18. Their conversations were among numerous calls that ICE agents intercepted pursuant to court-authorized wiretaps since February, during the final months of the investigation, code-named Operation Paper Tiger, which began in late 2003.

In all, 22 defendants, including Julio Leija-Sanchez and Salazar-Rodriguez were charged in the same criminal complaint with participating in a 3 1/2-year conspiracy to illegally produce

identification documents, authentication features and false identification documents. Yesterday, 12 of the defendants were arrested in Chicago, while 10 others are fugitives, including four believed to be in Mexico, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, and Elissa A. Brown, Special Agent-in-Charge of the U.S. Immigration and Customs Enforcement (ICE) Office of Investigations in Chicago.

ICE, FBI and Secret Service agents executed search warrants simultaneously at four locations: a basement apartment at 5366 South Campbell, which allegedly served as the primary office where fraudulent identification documents were produced, and where they seized two computer towers, printers, scanners, a cutting board, hundreds of blank identification cards, including social security cards and approximately $1,300 cash; the residences of Julio Leija-Sanchez in Oak Lawn and another alleged cell leader, Elias Marquez, 51, of West 64th Street, Chicago, where two laptop computers and cash preliminarily estimated in excess of $200,000 was seized; and at Nuevo Foto Munoz, a photo shop inside the Discount Mall at 3105 West 26th St.

The 12 defendants arrested yesterday were scheduled to have their initial court appearances beginning at 11 a.m. today in Courtroom 2541 before U.S. Magistrate Judge Sidney I. Schenkier in U.S. District Court. A list of the defendants and their custody or fugitive status is attached.

"Fraudulent documents are a favored method of terrorists and criminals for gaining entry into the United States to carry out their illegal activities," said Julie L. Myers, Assistant Secretary for U.S. Immigration and Customs Enforcement. "The continued success of ICE and our Federal, state, and local law enforcement partners in bringing and end to those activities represents a considerable achievement in protecting the nation."

Brown and Fitzgerald announced the charges together with Tim W. Viertel, Special Agent-in-Charge of the Chicago Office of the U.S. Secret Service; and Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation. The Chicago Police Department and the U.S. Postal Inspection Service also assisted in the investigation, which is continuing, the officials said.

According to the complaint affidavit, the fraudulent document organization originated in Mexico and is affiliated with a Mexican family named Castoreña-Ibarra. ICE agents around the country believe that the organization produces false documents in several U.S. cities, including Denver, Los Angeles and Chicago. Information developed during the investigation indicates that the organization generates millions of dollars in illegal proceeds each year in Chicago alone. Julio Leija-Sanchez allegedly assumed control of the organization in Chicago after his brother, Manuel Leija-Sanchez, 40, who also is among the 22 charged, was deported in May 2006. Manuel Leija-Sanchez allegedly still exercises leadership of the organization from Mexico.

The organization allegedly recruits illegal aliens to come to Chicago and sell false documents on street corners in the Little Village neighborhood, where individuals solicit business for the organization overtly. These individuals sell all sorts of false identification documents - such as driver's licenses purportedly issued by a variety of states, immigration documents such as Resident Alien Cards (Green Cards), and other purportedly government-issued documents. In just one location in the area of Albany and 26th Street alone, there are as many as 15 to 20 illegal aliens at any one time selling false documents, the charges allege. When these sellers locate a customer,

they obtain a photograph and personal information, such as name and address that the customer wants on a particular card. Once these sellers have accumulated such information from enough customers, one of the sellers will send that information to a document production facility where the false documents are made.

Members of the organization are primarily of Mexican descent, but the ethnicity of their customers varies, including American, Polish, Indian, Algerian, Arab, Mexican, Nigerian, Canadian, Haitian, Pakistani and Asian. Law enforcement is unaware of any occasion in which the organization declined selling fraudulent identification documents to a customer who had sufficient money to purchase the documents, the complaint states.

The affidavit describes various positions held by members of the organization, including vendors, customers, runners, lookouts and manufacturers. There may be between two and six manufacturers working in an office at any one time. Approximately eight to 10 street vendors are employed per shift in the parking lot and inside the Discount Mall, with two shifts per day - about 9:00 a.m. to 3 p.m., and about 1:30 to 8 p.m.

The charges allege that the various positions were held by the following defendants: organization leader in Mexico - Manuel Leija-Sanchez; Chicago cell leader - Julio Leija-Sanchez; office manager and shift supervisor - Elias Marquez; street supervisors - Eduardo Molina-Vasquez, Antonio Marquez and Chispa; street vendors - Miguel Cepeda, Jose Cortez-Perez, Armando Davila, Ricardo Gonzalez-Marquez, Julio Cesar Hernandez-Lopez, Oscar Monteil-Gerrido, Rafael Morales, Alfredo Muniz, Luis Perez, Oscar Perigrino and Ricardo Quintero-Lopez; runners - Oscar Perigrino and Alfredo Muniz; lookout - Angel Martin Dorantes-Vasquez; and smuggler - Raul Gonzalez-Marquez. The complaint alleges that the organization is also involved in the smuggling of illegal aliens into the United States from Mexico. Once these individuals arrive in Chicago, the organization provides them false identification and they then pay off their debt to those who smuggled them here by working for the organization.

It further alleges that the organization also requires technical support and office supplies to maintain the fraudulent document enterprise. The technical support and supplies come primarily through sources in Mexico, with Julio Leija-Sanchez's wife, Cathy, later identified as Caterina Zapien-Ruiz, 28, of Oak Lawn, often coordinating the purchases of supplies from Mexico.

Based on undercover purchases and information obtained from cooperating sources, law enforcement believes the organization sells as many as 50 to 100 sets of fraudulent identification documents each day, charging customers approximately $200 to $300 cash per "set." A set consists of a Social Security Card and either an Immigration "green card" or a state driver's license. Each vendor in the organization is obligated to provide approximately $140 cash per set of documents to the organization and keeps the remaining profit, the charges allege. According to an intercepted call from Julio Leija-Sanchez in February, he said: "I'm telling you, we've been here for 20 years, and a couple of times they have caught people. Not us."

The government is being represented by Assistant U.S. Attorneys Michelle Nasser Weiss, Andrew Porter and David Buvinger. If convicted, conspiracy to produce fraudulent identification documents carries a maximum penalty of five years in prison and a $250,000 fine. In addition, Leija-Sanchez alone faces a maximum penalty of life in prison if convicted of conspiracy to

commit murder in a foreign country. Note, however, that the Court would determine the appropriate sentence to be imposed. The public is reminded that a complaint contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

United States v. Julio Leija-Sanchez, et al.

JULIO LEIJA-SANCHEZ, also known as "Rogelio Garcia-Salazar," "Adrian Perez-Benitez," "Cesar Juarez," "Savino Zapiel," "Rogelio Garcia," "Carlos Becerra Velasquez," "Larry," and "Salivas;" 31, of Oak Lawn; arrested in Chicago;
MIGUEL CEPEDA, aka "Muta," "Cesar Ortiz," and "El Monstro;" 26,of Chicago; arrested in Chicago;
JOSE CORTEZ-PEREZ, aka "Bigotes," "Bigos," "Aramon Montero-Cortel," "Roberto Castro," "Ramon Gomez," "Alberto Gomez-Ramirez," "Spider," and "Tarantula;" 42, of Cicero; fugitive;
ARMANDO DAVILA, aka "Bikini" and "Tanque;" 26, of Chicago; arrested in Chicago;
ANGEL MARTIN DORANTES-VASQUEZ, aka "Angel Dorantes," "Martin," "Botas," and "Vaquero;" 35,of Chicago; arrested in Chicago;
RAUL GONZALEZ-MARQUEZ, aka "Raul Marquez-Gonzalez," "Raul Marquez,"; "Raul Gonzalez," "Rauline," "Raulin," and "Rulas;" 58, of Wood Dale, believed to be in Mexico;
RICARDO GONZALEZ-MARQUEZ, aka "Rico," "Ricos," and "Chino;" 54, of Wood Dale; arrested in Chicago;
JULIO CESAR HERNANDEZ-LOPEZ, aka "Pabo," "Pablo Hernandez," and "Pavo;" 36, of Chicago; arrested in Chicago;
MANUEL LEIJA-SANCHEZ, aka "Reglas," "Manuel Sanchez-Leija," "Vincente Vince," "Aguilar," "Ricardo Leiba," "Marcos a/k/a "Miguelito," "Moco," and "Enrique Felix;" 40, of Mexico City; believed to be in Mexico;
ANTONIO MARQUEZ, aka "Topo," "Tomatillo," and "Topoillo;" 35, of Chicago; arrested in Chicago;
ELIAS MARQUEZ, aka "Tio" and "Don;" 51, of Chicago; arrested in Chicago;
EDUARDO MOLINA-VASQUEZ, aka "Caracol," "Arturo Vasquez-Laguna," "David Ramirez-Montez," "Edwardo Molina," "Arturo Salizar" and "Rott;" 32,of Chicago; arrested in Chicago;
OSCAR MONTIEL-GERRIDO, aka "Rambo," and "Rambito;" 29, of Chicago; fugitive;
RAFAEL MORALES, aka "Mollejas;" 36, of Chicago; fugitive;
ALFREDO MUNIZ, aka "Chuy," "Lobos," and "Chucas;" 30, of Chicago; fugitive;
LUIS PEREZ, aka "Ronas;" 23,of Chicago; fugitive; OSCAR PERIGRINO, aka "Primate," and "Juan Carlos Sandoval-Hernandez;" 34, of Chicago; fugitive;
RICARDO QUINTERO-LOPEZ, aka "Porki," "El Chato," "Chicharon," "Ramon Cisneros," and "Cochino;" 33,of Cicero; arrested in Chicago;
GERARDO SALAZAR-RODRIGUEZ, aka "Larossa," "Chapulin," and "Labrosa;" 34, of Mexico City; believed to be in Mexico;
CATHY LNU, aka Caterina Zapien-Ruiz, 28, of Oak Lawn; arrested in Chicago; FNU/LNU, aka "**CHATO**," age unknown, of Mexico City, believed to be in Mexico; Claudio LNU, aka "**CHISPA**," "Dingo," and Claudio Carrillo-Fuentes, 38, of Chicago; arrested in Chicago.

-- ICE --

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

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Statement of the American Immigration Lawyers Association Regarding the House Subcommittee on Immigration's Hearing on "Problems with ICE Interrogation, Detention and Removal Procedures"

On February 13, 2008, the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held a hearing entitled "Problems with ICE interrogation, detention, and removal procedures." Multiplying immigration raids across the country, the dramatic expansion of immigration detention, and the lack of any safety valve to allow non-citizens to remain in the U.S. legally have created a system rife with abuse. AILA welcomes this opportunity to highlight the importance of enhancing procedural safeguards within our immigration system to ensure that the due process rights of everyone in America are respected.

AILA commends the Department of Homeland Security for implementing a series of reforms to ensure non-citizens in its custody are treated humanely including the issuance of humanitarian guidelines for large worksite raids and recent directives supporting the favorable exercise of prosecutorial discretion in cases where nursing mothers, sole caregivers and others merit release from detention. While the issuance of this guidance is an important first step toward ensuring fair and humane treatment, the hearing highlighted the need to ensure the Department's guidance is consistently followed by DHS officials in the field. AILA encourages DHS to work collaboratively with Congress to implement additional reforms that will ensure detainees and individuals encountered during raids are treated humanely including enhanced training requirements and the issuance of regulations regarding the treatment of detainees.

AILA is deeply concerned about testimony at the hearing regarding humanitarian and civil rights abuses against detainees. Specifically, inadequate due process protections in our current system and a failure by the federal government to guarantee the protections of current law have led to the following troubling developments during recent ICE enforcement actions:

- U.S. citizens, the mentally ill, children and other vulnerable individuals who should not be in ICE custody have been mistakenly detained.
- Both legal residents and U.S. citizens report having been approached by immigration officials during worksite and residential raids on the basis of their race or ethnicity.
- ICE officials have allegedly entered private homes in some residential raids without a warrant and questioned individuals about their immigration status.
- Mothers responsible for caring for their small children reportedly have been detained and transferred to detention facilities thousands of miles away from their families.
- Detainees have been transferred away from their attorneys in countless cases making it difficult to defend themselves in court.

Explosive growth in the numbers of non-citizens in immigration detention has also resulted in inconsistent and sometimes poor conditions of confinement. Although federal immigration authorities adopted generalized detention standards in 2000, these standards have not been consistently enforced. Despite the Department of Homeland Security's monitoring of conditions, widespread reports of abuse persist.

Our current immigration system does not include many of the basic procedural rules that would ensure individuals with valid claims to relief from deportation are permitted to remain in the U.S. Core due process protections were stripped from our immigration laws in 1996 resulting in the mandatory detention and deportation of many long-term permanent residents. Procedures such as expedited and administrative removal result in individuals being removed from the U.S. without a hearing. In many cases, our current immigration system does not permit immigration judges to consider individual equities such as the length of time a person has been in the U.S., their ties to the community, U.S. citizen family members and dependents, or whether the individual has a job and pays taxes.

Our government should ensure that the tenets of due process that underpin American society are respected. We must transform the chaos and lawlessness of our current immigration crisis into a system that respects due process, law and order and confronts the human and economic reality of millions of undocumented workers in America.

AILA calls on Congress to reform these laws to ensure that due process is respected and that government officials and judges have the discretion to ensure that individuals with strong connections to the U.S. are not mandatorily detained or deported. In the interim, AILA calls upon ICE to ensure that the rights of immigrant workers are protected, and that appropriate attention is paid to the safety and welfare of children and their families.

Founded in 1946, AILA is a nonpartisan, nonprofit organization that provides its Members with continuing legal education, information, professional services and expertise through its 35 chapters and over 75 national committees. AILA also advocates before Congress and the Administration, as well as provides liaison with government agencies in support of pro-immigration initiatives. AILA is an Affiliated Organization of the American Bar Association.

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Written Statement
For a Hearing on

"Immigration and Customs Enforcement Interrogation, Detention and Removal"

Submitted to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the House Judiciary Committee

Wednesday, February 13, 2008

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Introduction

The American Civil Liberties Union ("ACLU") commends the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law for conducting an oversight hearing of interrogation, detention, and removal practices conducted by the Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") Section. We urge the Subcommittee to initiate a rigorous oversight process to ensure that ICE is held accountable to Congress and the public for its enforcement practices. The following written statement, submitted on behalf of the ACLU, will address a range of problematic ICE practices at the interrogation, detention, and removal stages.[1]

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of hundreds of thousands of members, several national projects, and 53 affiliates nationwide. The ACLU was born during the "Red Scare" in 1920, a time when then U.S. Attorney General A. Mitchell Palmer ordered immigrants summarily detained and deported because of their political views. Since its founding, the ACLU has consistently defended and protected immigrants' rights. The ACLU has the largest litigation program in the country dedicated to defending the civil and constitutional rights of immigrants. Through a comprehensive advocacy program including litigation, public education, and legislative and administrative advocacy, the ACLU is at the forefront of major struggles securing immigrants' rights including legal challenges to ICE's unconstitutional laws and practices.

People charged with being removable are entitled to due process including a hearing before an immigration judge and review by a federal court. Among the specific rights that apply in removal proceedings are the right to be represented by counsel (at no expense to the government); to receive reasonable notice of the charges and of the time and place of the hearing; to have a reasonable opportunity to examine adverse evidence and witnesses; to present favorable evidence; to receive competent language interpretation; and to have the government prove its case by clear, convincing, and unequivocal evidence.

ICE has systematically chipped away at these core constitutional protections by pursuing an unprecedented campaign of interrogations, detention, and removal of immigrants. Since 2006, with the initiation of Operation Return to Sender, ICE has aggressively ramped up punitive deportation-only initiatives including:

- large-scale, mass raids in worksites and homes;
- dramatic increase in detention beds;
- expansion of federal immigration enforcement to include state and local police;
- denial of access to counsel for people facing removal from the U.S.;
- mass transfers of detainees to facilities hundreds of miles from their homes;
- incarceration of detainees in unsanitary inhumane conditions;

[1] This written statement is submitted in conjunction with the written and oral testimony of Mark Rosenbaum of the ACLU of Southern California. The testimony of Mr. Rosenbaum and James Brosnahan of Morrison & Foerster focused solely on the experiences of their client Pedro Guzman, a U.S. citizen born in California who was illegally deported to Mexico in 2007.

- denial of medical and dental care to detainees, including those with serious, life-threatening conditions.

I. Unprecedented large-scale round-up raids

Since the launch of Operation Return to Sender in 2006, ICE has engaged in an unprecedented round of raids, both at worksites and in homes, hitting many regions of the country. Below is a snapshot of just a few of the regions that have been hard hit by large-scale immigration raids:

Swift raids: On December 12, 2006, six Swift & Company facilities located in Greeley, Colorado; Cactus, Texas; Grand Island, Nebraska; Hyrum, Utah; Marshalltown, Iowa and Worthington, Minnesota were raided by ICE. ICE estimates that approximately 1,282 Swift employees were detained on immigration violations, and 65 were charged with criminal violations related to identity theft.

New Bedford, Massachusetts raid: On March 6, 2007, the New Bedford community was devastated by one of the nation's largest immigration raids, resulting in the arrest of 361 workers of the Michael Bianco factory. All but a few were detained, and 206 were transferred to detention facilities in Texas, hundreds of miles from their families, homes, and counsel. An estimated 100 to 200 children were separated from their parents. In response, the ACLU and a coalition of groups filed a lawsuit, challenging ICE's misconduct during the raid.

Van Nuys, California raid: On February 7, 2008, more than 100 ICE agents raided a printer supply manufacturer in the San Fernando Valley, taking into custody over 130 employees on immigration-related charges and arresting eight on federal criminal charges. Following the raid, ICE officials denied the workers access to counsel during ICE's interrogation of the workers, even after the attorneys had filed Form G-28s Notice of Entry of Appearance. The ACLU, the National Immigration Law Center, and the National Lawyers Guild recently filed a lawsuit on behalf of the workers, challenging ICE's denial of access to counsel.

Long Island suburbs raids: In September 2007 teams of 6 to10 armed ICE agents raided the homes of Latinos without court-issued search warrants. The raids were conducted during late night or pre-dawn hours. ICE agents pounded on and/or broke down doors and windows while screaming loudly at the inhabitants inside the house. ICE agents represented themselves as "police" and bullied or forced their way into people's homes without obtaining their consent to enter. The ACLU filed a lawsuit challenging that ICE violated the immigrants' Fourth amendment rights by entering and searching their homes without valid warrants or voluntary consent and in the absence of probable cause and exigent circumstances.

Georgia raids: In September 2006 armed federal agents searched and entered private homes without warrants and detained and interrogated people solely on the basis that they looked "Mexican." These raids swept so broadly that they covered homes where all the residents are U.S. citizens. In addition, the agents used excessive and wholly unnecessary force and destroyed private property without cause. The ACLU filed a class action suit on behalf of U.S. citizens who "appear Mexican," challenging that the federal agents violated the citizens' Fourth amendment rights by entering and searching homes without valid warrants or voluntary consent

and in the absence of probable cause or exigent circumstances. The ACLU suit further challenges that the federal agents violated the citizens' Fifth amendment rights by targeting them on the basis of race/ethnicity and/or national origin in violation of the Equal Protection Clause.

DHS Secretary Chertoff has claimed that the ICE enforcement operations launched in 2006 are aimed at capturing "fugitive aliens," with the highest priority on apprehending individuals who pose a threat to national security or the community and whose criminal records include violent crimes. However, 94 percent of those arrested by the San Francisco Fugitive Operations Team between January 1 and March 31, 2007, did not fit within the category of "criminal fugitives." A majority were not even subject to outstanding removal orders according to a letter from the acting ICE director to Congresswoman Anna Eshoo. These numbers indicate that ICE's raids, though purportedly targeted at "fugitive aliens," in reality have swept so broadly that the vast majority of people arrested under Operation Return to Sender were innocent bystanders.

Among the thousands of people who have been rounded up by ICE under the auspices of Operation Return to Sender is Kebin Reyes, six years old at the time of his arrest in March 2007. A native-born U.S. citizen, Kebin was sleeping when ICE officers stormed into his home. Kebin's father Noe told the ICE agents that Kebin is a U.S. citizen, and asked permission to call a relative to care for Kebin while Noe was detained. The ICE agents refused. Instead they made Noe wake up Kebin, who watched as officers handcuffed his father, and then took father and son to the ICE booking station in San Francisco. Kebin spent 10 hours locked in a room with his father. ICE agents never allowed Noe to call someone to pick up Kebin. It was only when a relative heard from neighbors what happened and came to the ICE facility that Kebin was able to leave.

Like Kebin, children all over the country have been traumatized by seeing their parents swept up and taken away or by being left behind without care after school when parents have been arrested without notice. After the raids in which Kebin was arrested, the San Rafael City Schools Board of Education wrote to Congresswoman Lynn Woolsey, reporting, "The ICE raids sent our schools into a state of emergency. Many students were and remain distracted from school work as they worry about their loved ones. Most of these children are, by and large, American-born, full-fledged citizens with a right to a quality education and to live in this country for the rest of their lives." To vindicate Kebin's rights under the Fourth Amendment and to prevent future abuses, the ACLU, the Lawyers' Committee for Civil Rights, and the law firm of Coblentz Patch Duffy & Bass filed a lawsuit against ICE in April 2007.

Just as troubling as the sweeping breadth of recent raids are accompanying reports of rampant constitutional violations. Both DHS Secretary Chertoff and ICE Assistant Secretary Myers have publicly stated that administrative warrants cannot be used by ICE agents to enter people's homes. However, in practice, ICE agents have been entering people's homes, even without consent. ICE's response that people are voluntarily consenting to questioning is insupportable when considering that ICE agents, fully armed and identifying themselves as "police," are banging on people's doors and windows in the pre-dawn hours as the inhabitants are sleeping.

Sweeping and overbroad raids are terrorizing immigrant communities across the U.S. while doing little, if anything, to improve the safety and security of the U.S.

Recommendations: The ACLU urges that ICE:

- Halt large-scale, pre-dawn raids, both at worksites and in homes;
- Refrain from investigating and/or detaining family members, roommates, housemates, neighbors, and other bystanders, without individualized suspicion.
- Clarify standards for determining "consent"
- Not identify themselves as "police."
- Not question any persons represented by counsel without counsel present during the interview.

II. Expansion of federal immigration enforcement to include state and local police

In recent years ICE has entered into an increasing number of 287(g) agreements with states and localities. Under 287(g) agreements, state and local law enforcement can identify, process, and detain immigrants whom they encounter during their daily law-enforcement activity, including traffic stops. The ACLU has challenged such 287(g) agreements on the basis that state and local law enforcement lack the inherent authority to arrest individuals for civil immigration violations. Enforcement of federal immigration laws is an exclusive federal function based on Congress's plenary powers to regulate immigration.

For example, the ACLU has sued Danbury, Connecticut for arresting 11 immigrants in September 2006 in a public park in an undercover immigration sting operation at a public park. A Danbury police officer disguised himself as a contractor/employer looking to hire day laborers. The ACLU lawsuit challenges the arrests on civil immigration violations on the basis of failure to have valid warrants, lack of probable cause, or lack of reason to believe that the detained were engaging in unlawful activity. Additionally, the suit challenges Danbury's immigration enforcement activities on the grounds that federal law preempts state or local police from civil immigration enforcement activity, thereby leaving Danbury without appropriate authority cognizable under 8 U.S.C. § 1357. The case also challenges the detentions on the basis on race, ethnicity, perceived national origin, asserting that the 11 immigrants were subjected to selective law enforcement arising out of a malicious and bad faith intent to drive them out of Danbury.

Supporters of 287(g) agreements often have little or no understanding of immigration law and its complexities. Some proponents envision a fictional database system where a local police officer can enter a person's name in the computer and immediately get an answer from ICE that the person is "legal" or "illegal." In reality, determining an individual's immigration status requires extensive training and expertise in immigration law and procedures, and thus is simply not suitable for state and local law enforcement.

Section 287(g) supporters fail to understand that immigration status is complex, fluid, and very case-specific. For example, many people are in the U.S. pursuant to a non-immigrant visa for employment, study, investment, travel, and other reasons. Most of them are typically admitted to

the U.S. for a certain period of time, but many can then request to extend their stay or to change to a different status with the DHS Citizenship Immigration Services ("CIS"). During the pendency of their application, they may have no documentation that proves they are in current lawful status even though CIS is aware of their presence in the U.S. and permits them to remain here until a decision is made on their application. Many people in the U.S. are in the midst of applying for permanent resident status, sponsored by a family member or employer. Others are seeking refugee protection. Others have been granted special status based on being a victim of family abuse, trafficking in persons, or a violent crime. Still others are in immigration removal proceedings but are applying for relief with an immigration judge. Still others have been denied relief by an immigration judge but are appealing their removal orders to the Board of Immigration Appeals. Finally, it is not uncommon for a single individual to be pursuing simultaneously multiple forms of immigration relief. These are just a few of the many permutations that could apply to a single individual who is arrested by a local police officer.

The practice of deputizing state and local police to enforce federal immigration laws has proven to be highly ineffective and dangerous. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up in Mexico – a country where he had never lived – forced to eat out of trash cans and bathe in rivers. His mother, also a U.S. citizen, took leave from her Jack in the Box job to travel to Mexico in search of her son. She combed the jails and morgues of northern Mexico in search of her son. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. To vindicate Mr. Guzman's rights and to prevent future DHS errors and abuses, the ACLU and the law firm of Morrison & Foerster filed a lawsuit against ICE last year.

In addition, deputizing state and local law enforcement to become deportation agents pushes immigrant communities farther and farther away from police protection. Fearful that a call to the police will result in deportation, immigrant victims of crime, including battered women, are choosing not to summon the police, thereby subjecting themselves and their children to further violence. Ultimately this dynamic jeopardizes all segments of society, not just immigrant communities. Police rely heavily on tips from witnesses or people familiar with suspects. If the police are cut off from these sources of information, they will encounter greater difficulties in apprehending suspects and solving criminal cases.

Finally, charging state and local law enforcement with the responsibility of enforcing immigration laws opens the door for law enforcement to engage in racial profiling. Latinos, Asians, and other immigrants will be at risk of being stopped, arrested, interrogated, and detained by state and local law enforcement for no reason other than looking or sounding "foreign."

Recommendations: The ACLU urges that ICE:

- Halt entering into future 287(g) agreements with states and localities;
- Cease recognition and compliance with 287(g) agreements currently in operation.

III. Growth and expansion of inhumane immigration detention

Immigration detention has more than quadrupled over the past 15 years. Each year Congress allocates more money to ICE for detention bed space and more personnel. The vast majority of detainees have no counsel to represent them in bond matters or immigration removal proceedings. Free or low-cost immigration legal services are completely absent in many regions. Frustrated by the unending incarceration and the lack of assistance in navigating the immigration system, many detainees – even those with legitimate immigration applications – simply give up and are deported. Their stories are the product of a failed immigration system – a system that purports to be premised on due process, but in actuality pushes people out of the U.S. by subjecting them to long periods of incarceration in unsanitary inhumane conditions, without access to appointed counsel.

These due process violations have been exacerbated by ICE's growing practice of transferring detainees to facilities far from their location of arrest, often hundreds of miles away from their homes and workplaces. For example, in October 2007 ICE closed down the San Pedro detention facility in Southern California and subsequently transferred over 420 detainees to facilities in Texas, Arizona, Washington State, and other parts of California. Prior to transferring the detainees to remote facilities, ICE did not notify the detainees' counsel. In many cases an immigration judge had already commenced merits hearings on the detainees' cases. The mass transfer of detainees out of state has resulted in unnecessary prolonged detention, with many detainees forced to start their cases all over again before a new immigration judge in a different jurisdiction.

In addition to challenging the constitutionality of mandatory detention and prolonged detention, the ACLU has been at the forefront of challenging ICE's inhumane unsanitary conditions of confinement including ICE's policy of family detention which resulted in the prolonged detention of families with children. In 2007 the ACLU and the University of Texas Law School sued on behalf of children incarcerated at the Hutto, Texas prison as their parents were pursuing bona fide asylum claims. At the time the lawsuits were filed, the children were receiving only one hour of education per day, were required to wear prison uniforms, were held in jail cells for much of the day, and were often disciplined by guards with threats of separation from their parents. In August 2007 the parties reached a settlement which mandated major improvements in conditions at Hutto. Although those families represented by the ACLU and University of Texas were eventually released from Hutto, other families with children are being detained in Hutto and other facilities.

In 2007 the ACLU filed a class action lawsuit against a Corrections Corporation of America facility in San Diego where detainees were incarcerated in grossly overcrowded quarters. A separate ACLU lawsuit against the San Diego facility challenged the inadequate medical and mental health care afforded to detainees. One of the detainees whose serious medical needs was grossly neglected was Francisco Castaneda, who testified before this Subcommittee on October 4, 2007, at a hearing on "Detention and Removal: Immigration Detainee Medical Care." Detained for eight months in the San Diego facility, Mr. Castaneda suffered extremely painful bleeding and discharge from his penis. Numerous health care professionals—both on-site and off-site—stated that Mr. Castaneda required a biopsy to determine whether he was suffering

from penile cancer. But the biopsy was never authorized. Instead of diagnosing and treating his serious condition, medical professionals provided Mr. Castaneda with pain medication and an order for clean boxer shorts on a daily basis, to replace the boxer shorts that he regularly soiled with blood and discharge. Only after relentless advocacy by the ACLU was Mr. Castaneda released from ICE custody. Mr. Castaneda promptly received a biopsy at the emergency room and learned that he had developed metastatic penile cancer that had already spread to other parts of his body. In February 2008, just four months after testifying before this Subcommittee, Mr. Castaneda passed away, succumbing to the cancer.

Recommendations for Congress:

- Congress should strengthen the long-established statutory right to counsel for all people facing removal from the U.S. by assuring access to appointed counsel.
- Congress should mandate that no detainee be housed in a facility that fails to comply with the detention standards. ICE shall codify, through the promulgation of regulations, national detention standards that are consistent with internationally recognized human rights principles.
- Congress should require that all immigration deaths in detention—including deaths at SPCs, CDFs, and IGSAs—be publicly reported by ICE to Congress on a regular basis.

Recommendations for ICE oversight:

- ICE shall develop non-penal alternatives to detention to decrease the number of people detained and/or subject to ICE supervision, especially with respect to asylum seekers, torture survivors, victims of human trafficking, juveniles, families with children, sole caregivers, survivors of domestic abuse and other violent crimes, and long-term permanent residents.
- ICE shall ensure that all detainees be given a constitutionally adequate custody review before an immigration judge or impartial adjudicator. In cases where ICE seeks to detain an individual beyond six months, ICE shall bear the burden of proving by clear and convincing evidence that prolonged detention is justified. Where ICE cannot make its burden, ICE shall release such detainees on bond with reasonable conditions.
- ICE shall not transfer detainees to remote facilities where a Form G-28 Notice of Entry of Appearance has been filed on behalf of a detainee, where the detainee has requested a bond hearing, where the detainee has filed an application with the immigration court, and/or when an immigration judge has conducted a merits hearing in the detainee's case.
- ICE shall ensure the transfer of complete medical records along with detainees so that receiving facilities have all of the information needed to ensure prompt, necessary treatment.
-

The ACLU appreciates the opportunity to submit this written statement and urges the Subcommittee to exercise meaningful oversight over ICE by implementing the proposed recommendations.

Statement for the Record to the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and Immigration Law from the Vera Institute of Justice on the Role of the Legal Orientation Program

February 13, 2008

Since 2003 the Department of Justice, through the Executive Office for Immigration Review (EOIR), has received funding to administer Legal Orientation Programs (LOP) for detained persons in removal (deportation) proceedings. In 2005, the Vera Institute of Justice entered into a contract with EOIR to administer the LOP.

The goal of the LOP is to educate detained aliens in removal proceedings so they can make better informed decisions, thus increasing efficiencies in the immigration court and detention processes. Through group and individual orientations, the LOP provides detained persons with basic, impartial information on forms of relief from removal, how to accelerate repatriation through the removal process, how to represent themselves *pro se*, and how to obtain legal representation. The LOP provides this information to detained aliens prior to the initial immigration court hearing. The LOP is offered nationally, currently in twelve locations, by nonprofit legal service providers who work collaboratively with local immigration courts, detention facilities, and Immigration and Customs Enforcement (ICE).

The primary activity of the LOP is to provide group orientations, which are presentations by attorneys or paralegals employed by the contracted nonprofit organizations. Group orientations offer a broad overview of the immigration court process and basic information on relief from removal or ways to expedite the removal process. Between 2003 and 2006, the LOP reached more than 85,000 persons in immigration detention.

Following the group orientation, LOP providers offer individual orientations to interested detainees. In these one-on-one meetings, detainees ask LOP attorneys and paralegals more detailed questions about process, specific defenses, or forms of relief from removal. This is necessary because group orientation presenters merely provide a broad overview

of the law. In an individual orientation, the presenter is able to respond to questions and educate individual detainees about specific parts of the law and applicable procedures in much greater detail.[1]

As part of the contractual obligations, LOP providers track the possible forms of relief individual orientation participants may pursue. This information is reported to the Vera Institute, and, in turn, EOIR, in order to understand what sorts of questions and concerns are raised by persons attending the LOP. This information fosters the effective allocation of resources and knowledge for how best to accomplish the goals of the LOP.

The Vera Institute recently finished analyzing program service data from calendar year 2006. In 2006, the six sites operating for the entire twelve month period reported seeing more than 125 persons at individual orientation sessions who were planning to pursue claims to United States citizenship. LOP providers do not discuss the details of individual cases with orientation session attendees, so we do not know if those are possible claims to citizenship that are derivative, acquired, or by birthright. Nor do we know the outcomes of these claims. Based on the available data, the Vera Institute is simply able to report that more than 125 persons who attended LOP orientations at six sites in 2006 said that they *planned* to pursue claims to citizenship.

For additional information, contact Oren Root, Interim Director, Center on Immigration and Justice, Vera Institute of Justice: (212) 376-3106.

[1] Participants in both group and individual orientation sessions are advised that LOP providers are not offering legal advice, but, rather, general legal information.

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Prof. Daniel Kanstroom
Director, PDHRP/CHRIJBC

Rachel E. Rosenbloom
Supervising Attorney, PDHRP

February 21, 2008

The Hon. Zoe Lofgren, Chairwoman
Committee on the Judiciary,
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
United States House of Representatives
Washington, D.C. 20515

Dear Chairwoman Lofgren:

Thank you for the opportunity to testify before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law on February 13.

At the hearing, Rep. King cited a statistic showing that one quarter of all federal prison inmates are foreign-born. Based on that statistic, he alleged that one quarter of homicides in the United States are committed by immigrants. I respectfully request that the hearing record be supplemented with the following information, which calls into question the accuracy of Rep. King's assertion.

- In FY2004, immigration-related offenses (primarily illegal reentry) represented the *single largest group* of all federal prosecutions, comprising 32 percent of all federal convictions.[1] **Thus the majority of foreign-born inmates in federal prison are there due to convictions for *non-violent* immigration-related offenses**.

- Moreover, federal inmates represent only a small proportion (eight percent) of the American prison population, and federal prisons are disproportionately likely to house foreign-born inmates due to the federal nature of immigration law.[2] **Thus**

[1] "Prosecution of Immigration Cases Surge in U.S. While Sentences Slump," TRAC Immigration Report (2005), available at http://trac.syr.edu/tracins/latest/131/.
[2] "Immigration Fact-Check: Immigrants and Crime – Are They Connected?" Immigration Policy Center, American Immigration Law Foundation (Spring 2007), available at http://www.ailf.org/ipc/factchecks/CrimeFactCheck10-16-07.pdf.

the proportion of foreign-born inmates in federal prisons is not representative of overall incarceration rates in the United States.

- **Nationwide, those born in the United States are *four times* more likely to be incarcerated as those who are foreign-born** (3.51 percent versus 0.86 percent).[3]

- **Groups with the lowest incarceration rates among Latin American immigrants are Salvadorans and Guatemalans (0.52 percent), and Mexicans (0.70 percent).**[4] These are precisely the groups most stigmatized as "illegals" in the public perception and outcry about immigration.

- **Even as the undocumented population has doubled to 12 million since 1994, the violent crime rate in the United States has declined 34.2 percent and the property crime rate has fallen 26.4 percent.** Cities with large immigrant populations such as Los Angeles, New York, Chicago, and Miami also have experienced declining crime rates during this period.[5]

- **A 2001 study found that there was either no relationship or a *negative* relationship between homicide and recent immigration.**[6]

Taken together, these statistics provide powerful refutation of the misleading statement made by Rep. King at the Feb. 13 hearing. Thank you for your consideration of this matter.

Sincerely,

Rachel E. Rosenbloom,
Supervising Attorney

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[3] Rubén G. Rumbaut, Roberto G. Gonzales, Golnaz Komaie & Charlie V. Morgan, "Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second-Generation Young Men," Migration Information Source (http://www.migrationinformation.org). Washington, DC, Migration Policy Institute, June 2006.

[4] Id.

[5] Rubén G. Rumbaut & Walter A. Ewing, "The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men." Washington, DC: Immigration Policy Center, American Immigration Law Foundation (Spring 2007), available at http://www.immigrationpolicy.org/images/File/specialreport/Imm%20Criminality%20(IPC).pdf.

[6] Matthew T. Lee, Ramiro Martínez, Jr., and Richard B. Rosenfeld, "Does Immigration Increase Homicide? Negative Evidence from Three Border Cities." *Sociological Quarterly* 42:559-580 (2001).

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Statement of Lutheran Immigration and Refugee Service

Submitted to the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the Committee on the Judiciary

For the February 13, 2008 Hearing on
Problems with ICE Interrogation, Detention, and Removal Procedures

Lutheran Immigration and Refugee Service (LIRS) is the national agency established by Lutheran churches in the United States to carry out the churches' ministry with uprooted people. LIRS is a cooperative agency of the Evangelical Lutheran Church in America (ELCA), the Lutheran Church-Missouri Synod (LCMS), and the Latvian Evangelical Lutheran Church in America, whose members comprise about 7.5 million congregants nationwide. Founded in 1939, LIRS has assisted and advocated on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration, and other vulnerable populations. LIRS provides services to immigrants through over 60 grassroots legal and social service partners.

Executive Summary

For this statement, LIRS contacted Lutheran congregations in several towns and cities in Texas, Pennsylvania, New York, and New Jersey and asked bishops, pastors, and lay members how Immigration and Customs Enforcement (ICE) policies on interrogation, detention and removal have impacted immigrants and the broader church community. Nationwide, Lutheran congregations have significant immigrant membership and to meet these members' needs, congregations provide extensive services and ministry, including pastoral counseling, multilingual legal and social services, ESL classes, and visitation at detention facilities.

Increasingly Lutheran leaders and members are expressing concern that the aggressive and punitive tactics ICE has used are hurting not only the individual targets of these policies but also entire congregations and their communities. Lutherans report that raids and other apprehensions are spreading fear in both immigrant and non-immigrant communities that is making community members distrustful of the government. After raids occur, congregants notice that fellow members disappear and that the raids are tearing families apart, splitting husbands and wives, parents and their children, including many who are U.S. citizens. Legal immigrants are leaving their congregations and communities, reporting that they feel like unwelcome guests in their own neighborhoods.

Lutherans are dismayed by our federal government's skyrocketing use of detention upon thousands of asylum seekers, families with children, and other vulnerable groups. Community members are asking why the government is spending billions of dollars to jail immigrants who pose no threat to public safety or national security. In fact, last year, ICE spent more than $1.2 billion to detain 320,000 immigrants.

Across the country Lutherans are now asking: Is raiding homes and locking up families making us more secure? Is this how we should treat people who are living and working in our communities? Are these approaches strengthening our communities? Or are they hurting us?

Lutherans are concluding that ICE's practices are overly aggressive, inhumane, and ultimately erode our communities' values and sense of unity. Lutheran congregations have responded in the following ways:

1. Providing spiritual counseling to those who are fearful that they will be detained and deported or who have had friends and family that have been detained or deported;
2. Assisting with social and legal services for families who have members that are detained or deported;
3. Visiting individuals in detention facilities and providing them support and counseling;
4. Protesting the detention of immigrants and their poor treatment by holding vigil outside detention facilities;
5. Issuing church-wide resolutions expressing concern for those impacted by raids, detentions and deportations and calling upon the government to end such practices.

New Jersey

In New Jersey, raids have taken place in many cities with active Lutheran congregations, including Jersey City, Newark, Union City, Trenton, and Weehawken. Across the state, there are five facilities that ICE uses to detain about 1,000 immigrants on any given day. Pastors report that congregations have been shocked by the violent and intimidating manner raids have been conducted, including incidents where weapons were drawn upon young children. In November 2007, New Jersey ELCA Bishop Roy Riley recounted at the National Press Club how a congregation member had to hide under the floorboards when federal agents raided the factory where she worked. Everyone but her was hauled away forcing the factory to close. The woman was attending the adult English class at the Good Sherpherd Lutheran Church in Weehawken and during class shared her story with the pastor. Still terrified days after the incident, she kept asking what would have happened to her son if she was taken.

After several congregations experienced the painful loss of immigrant members who have been detained and deported, the ELCA New Jersey Synod passed a resolution calling attention to the government's inhumane treatment of immigrants. The 2005 resolution called upon:

> "congregations … to respond in love, spiritual care, and support for those who are detained … through visits, letters, prayer, and assistance; and

"Congress and the administration to immediately end the detention and imprisonment of non-criminal asylum seekers, undocumented laborers and others, in jails or jail-like facilities.

The New Jersey ELCA Synod has formed a statewide Immigration Task Force which began a ministry for detainees that includes visits to the facilities and a weekly vigil at the largest facility in Elizabeth, NJ.

Reverend Birgit Solano, Good Shepherd Lutheran, Weehawken, New Jersey,
The New Jersey ELCA Synod established the Good Shepherd as part of a broader strategy to reach the state's growing Latino population. Currently, 80 percent of the congregants are Latino, primarily, Cuban, Salvadoran, Mexican, Peruvian, Colombian, and Venezuelan. Rev. Solano observed that raids and other aggressive tactics hurt the entire community. On Ash Wednesday only a few weeks ago, a church member came with her daughter and asked for prayer for her ex-husband who had been detained at the Elizabeth Detention Facility pending deportation. The mother and daughter were crying, and Rev. Solano recounted how the entire day's services were marked by grieving and concern for the family. The man has been in the United States for 16 years. In another case, Rev. Solano described a 10-year-old U.S. citizen boy who always seems fearful that his parents will be deported. He seeks counsel at church and prays that the next eight years will pass quickly so that he will be eligible to sponsor them for visas. Once he "saves his parents," he says, "everything will be fine."

Rev. Solano feels overwhelmed and fearful for her Lutheran community. Concerns about raids, detentions and deportation are present at every meeting, sermon, or discussion. Everybody is afraid. The community was shocked when ICE detained a long-standing church member from El Salvador in front of his family after he applied for U.S. citizenship. Before obtaining his lawful permanent resident status 15 years ago, the man was convicted for a misdemeanor. Rev. Solano obtained an immigration attorney to represent him, but in the meantime, the detention has caused great pain to church members who have seen the family's young children deeply affected by the separation from their father.

Rev. Solano, herself, a lawful permanent resident, reported how her daughter was briefly detained in Detroit airport after her name appeared on the security database. She said the fear of the government has spread throughout the community, including to U.S. citizens and legal immigrants. In addition to spiritual counseling that staff at the Good Shepherd provide, a sister congregation, the Christ-St. John Lutheran Church in West New York, NJ established a legal advice clinic for congregants. The church is helping a Salvadoran family lodge a complaint after the immigration authorities conducted a raid on their home at 2:00 a.m. waking up everyone including young children. Many congregants participate in the vigils at the Elizabeth facility.

A Lutheran congregation in Linden, NJ[*]
The pastor from a Lutheran congregation in Linden regularly visits the Elizabeth Detention Center, focusing in particular on Portuguese speaking detainees from Africa and Latin America. At the facility, the pastor speaks to detainees through a glass partition, and conversations are monitored. Most detainees are too afraid to complain about conditions of detention even though

[*] Name withheld at the request of the interviewee.

the poor treatment is well-known. Many do complain of substandard medical care, telling the pastor they only receive treatment if their situation is urgent. The detainees are frightened, desperate, and often suffer from mental health or physical ailments. Seeing the plight of immigrant detainees, many of the congregation's members were moved to participate at weekly interfaith vigils at the Elizabeth facility. Each Sunday, church members gather, pray, and sing as a way of protesting the inhumane detention conditions that they view as inhumane and immoral. The pastor is also a member of the New Jersey Synod Immigration Task Force.

Texas

Reverend Mark Junkans, Lutheran Innercity Network Coalition (LINC), Houston, TX
As director of LINC, a Lutheran urban outreach program of the LCMS Church, Rev. Junkans observed that raids and detentions have devastated the communities they serve, dividing families when men are deported and women and children are left behind. Two recent local raids on large manufacturing companies resulted in the detention of more than 40 people. Rev. Junkans recounted the case of a family from Guatemala: a couple with three children, 2, 4, and 7 years-old. In late 2007, the husband was detained by ICE while he was at work and was placed in immigration removal proceedings. For one week after the husband was detained, the wife was unable to obtain any news about his whereabouts putting her and the children in severe distress. LINC helped identify the facility where he was detained and is trying to find an immigration attorney to represent him. In the meantime, the wife is desperate, as she has no source of income and takes care of their three small children. She knows the family will be separated for many months while the husband is in detention, or even years if he is deported.

The raids, Junkans said, affect not only the detained individuals and their immediate families, but relatives, neighbors and Lutheran church members who worry that raids are eroding trust in their communities. LINC provides spiritual counseling to its members and has seen dramatic increases in the requests for help and assistance. LINC has also engaged an immigration lawyer who is making presentations to immigrants about their legal rights. It is now applying for accreditation to establish a clinic to represent immigrants before the Board of Immigration Appeals.

Reverend Rodrigo Fernandez, St. Timothy Lutheran Church in Houston, TX
Reverend Fernandez provides counseling to many congregants who fear that they or their friends and community members will be deported. As the leader of a new Hispanic congregation, Rev. Fernandez has seen signs of panic and depression in his parishioners, some who have witnessed raids and seen how frightened children become during raids in their neighborhoods. He frequently receives requests for prayer for persons who are detained or awaiting deportation.

Reverend Jhon Arroyave, Holy Cross Lutheran Church, Houston TX
Rev Arroyave serves a congregation largely comprised of immigrants from Mexico, Guatemala, and Honduras. Recently Holy Cross has provided counseling and support to four or five families whose parents have been deported leaving behind U.S citizen children. In most cases, the parents have been living in the United States for many years and the children attend school. But detentions and deportations happen so quickly that families have no time to prepare for the extended separation or to find alternative sources of income, care and support.

Pennsylvania

In Pennsylvania, the state with the third largest Lutheran representation, the ELCA has had a long-standing commitment to welcome immigrants and newcomers. The ELCA has grown increasingly concerned that raids are proving divisive to their community. Reverend Linda Theophilns of Emmanuel Lutheran Church in Pittsburgh said congregants have reported that raids in Pennsylvania are taking place at small business facilities with pervasive effects on residents and communities. At the shopping mall at Robinson Township, ICE and local police stopped cars that failed to make full stops at stop signs as a pretext to ask for documentation of drivers and passengers. About 14 people were detained in such stops in recent weeks. People are afraid to go outside and many fear attending church.

Concerns over the treatment of immigrants detained in Pennsylvania facilities compelled the Southwestern Pennsylvania ELCA Synod to pass a resolution in 2001 calling upon church leadership and members to:

> "respond in love with spiritual care and expressions of support for those who are detained… such as visitation, letters, prayer," and
>
> "call upon the Congress and the Administration to end expedited removal and prolonged detention, to require an independent review of … custody decisions and to avoid prison conditions and any demeaning treatment of asylum seekers and others when detention cannot be avoided."

New York

Reverend Khader El-Yateem, Salam Arabic Lutheran Church, Brooklyn, NY
Beginning with threats and hate violence against Rev. El-Yateem and church members after the 9/11 terrorist attacks, the largely Arab Lutheran congregation has felt increasingly targeted as an immigrant community from the Middle East. The recent escalation in raid activity and ICE detentions has compounded the feeling that the whole community is threatened. Rev. El-Yateem reported that ICE raided the home of a church member, detained him, and after a month in detention, released him on bail pending his removal proceedings. The congregation organized legal assistance for him. Another member attending services at the church was recently deported to Jordan after being detained at a public market. He had been in the United States for 17 years, owned two houses, and was a successful business man. After Rev. El-Yateem's last visit to Jordan, ICE detained him for three hours at the airport. To avoid harassment, some members of the congregation are leaving the country. These incidents brought the entire congregation together as many felt the raids and deportations were linked to discrimination and targeting of Arabs.

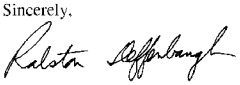
Conclusion

LIRS urges Congress to put an end to ICE's use of raids and the other aggressive and punitive approaches being applied nationwide. Congress must also scale back its use of detention for immigrants, which is costing our taxpayers over a billion dollars each year. Instead, LIRS calls

for more humane and balanced solutions to the complex issue of immigration that take into account their contributions to our economy and our communities. LIRS urges Congress to show leadership at this critical time by bringing strength, unity, and hope back to our communities.

LIRS welcomes your questions and asks that you direct them to Gregory Chen, Director for Legislative Affairs, 202-626-7933, gchen@lirs.org.

Sincerely,



Ralston H. Deffenbaugh, Jr.
President

Question#:	1
Topic:	reasonable suspicion
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Pursuant to 8 CFR §287.2(b)(2), if an immigration officer has "a reasonable suspicion, based on specific articulable facts" that a person being questioned is in the U.S. illegally, then the officer "may briefly detain the person for questioning."

What constitutes a "brief" period of detention? Please provide examples.

Response: I believe the CFR citation to which you refer is §287.8(b)(2). In this regard, what constitutes a brief period of detention is a fact specific inquiry and will be determined on a case-by-case basis. The period of the detention must be reasonable and last only as long as necessary to verify or dispel the suspicion. United States v. Sokolow, 490 U.S. 1, 11, 109 S.Ct. 1581, 1587 (1989).

Generally speaking, upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for inspection or examination at a designated Port of Entry. At the Port of Entry, it is the arriving applicant who bears the burden of proving his or her U.S. citizenship. 8 U.S.C. § 1357(b); 8 C.F.R. § 235.1(b). If an arriving applicant claims U.S. citizenship, he or she must present a valid U.S. passport upon entry (if a passport is required), and prove his or her claim to the Customs and Border Protection (CBP) officer's satisfaction. If an applicant for admission fails to satisfy the examining officer of his or her U.S. citizenship, he or she shall thereafter be inspected as an alien.

In the interior of the United States, however, ICE bears the burden to prove that an individual is not a U.S. citizen when an individual is detained by an immigration officer. ICE may engage in consensual encounters like any law enforcement officer. If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States. If a person refuses to speak to the officer, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual is not detained and is permitted to leave.

Question:

Does detaining one of our witnesses, Mr. Mike Graves, and hundreds of his co-workers in the Swift plant in Marshalltown, Iowa for eight hours constitute a "brief" period?

Question#:	1
Topic:	reasonable suspicion
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Response: ICE is unaware of any instances where United States citizens or lawful permanent residents were detained for eight hours during the worksite enforcement operation conducted at the Swift & Company plant in Marshalltown, Iowa. ICE takes such allegations seriously and if the committee has information regarding any such instances, we ask that the information be provided in order to facilitate an investigation.

Question:

Why were they denied food or water or contact with their families, union representatives, or lawyers during this time?

Response: It is ICE's policy when conducting worksite enforcement operations to treat all persons humanely, to include providing adequate food, water, telephone access, access to counsel and access to restrooms in accordance with existing enforcement procedures. ICE also took the unprecedented step of establishing a toll-free hotline for family members to obtain the most recent custody information about a detainee. ICE does not generally grant attorney or union access to detained aliens at the enforcement location due to operational security, but does, as soon as practicable after arrest and routine booking, provide the arrestee with oral and written notice of the alien's right to counsel and right to consular access. ICE also facilitates communication, if requested, by providing all arrestees free and reasonable telephone access and the opportunity to meet with their attorneys or consular officers from their country.

Question:

How does ICE define "a reasonable suspicion, based on specific articulable facts?" Please provide examples.

Response: In interpreting the meaning of this phrase, ICE looks to case law for guidance. However, even the Supreme Court has found that "articulating precisely what reasonable suspicion and probable cause means is not possible." Orlenas v. U.S., 517 U.S. 690, 696, 116 S.Ct. 1657, 1661 (1996) (citing Illinois v. Gates, 466 U.S. 213, 103 S. Ct. 213 (1983)). The Court described "reasonable suspicion" as "a particularized and objective basis" for suspecting wrong doing. Id. In describing reasonable suspicion in an immigration context, the Supreme Court has said that "except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country". See, U.S. v. Brignoni-Ponce, 422 U.S. 873, 884, 95 S.Ct. 2574, 2582 (1975).

Question#:	1
Topic:	reasonable suspicion
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

What will be considered "reasonable" is a fact-specific inquiry and will be determined on a case-by-case basis. An individual being interviewed must voluntarily agree to remain during the questioning or the agent must be able to articulate the basis of the reasonable suspicion for believing that the person is unlawfully present or unauthorized to work in the United States. If the individual (alien or U.S. citizen) refuses to engage in conversation with the agent and there is nothing else that would lead the agent to believe that the individual is illegally present in the United States, the individual will not be detained and will be permitted to leave the premises.

Examples supporting reasonable suspicion or articulable facts may include, but are not limited to:

- observing an individual running and/or hiding, upon learning that ICE has entered the vicinity;
- providing inconsistent biographical information during the initial encounter; or
- presenting documents that do not appear authentic on their face.

Once again, an agent will not detain individuals who have produced what appears to be valid documents evidencing that the person is whom s/he claims to be and is lawfully present and authorized to work in the United States. However, once there is probable cause to believe that the individually is illegally present in the United States or that a crime has been committed, the person may be arrested and taken into custody.

During any worksite enforcement operation, immigration officers may question, without a warrant, any alien or person believed to be an alien as to his right to be, or to remain, in the United States. (Immigration and Nationality Act (hereinafter "INA") § 287(a)(1); 8 U.S.C. § 1357(a)(1)). Consensual questioning, alone, does not constitute a Fourth Amendment seizure. See INS v. Delgado, 466 U.S. 210, 104 S.Ct. 1758 (1984). The person being interviewed, however, must voluntarily agree to remain during questioning. If the individual refuses to speak to the officer, absent reasonable suspicion that the individual is unlawfully present, the individual may not be detained.

During questioning, if the individual gives a credible reply that he is a United States citizen, the agent will move on to another individual. If the individual gives an unsatisfactory response or admits that s/he is an alien, the individual will be asked to produce evidence that s/he is lawfully present in the United States. If a person refuses to speak to the agent, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual will not be detained and must be permitted to terminate the consensual encounter. But, if reasonable suspicion can be

Question#:	1
Topic:	reasonable suspicion
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

articulated, a brief detention is justified while investigating identity and immigration status. See U.S. v. Cortez, 449 U.S. 411, 101 S.Ct. 690 (1981); see also, U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574 (1975).

Question:

Based on your knowledge of ICE's policy interpreting this regulation, what would you say was the "reasonable suspicion, based on specific articulable facts" that lead ICE agents to handcuff a U.S. citizen like Mr. Graves, search his locker, and question him about how he would drive from Iowa to Mississippi?

Response: ICE may not comment on matters that are the subject of ongoing litigation. As a matter of practice, ICE executes lawful arrests based on reasonable suspicion and consistent with INA § 287, 8 C.F.R. §287.8(b)(2).

Question:

Does ICE have policies and written training materials readily available for officers to reference on these matters? If so, please provide them to the Subcommittee.

Response:
ICE extensively trains its investigative personnel in various law-enforcement related courses, including, the Criminal Investigator Training Program and the ICE Special Agent Training Program conducted at the Federal Law Enforcement Training Center (FLETC). ICE agents receive further extensive legal and immigration law training regarding their authority to question, detain, and arrest individuals for violation of the criminal and administrative laws enforced by ICE. ICE agents are trained to conduct all law enforcement operations professionally in a manner that is consistent with their mandate to enforce the nation's immigration and customs laws and in accordance with applicable U.S. law and regulation.

Question#:	2
Topic:	evidence
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Section 240(c)(3)(A) of the Immigration and Nationality Act states that ICE has "the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable." Furthermore, the U.S. Supreme Court has held in INS v. Woodby that "it is incumbent upon the Government in such proceedings to establish the facts supporting deportability by clear, unequivocal, and convincing evidence." 385 U.S. 276 (1966).

How does ICE define "clear and convincing evidence?" Please provide examples.

Response: The statutory phrase "clear and convincing evidence" is not defined except through the emergence of case law. As noted above, Woodby holds that deportability must be established by "clear, unequivocal, and convincing evidence." Thirty years later, the Congress amended the INA to provide that deportability must be established in removal proceedings by "clear and convincing" evidence. INA § 240(c)(3)(A). Whether the government has met its burden of proof in this regard, is a question of law and fact that is determined by an immigration judge, subject to review by the Board of Immigration Appeals and possibly a federal court.

In establishing that an alien is deportable under INA § 237, the government may submit to an immigration judge evidence including, but not limited to, statements from the alien that he or she was born in another country, foreign birth certificates, an alien's admissions regarding foreign birth before the immigration judge when pleadings are taken in the case, and certified conviction records showing the alien was convicted of a crime that would render him or her removable under INA §§ 212 and 237.
Question:

Do you all have training materials on this in written form? If so, please provide them to the Subcommittee.

Response: ICE officers and agents are told that "clear and convincing evidence" is the applicable burden of proof to establish deportation There are no written training materials given to officers and agents defining that term.

ICE attorneys receive training on the applicable burdens of proof in immigration proceedings including the burden to prove an alien deportable by "clear and convincing evidence." This training includes written training material and reflects the collective experience of agency attorneys on how to approach certain issues that are repeatedly

Question#:	2
Topic:	evidence
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
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encountered during litigation. The training material is intended to provide guidance to agency attorneys on the appropriate approach to take when encountering such issues in the course of litigation. Disclosure of the agency's litigation strategy would place the agency at an unfair disadvantage in the adversarial process. Accordingly, the material is subject to the attorney work product privilege. Therefore DHS declines to disclose these materials as part of this response.

Question:

In the case of a U.S. citizen, who has the burden of proof in citizenship – the U.S. citizen or ICE?

Response: Upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for inspection or examination at a designated Port of Entry. At the Port of Entry, it is the arriving applicant who bears the burden of proving his or her U.S. citizenship. 8 U.S.C. § 1357(b); 8 C.F.R. § 235.1(b). If an arriving applicant claims U.S. citizenship, he or she must present a valid U.S. passport upon entry (if a passport is required), and prove his or her claim to the Customs and Border Protection (CBP) officer's satisfaction. If an applicant for admission fails to satisfy the examining officer of his or her U.S. citizenship, he or she shall thereafter be inspected as an alien.

In the interior of the United States, ICE bears the burden to prove that an individual is an alien. See 8 C.F.R. § 1240.8(c). If the government cannot prove the individual is an alien, the individual may not be detained and removal proceedings may not be initiated. ICE agents may engage in consensual encounters like any law enforcement officers. If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States. In instances in which the person claims U.S. citizenship, but the officer has reasonable suspicion to *the* contrary, the officer may still continue to question the person. If a person refuses to speak to the officer, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual is not detained and is permitted to leave.

Question:

How did ICE meet that "clear and convincing evidence" burden in the case of Mr. Thomas Warziniack, the U.S. citizen that ICE detained in Florence, Arizona until his sisters obtained a copy of his birth certificate?

Question#:	2
Topic:	evidence
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
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Response:

Thomas Warziniack was incarcerated at the Colorado Department of Corrections (CDOC) facility in Buena Vista, CO, where he was serving a sentence for criminal impersonation and possession of a controlled substance. Colorado officials brought him to the attention of ICE, because he had told them he was a citizen of Russia.

During his interview with ICE officers, Mr. Warziniack claimed to be a citizen of Russia, born in St. Petersburg on September 1, 1960, who last entered the United States in the late 1960's, without permission. After his interview, ICE officers lodged a detainer with the CDOC. ICE conducted additional records checks which did not reveal an immigration history for Mr. Warziniack. However, records checks revealed Mr. Warziniack had an FBI record, which reflected Mr. Warziniack's place of birth as Minnesota. Additionally, it revealed he had a criminal history in Colorado which listed Alabama as his place of birth, and a criminal history in Georgia, which listed Colorado as his place of birth. Mr. Warziniack has multiple arrests and convictions to include: a conviction for simple battery in June of 1989, a conviction for simple assault in August of 1992, an arrest for theft by conversion leased or rented property in July of 1990, and an arrest for abandonment of child/non-support in May of 2002.

Mr. Warziniack was released into ICE custody on December 18, 2007. Throughout his detention, Mr. Warziniack consistently maintained that he was born in Russia and entered the United States without permission. On January 10, 2008, Mr. Warziniack appeared before an Immigration Judge (IJ) and testified that he was a citizen of the United States. At that hearing, the court rescheduled Mr. Warziniack's hearing until January 24, 2008. On January 11, 2008, Mr. Warziniack's sisters contacted ICE and claimed that Mr. Warziniack was a United States citizen born in Minnesota in 1967. When asked for proof of Mr. Warziniack's U.S. citizenship, they advised that the Florence Refugee Rights Project (FIRRP) was assisting them in obtaining Mr. Warziniack's birth certificate. On January 16, 2007, FIRRP notified ICE that Mr. Warziniack's attorney had obtained the birth certificate. On January 23, 2007, Mr. Warziniack's attorney informed ICE that he had obtained his client's birth certificate, but declined to present it to ICE at that time. At his immigration hearing on January 24, 2007, through his attorney, Mr. Warziniack denied the factual allegations and charges contained in the Notice to Appear (NTA) and re-asserted his claim to U.S. citizenship. In support of his claim, he provided a birth certificate from the state of Minnesota. On January 24, 2007, ICE was able to verify the authenticity of the birth certificate. After verifying the validity of the certificate, removal proceedings for Mr. Warziniack were terminated and he was released from ICE custody that same day.

Question#:	2
Topic:	evidence
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
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Question:

In a McClatchy newspaper article describing the plight of Mr. Warziniack, an ICE spokeswoman stated that "[t]he burden of proof is on the individual to show they're legally entitled to be in the United States." How do you reconcile this statement with §240(c)(3)(A) of the INA and the U.S. Supreme Court's ruling in Woodby?

Response: An alien who is applying for admission has the burden of proving that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under INA § 212. See INA § 240(c)(2)(A); see also INA § 291. Likewise an alien bears the burden of establishing by clear and convincing evidence that the alien is lawfully present pursuant to a lawful admission. INA § 240(c)(2)(B); see also INA § 291. INA § 240(c)(3)(A) states that the government bears the burden of establishing that an alien who has been admitted to the United States is deportable. Once the government establishes alienage, and the alien establishes that they are present pursuant to a lawful admission, the government must then prove by clear and convincing evidence that the alien is deportable. INA § 237 lists the grounds of deportability and they include aliens who have overstayed their authorized period of admissions and aliens who have been convicted of particular crimes found in section § 237. INA § 240(c)(2) clearly states that aliens do have the burden of proof to show they are legally entitled to be in the United States

Question#:	3
Topic:	U.S. citizen
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: What intake process does ICE utilize to ascertain if an individual is a U.S. citizen before detaining a person? How often have has ICE detained U.S. citizens? For how long?

Response: The same constitutional principles that govern encounters between law enforcement and citizens encountered in public places apply to immigration enforcement operations, including those conducted at the worksite.

A "nonimmigrant" (legally present in the United States) must provide full and truthful information regarding his or her immigration status when requested to do so by a law enforcement officer, and failure to do so shall constitute a failure to maintain his or her nonimmigrant status under INA § 237(a)(1)(C)(i), 8 U.S.C § 1227 (a)(1)(C)(i); see also 8 C.F.R.§ 214.1(f).

ICE agents and officers use a variety of methods to assess whether an individual is legally present in the country. The use of the different methods of ascertaining ones status reflects operational varying necessities. These methods include, but are not limited to:

i. Questioning;
ii. Inspection of documents produced as evidence of legal status;
iii. Consulting the Alien File (A-File) of the alien (or U.S. citizen) if one exists;
iv. Performing DHS law enforcement and benefits database checks;
v. Performing National Crimes Information Center (NCIC) checks (including pursuing any biometric information from other agency arrests); and
vi. Performing commercial database checks to further identify the subject and what their current address may be in order to minimize making unnecessary contact at previous addresses.

Where evidence produced is insufficient to establish legal status, individuals are generally taken into custody. As new evidence becomes available, ICE revisits the initial determination—as, for example, in the case of an immigrant who fails to produce the evidence of legal status he is required to keep in his possession, but whose claims are

Question#:	3
Topic:	U.S. citizen
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
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later validated through use of the DHS databases mentioned. Determinations otherwise found to be erroneous are expeditiously addressed. Operations are continually reviewed with a view towards improving their efficacy, to include the interactions, documentary proof, and facts specific to each custody determination.

ICE does not keep track of how many US citizens have been detained.

Question#:	4
Topic:	mentally disabled
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: What protections are in place to ensure that U.S. citizens who are mentally disabled are not caught up in administrative removal, expedited removal, or are asked to sign stipulated removal orders?

Response: Prior to being transferred to an ICE detention center, individuals are screened by the Public Health Service. ICE officers complete a medical screening form for incoming detainees that evaluates both physical and mental health. In addition, detainees often come into ICE custody directly from state prisons and county jails, after having been convicted of criminal offenses, in which case they may have already been found mentally competent by the criminal court.

Care is taken to ensure that any claims by an ICE detainee of U.S. citizenship are properly reviewed and handled. Should they suspect the presence of a mental disability during the course of an interview, detention in-processing or other removal-related procedure, ICE employees are instructed to raise the situation to their supervisors who will address each situation individually. Once in custody, ICE relies upon extensive written procedures governing the care and attention of aliens with mental disabilities. Furthermore, prior to their repatriation, proper medical authorities review the medical history of all aliens being removed from the United States, and confirm whether each individual is medically able to travel.

If ICE determines that an individual in custody is a U.S. citizen, it immediately releases the detainee. If citizenship cannot be immediately determined, ICE actively researches a claim to U.S. citizenship and, upon locating confirming evidence of U.S. citizenship, recommends immediate release of the detainee

Question:

What specific steps do ICE officers take to ensure that mentally ill individuals who are not capable of exercising a voluntary, knowing and intelligent waiver of their rights at the time of deportation are not mistakenly deported?

Response: Prior to being transferred to an ICE detention center, individuals are screened by the Public Health Service. ICE officers complete a medical screening form for incoming detainees that evaluates both physical and mental health. In addition, detainees often come into ICE custody directly from state prisons and county jails, after

Question#:	4
Topic:	mentally disabled
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
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having been convicted of criminal offenses, in which case they may have already been found mentally competent by the criminal court.

If ICE becomes aware of a mental deficiency through the course of an interview, detention in-processing, or other removal related procedures, the situation is addressed on a case by case basis.

Additionally when the alien is being interviewed during processing into ICE custody, ICE officers have the opportunity to observe the alien for any signs of a mental disability. At the conclusion of any explanation of rights, the alien is asked if he or she understands those rights. If the alien does not appear to understand, the alien is not forced to sign the document. If the alien is subject to expedited removal proceedings, s/he is placed into administrative removal proceedings before an immigration judge instead of expedited removal proceedings. These aliens are treated just like anyone else who does not appear to understand the process or appears unable to comprehend the waiver of rights.

Question:

What written policies or guidelines has ICE issued regarding steps to be undertaken by ICE personnel during the voluntary departure or removal process to ensure that mentally disabled U.S. citizens are not deported from the United States?

Response: Prior to being transferred to an ICE detention center, individuals are screened by the Public Health Service. ICE officers complete a medical screening form for incoming detainees using DIHS Form 794, which instructs agents to inquire about physical and mental health. In addition, detainees often come into ICE custody directly from state prisons and county jails, after having been convicted of criminal offenses, in which case they may have already been found mentally competent by the criminal courts.

ICE removal procedures are designed to identify, arrest, process and remove from the United States only aliens who have violated U.S. immigration law. Only non-citizens may be removed from the United States for immigration violations.

ICE officers are extensively trained to question and identify persons as to their nationality and citizenship. Because the Government has the burden of proof to establish alienage and deportability in removal proceedings, ICE officers ensure that sufficient evidence

Question#:	4
Topic:	mentally disabled
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
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substantiates the charges brought. ICE officers regularly collect physical evidence such as passports and other identifying documents in addition to statements made by detained aliens regarding their citizenship. A detainee's identity and citizenship are further screened prior to removal by foreign government officials who must provide the travel documents needed for removal.

Question#:	5
Topic:	voluntary departure
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Pursuant to 8 CFR Section 287.3(b), when ICE arrests an individual, it must either grant voluntary departure or determine whether the person will remain in custody and/or be placed in removal proceedings within 48 hours of arrest, "except in the event of an emergency or extraordinary circumstance."

How many times has ICE failed to make this determination within 48 hours?

How many times has that happened due to "emergency or extraordinary circumstances?"

What is considered an "emergency or extraordinary circumstance?" Please provide examples.

How many times has ICE failed to make this determination within 48 hours?

Response: ICE, by policy and practice, adheres to the rule of law. If the committee is aware of any cases where ICE has failed to make a determination as required, we welcome your information and will investigate this information in accordance with established procedures.

Question:

How many times has that happened due to "emergency or extraordinary circumstances?"

Response: ICE does not collect or maintain statistical information on this matter.

Question:

What is considered an "emergency or extraordinary circumstance?" Please provide examples.

Response: "Emergency or other extraordinary circumstance" as used in 8 CFR § 287.3(d) is construed to mean

Question#:	5
Topic:	voluntary departure
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
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- A significant infrastructure or logistical disruption including, but not limited to, disruption caused by an act of terrorism, weather, natural catastrophe, power outage, serious transportation emergency or serious civil disturbance,
- Whenever there is a compelling law enforcement need including, but not limited to, an immigration emergency resulting in the influx of large numbers of detained aliens that overwhelms agency resources and makes it unable logistically meet the general servicing requirements, or
- Individual facts or circumstances unique to the alien including, but not limited to, the need for medical care or a particularized law enforcement need.

Question#:	6
Topic:	process
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: In the case where an individual does not admit they are in the U.S. illegally but you have probable cause to believe he/she is in the U.S. illegally, what is your process for determining whether the individual is in fact here illegally? How long does it take? Does your policy have a time requirement? Does your policy require detention during that time period?

Response:

ICE Officers utilize many factors to determine whether an individual is in fact legally present in the United States. ICE officers are extensively trained to question and determine a person's nationality and citizenship. They use a variety of methods to assess whether an individual is legally present in the country.

The use of the different methods of ascertaining ones status reflects operational varying necessities. These methods include, but are not limited to:

i. Questioning;
ii. Inspection of documents produced as evidence of legal status;
iii. Consulting the Alien File (A-File) of the alien (or U.S. citizen) if one exists;
iv. Performing DHS law enforcement and benefits database checks;
v. Performing National Crimes Information Center (NCIC) checks (including pursuing any biometric information from other agency arrests), and;
vi. Performing commercial database checks to further identify the subject and what their current address may be in order to minimize making unnecessary contact at previous addresses.

Because the government has the burden of proof to establish alienage and deportability in removal proceedings, ICE officers ensure that sufficient evidence, often including affidavits provided by the person in custody, substantiate the charges brought. In addition to these statements, however, ICE trains its officers to collect physical evidence when available, including passports and other identifying documentation such as driver's licenses, to supplement and support the Government's case.

Where alienage has been established and the evidence produced is insufficient to establish legal status, individuals are generally taken into custody. As new evidence becomes available, ICE revisits the initial determination—as, for example in the case of an immigrant who fails to produce the evidence of legal status that the immigrant is required to keep in his possession, but whose claims are later validated through use of

Question#:	6
Topic:	process
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DHS databases mentioned. As new evidence becomes available, ICE revisits the initial determination and either releases the individual from custody or places the individual into administrative removal proceedings.

The time frame for the process of determining whether an individual is in fact in the United States illegally is determined on a case-by-case basis and depends on the evidence that is readily available to the officer.

In order to detain an individual for further questioning, the officer must have reasonable suspicion that the individual (1) committed a crime; (2) is an alien who is unlawfully present; or (3) is an alien with status who is either inadmissible or removable from the United States. ICE does not have a policy regarding a time standard for determining alienage nor a requirement for detention. Pursuant to 8 CFR § 287.3(d), unless voluntary departure has been granted pursuant to subpart C of 8 CFR part 240, a determination regarding whether to further detain or release an alien will be made within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance, in which case a determination will be made within an additional reasonable period of time.

The individual will remain in custody if s/he is classified as a "mandatory detention" case or poses a threat to public safety or national security, or if his or her claim to U.S. citizenship is found not to be credible based upon review of the file and information gleaned from interviews and other investigative tools. In this circumstance, removal proceedings will continue and the alien will be able to request a custody re-determination before the Immigration Judge.

Question#:	7
Topic:	caretaker
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: What regulations, written policies or procedures, if any, does DHS have to prevent the transfer of a non-citizen who is a caretaker of a child in the United States to a facility beyond the physical jurisdiction of the local ICE field office in order to maximize the full and fair visitation by the child and immediate family members? Please specify. If none, please clarify why not.

Response:
The National Detention Standards do not specifically address the transfer or non-transfer of persons who are caretakers of children in the United States. However, ICE attempts not to transfer these individuals unless it is operationally necessary. Whenever appropriate, ICE considers the release of a sole-caregiver on an order of recognizance, order of supervision, bond or an Alternative to Detention. ICE encourages visits from family and friends in order to maintain detainee morale and family relationships so facilities holding ICE detainees permit authorized persons to visit, within security and operational constraints.

Question#:	8
Topic:	legal representation
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: The detention standards require that ICE take into consideration whether the individual has legal representation before transferring that person. However, immigration lawyers have observed that they regularly have cases where counsel is never notified of the transfer and there seems to be no consideration given to not transferring people with representation.

What criteria does ICE use to select which individuals will be transferred from a facility when it becomes too crowded?

What are ICE's protocols and procedures to ensure that ICE officials across the country know and comply with their obligation under the detention standards to consider whether an individual has counsel before transferring that person?

If a represented person is transferred, what are ICE's protocols and procedures to ensure that notation of the consideration is made and that ICE does in fact notify counsel of the transfer as required by the detention standards?

Response: On July 17, 2006, ICE established the Detention Operations Coordination Center (DOCC). The DOCC was specifically established to manage bed space on a national scale while ensuring that all Field Offices have adequate detention space for routine apprehensions and special operations requiring large numbers of detention beds. Detainees from Field Office jurisdictions with detention capacity shortages are moved to Field Office jurisdictions with surplus capacity.

ICE policy requires that when deciding whether to transfer a detainee, consideration be given to whether the detainee is represented before the immigration court, the detainee's stage within the removal process, whether the attorney of record is located within reasonable driving distance of the detention facility and where immigration court proceedings are taking place. Though ICE prefers to avoid transferring detainees who are represented by counsel or in removal proceedings, there are compelling circumstances (i.e., medical related) that warrant, if not mandate such transfers.

Prior to transferring an alien to another Area of Responsibility (AOR), the transferring office must conduct records checks, to determine if the alien is represented, and ensure that all transfers are in compliance with the National Detention Standards (NDS). Accordingly, the DOCC historically moves new cases where venue is not yet established,

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or Final Order (FO) cases. If it becomes necessary to transfer an alien who is represented by counsel, ICE will notify the attorney of record. The NDS requires that the notification to the detainee's attorney of record be recorded in the detainee's A-file, if available, or in the work file. Notification is also to be notated in the comments screen in the Deportable Alien Control System (DACS). The attorney is to be notified of the reason for the transfer and shall be provided with the name, address and telephone number of the receiving facility.

Question#:	9
Topic:	bond hearing
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: The Subcommittee staff has heard that detained individuals are regularly transferred away from family immediately before a bond hearing where they could have been potentially released.

Does ICE consider other factors such as whether the individual is eligible for bond and scheduled for a bond hearing?

Answer: ICE DRO is unaware of any case in which a detainee was separated from his family just prior to a bond hearing. Prior to transferring an alien to another Area of Responsibility (AOR), the transferring office must conduct records checks, to include determining if the alien is represented, and ensure that all transfers are in compliance with the National Detention Standards. When detention capacity shortages necessitate a transfer, DRO primarily moves Final Order (FO) cases or new cases where venue is not yet established. Due to operational needs, it may be necessary to transfer an alien who is eligible for bond and/or represented by counsel. In these instances, ICE shall notify the attorney of record when the detainee is en route to the new detention location.

Question#:	10
Topic:	protocols
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: We have heard many reports from our constituents that immigrants and their families have been targets of enforcement actions at home and at work without fair and humane treatment. If ICE has a protocol regarding the following situations, please confirm whether it is in writing and whether it has been disseminated to ICE field agents. Finally, please identify the mechanisms in place to hold ICE officers accountable when such protocols are violated.

Use of force or humiliation in executing warrants and related interrogations.

ICE display and use of weapons during interrogations and arrests.

ICE cooperation and coordination with state and local law enforcement during larger operations.

Whether ICE officers are required to identify themselves when entering a location for enforcement purposes.

Whether confined individuals are provided access to a telephone.

Whether confined individuals are notified of their rights in a language they can understand.

ICE Methodology for notifying agents about humanitarian standards regarding enforcement actions and holding them accountable when such standards are violated.

Response In all cases, ICE has written policy that addresses misconduct, which is applicable to all ICE Special Agents. All allegations made against employees are investigated promptly, thoroughly and impartially. If it is determined that ICE personnel have violated policy, immediate corrective action is taken.

ICE takes pride in being first and foremost a federal law enforcement agency with a mandate to protect national security and public safety by enforcing the nation's immigration and customs laws. ICE accomplishes this in a manner that is lawful, professional, and humane, and by taking extraordinary steps to identify, document, and act on the humanitarian concerns.

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Topic:	protocols
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Primary:	The Honorable Zoe Lofgren
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Question:

Use of force or humiliation in executing warrants and related interrogations.

Response: ICE has a protocol regarding the use of force. This policy is in writing and is part of the Criminal Investigator Training Program at the Federal Law Enforcement Training Center (FLETC), where ICE thoroughly trains investigative personnel prior to their deployment to a field office as ICE Special Agents

Question:

ICE display and use of weapons during interrogations and arrests.

Response: Use or display of weapons in any context would fall under ICE's use of force policy, which is part of the Criminal Investigator Training Program at FLETC.

Question:

ICE cooperation and coordination with state and local law enforcement during large-scale operations.

Response: When conducting worksite enforcement operations, ICE considers the safety and well-being of everyone involved of paramount importance. This includes ensuring the safety of all ICE personnel, the targets of the operations, and the public at large.

Prior to conducting large worksite enforcement operations, ICE will review all aspects of the proposed operation to ensure safety and the security of the operation. In order to ensure the safety and security of operations, notifications will generally be made to state law enforcement agencies and the state and local administrations of any impacted jurisdictions; however, such notifications are not mandatory and may not be appropriate in certain circumstances. When advance notification is given, it is with sufficient notice to allow affected entities time to assess and prepare for any anticipated impact on their community. In addition, in some instances ICE may provide advance notification of an operation directly to a social service agency.

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Topic:	protocols
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question:

Whether ICE officers are required to identify themselves when entering a location for enforcement purposes.

Response: When executing a federal search warrant during an enforcement operation, ICE Special Agents are required to identify themselves. Also, ICE Special Agents and Officers are required by policy to wear law enforcement insignia or identification, unless operational circumstances dictate otherwise, when conducting worksite enforcement operations. In all cases, the display of the agent's badge on the jacket, shirt pocket or belt area is recommended if ready identification is operationally advisable.

Question:

Whether confined individuals are provided access to a telephone.

Response: In accordance with existing law and procedure, ICE grants arrestees an opportunity to meet or speak by phone at no charge with legal counsel and consular officers as soon as practicable after processing. ICE facilitates all such communication, as well as communication with family members, by providing telephone access for the purpose of making collect calls or calls at a reasonable cost. All facilities housing ICE detainees must provide reasonable and equitable access to telephone service as provided for in the ICE National Detention Standards.

Question:

Whether confined individuals are notified of their rights in a language they can understand.

Response: In accordance with existing law and procedure, ICE provides arrestees with oral, and where practical written, notice of their right to counsel and communication with consular officers as well as a list of pro-bono legal services in the area. These notices are provided in the arrestees' primary language.

Question:

ICE methodology for notifying agents about humanitarian standards regarding enforcement actions and holding them accountable when such standards are violated.

Question#:	10
Topic:	protocols
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Response: ICE has distributed the humanitarian guidelines to all field offices. These guidelines have been in practice for over a year. Additionally, these guidelines are a component of ICE's Worksite Enforcement course curriculum and Worksite Enforcement Guide. The guidelines are factors for field agents and officers to consider when planning an enforcement operation. It is the field manager's responsibility to ensure that their operation is planned in accordance with the law and ICE policy, including the use of discretion when warranted. Field managers and HQ components address any alleged violation through investigation and reporting as appropriate. ICE invites the Committee to provide facts and circumstances of any suspected instances of violations.

Question#:	11
Topic:	fugitive operations
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Please identify ICE's protocol on Fugitive Operations and specifically:

Percentage of ICE arrests that are collateral arrests

Percentage of arrests that are of level 1, 2, or 3 fugitives (fugitives posing a threat to the nation; fugitives posing a threat to the community; or fugitives with a violent criminal history, respectively)

Percentage of arrests of fugitives based on in absentia orders.

Response:

Protocol on Fugitive Operations:

The primary mission of the National Fugitive Operations Program (NFOP) is to identify, locate, arrest, or otherwise remove fugitive aliens in the United States. An ICE fugitive is defined as an alien who has failed to depart the United States pursuant to a final order of removal, deportation, or exclusion; or who has failed to report to a Detention and Removal Officer after receiving notice to do so. At present, there are over 575,000 ICE fugitives at large in the United States.

Fugitive Operations Teams (FOT) use intelligence-based information and leads to find and arrest aliens who have been ordered to leave the country by an immigration judge, but have failed to comply - thus making them fugitive aliens.

FOTs are deployed at Detention and Removal Operations Field Offices throughout the United States. The FOTs do not specifically target undocumented immigrants, do not conduct "sweeps" or "raids," nor do they take an ad hoc approach to enforcing immigration laws. Rather, the FOTs focus their efforts on specific aliens in specific locations. According to policy, FOTs prioritize their efforts utilizing the following criteria: (1) fugitives who are a threat to national security; (2) those that pose a threat to the community; (3) those convicted of violent crimes; (4) those with criminal records; and lastly, (5) non-criminal fugitives. ICE FOTs have federal authority and nationwide jurisdiction. Though based in specific Field Office AORs across the United States, the teams can be deployed to conduct operations anywhere in the United States that fugitive alien populations are located.

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Topic:	fugitive operations
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Zoe Lofgren
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Percentage of Non-Fugitive ICE arrests:

FY07: During fiscal year 2007 there were a total of 30,407 arrests. Of those arrests, 12,084 were non-fugitive arrests (approximately 40% of the total aliens arrested). Of this non-fugitive arrest total, approximately 30% were criminal aliens.

FY08: During fiscal year 2008, as of March 2008, there have been 15,987 arrests. The majority of the arrests have been fugitive alien arrests, with 3,725 non-fugitive arrests, or approximately 23% of the total aliens arrested. Twenty-two percent of the total non-fugitives arrested during FY08 were criminal aliens.

Percentage of arrests that are of level 1, 2, or 3 fugitives (fugitives posing a threat to the nation; fugitives posing a threat to the community; or fugitives with a violent criminal history, respectively):

Note that the population of fugitive aliens that pose a threat to the nation; pose a threat to the community; or fugitives with a violent criminal history (Priority 1, 2 and 3 aliens) comprise less than one percent of the total fugitive alien population .

- Arrests, however, of these prioritized fugitive aliens comprised approximately 3.21% of the ICE fugitives arrested in FY07. If prioritized utilizing the same methodology as ICE fugitives, approximately 2.44% of the non-fugitives arrested in FY07 were Priority 1, 2, or 3 aliens.

- Arrests, however, of these prioritized fugitive aliens comprised approximately 3.75% of the ICE fugitives arrested in FY 08. If prioritized utilizing the same methodology as ICE fugitives, approximately .94% of the non-fugitives arrested were Priority 1, 2, or 3 aliens.

The population of Priority 4 aliens represent 19% of the total population of fugitive alien cases.

The population of Priority 5 aliens represent 80% of the total population of fugitive alien cases.

Percentage of arrests of fugitives based on in absentia orders:

In FY07, 31.25% and in FY08 34.5% of the ICE fugitives arrested had been ordered removed from the United States by an independent Immigration Judge in absentia.

Question#:	12
Topic:	San Pedro - 1
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: Two months after losing its accreditation from the American Correctional Association for failing to meet standards, in October 2007, Immigration and Customs Enforcement (ICE) abruptly closed the detention facility in San Pedro. This closing resulted in the mass transfer of more than 400 detainees. The vast majority (230) were sent to Texas; 132 were sent to Arizona, 26 to Washington State, and 20 to other facilities in California. The immigration courtrooms at the San Pedro center were also closed and all cases rescheduled. According to your statements ICE is considering transferring control of the San Pedro facility to private companies in part because of the high cost of upkeep on the aging facility.

Are there plans to re-open the San Pedro detention facility? If so, when?

How many detainees, of each gender, will the facility house?

Will ICE transfer those detainees who were uprooted due to the October closure, back to San Pedro?

Will the Executive Office of Immigration Review be reopening the two immigration courtrooms previously housed in the San Pedro center? If so, when?

Question:

Are there plans to re-open the San Pedro detention facility? If so, when?

Response:

Currently there are no plans to re-open the San Pedro detention facility.

Question:

How many detainees, of each gender, will the facility house?

Response:

See above.

Question:

Question#:	12
Topic:	San Pedro - 1
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Will ICE transfer those detainees who were uprooted due to the October closure, back to San Pedro?

Response:

See above.

Question:

Will the Executive Office of Immigration Review be reopening the two immigration courtrooms previously housed in the San Pedro center? If so, when?

Response:

See above.

Question:

Is it the policy of ICE to fail to notify the attorney of record of the transfer? Why or why not?

Response:

No. ICE's policy is to notify attorneys in the event their client is transferred to another facility. ICE has specific National Detention Standards that require ICE to notify the attorney of record when a detainee is transferred.

Question:

Do you believe that ICE should make an effort to avoid transferring detainees to distant facilities when they have retained attorneys in a particular location? Why or why not?

Response:

To the extent that operational considerations do not indicate otherwise, ICE attempts to avoid transferring aliens who are represented by counsel. To that end, ICE

Question#:	12
Topic:	San Pedro - 1
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

conducts records checks, including determining if the alien is represented, on all cases where a detainee is deemed a candidate for transfer and evaluates the transfer using that information.

Question:

If ICE does not have a policy of ensuring that detainees are housed in proximity to counsel, what remedial measures does ICE plan to institute to ensure detainees can access legal representation, particularly when their cases are on appeal?

Response:

ICE prefers not to transfer aliens to another Area of Responsibility (AOR). In the event that transfers are necessary, the transferring office must conduct records checks, to include determining if the alien is represented, and ensure that all transfers are in compliance with the National Detention Standards. When a transfer is necessary, ICE [illegible] in cases where venue is not yet established, or cases involving individuals who have already received a Final Order (FO) of removal. If it is necessary to transfer an alien who is represented by counsel, in accordance with these standards, ICE shall notify the attorney of record. In addition, ICE ensures that aliens receive the list of pro bono legal counsel for the area they are transferred to. Where there is an established Legal Orientation Program, ICE facilitates the alien's participation in that program.

Question#:	13
Topic:	San Pedro - 2
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: After the San Pedro detention facility was closed ICE transferred detainees to facilities to other states, including many detainees who were represented by counsel in Los Angeles. Compounding this problem, ICE failed to notify many attorneys of the transfers in a timely manner. These attorneys struggled to locate and contact their clients and to advise them on whether they could retain the case or how termination of representation would affect the case.

Do you believe that ICE should return detainees to facilities close to the Los Angeles area upon request of detainee and counsel? Why or why not?

Is it the policy of ICE to fail to notify the attorney of record of the transfer? Why or why not?

Do you believe that ICE should make an effort to avoid transferring detainees to distant facilities when they have retained attorneys in a particular location? Why or why not?

If ICE does not have a policy of ensuring that detainees are housed in proximity to counsel, what remedial measures does ICE plan to institute to ensure detainees can access legal representation, particularly when their cases are on appeal?

Do you believe that ICE should return detainees to facilities close to the Los Angeles area upon request of detainee and counsel? Why or why not?

Response:

To the extent that operational considerations do not indicate otherwise, ICE attempts to avoid transferring cases where an alien is represented by counsel. To that end, ICE conducts records checks, to include determining if the alien is represented, on all cases where a detainee is deemed a candidate for transfer and evaluates the transfer using that information.

Question#:	13
Topic:	San Pedro - 2
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question:

Is it the policy of ICE to fail to notify the attorney of record of the transfer? Why or why not?

Response:

No. ICE's policy is to notify attorneys in the event their client is transferred to another facility. ICE has specific National Detention Standards that require ICE to notify the attorney of record when a detainee is transferred.

Question:

Do you believe that ICE should make an effort to avoid transferring detainees to distant facilities when they have retained attorneys in a particular location? Why or why not?

Response:

To the extent that operational considerations do not indicate otherwise, ICE attempts to avoid transferring cases where an alien is represented by counsel. To that end, ICE conducts records checks, to include determining if the alien is represented, on all cases where a detainee is deemed a candidate for transfer and evaluates the transfer using that information.

Question:

If ICE does not have a policy of ensuring that detainees are housed in proximity to counsel, what remedial measures does ICE plan to institute to ensure detainees can access legal representation, particularly when their cases are on appeal?

Response:

ICE prefers not to transfer aliens to another Area of Responsibility (AOR). In the event that transfers are necessary, the transferring office must conduct records checks, to include determining if the alien is represented, and ensure that all transfers are in compliance with the National Detention Standards. Accordingly, when a transfer is necessary ICE has historically prioritized new cases where venue is not yet

Question#:	13
Topic:	San Pedro - 2
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

established, or cases involving individuals who have already received a Final Order (FO) of removal. If it is necessary to transfer an alien who is represented by counsel, in accordance with these standards, ICE shall notify the attorney of record. In addition, ICE ensures that aliens receive the list of pro bono legal counsel. Where an established Legal Orientation Program exists, ICE facilitates the alien's participation in that program.

Question#:	14
Topic:	material witnesses
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: It appears that ICE has transferred detainees and, thereby, changed venues without regard to whether or not the detainee has material witnesses who are available only in the original venue.

Do you believe that ICE should withdraw its change of venue motions in cases where witnesses would not be able to testify in the new venue, and should seek to return those detainees' cases to the original immigration judges, upon the request of the detainees or their counsel? Why or why not?

Do you believe that ICE should transfer such persons to distant facilities without providing any reasonable accommodations such as video conference hearings? Why or why not?

In cases where the detainee is now seeking to return his or her case to the original venue, do you believe that ICE should oppose the motion seeking return of the case to the original venue? Why or why not?

What determinations are made when deciding whether or not to oppose a detainee's motion seeking to return to the original venue?

If you believe access to witnesses is a problem, how do you plan to resolve it?

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a. Do you believe that ICE should withdraw its change of venue motions in cases where witnesses would not be able to testify in the new venue, and should seek to return those detainees' cases to the original immigration judges, upon the request of the detainees or their counsel? Why or why not?

Response:

Decisions to join in or oppose motions to change venue are case-specific determinations. Although DHS may file a motion to request such a change, it is the immigration judge (IJ) that rules on the motion. Aliens who believe that a change of venue is prejudicial in their particular case may oppose the motion, file their own

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Topic:	material witnesses
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motion or seek further review of the IJ's order. These decisions are made by the IJ and, if appealed, by the Board of Immigration Appeals (BIA). Both the IJ and the BIA must take into account the variety of factors present in each individual case. See Matter of Rahman, 20 I&N Dec. 480, 482-83 (BIA 1992).

Question:

b. Do you believe that ICE should transfer such persons to distant facilities without providing any reasonable accommodations such as video conference hearings? Why or why not?

Respouse:

While ICE tries to limit the practice of transferring detainees, it is sometimes necessary to transfer detainees to facilities with available bed space due to finite detention space nationwide. The major criterion for transfers is the matching of the detainee's classification level to a similar classification within a facility with available bed space, which also provides the appropriate conditions of confinement to ICE detainees. Because of finite detention space that often is not enough to accommodate operational surges nationwide, these detainee transfers take place to ensure that all field offices have adequate detention space for routine operations and special operations requiring large numbers of detention space.

In appropriate circumstances, and when available, accommodations such as video conference hearings are made for detainees who are transferred to distant facilities. However, whether or not conducting hearings by video conference is appropriate is a case by case determination that is ultimately made by an immigration judge.

Question:

c. In cases where the detainee is now seeking to return his or her case to the original venue, do you believe that ICE should oppose the motion seeking return of the case to the original venue? Why or why not?

Response:

As stated above, these decisions are case-specific determinations. DHS will not agree to a blanket policy to return these cases to the original immigration judges and, in

Question#:	14
Topic:	material witnesses
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
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fact, lacks authority to do so. Whether ICE opposes or joins in change of venue motions will be considered in the light of factors such as the availability of appropriate detention space for the detainee at the requested location or the availability of video teleconferencing capability.

Question:

d. What determinations are made when deciding whether or not to oppose a detainee's motion seeking to return to the original venue?

Response:

As stated above, whether ICE opposes or joins in change of venue motions will be considered in the light of other factors such as the availability of detention space for the detainee at the requested location and availability of video teleconferencing capabilities, but in all cases ICE always strives to provide the detainee all avenues of redress and rights of due process. Ultimately, the authority to grant a change of venue lies solely within EOIR from the immigration judge or the Board of Immigration Appeals (BIA).

Question:

e. If you believe access to witnesses is a problem, how do you plan to resolve it?

Response:

ICE always strives to provide detainees all avenues of redress and rights of due process. If the alien has difficulty accessing witnesses, his or her attorney can seek accommodations such as a change of venue, or introduce their testimony through affidavit. ICE attorneys decide whether to join in or oppose these types of applications on a case by case basis, based on the specific circumstances of each case.

Question#:	15
Topic:	telephonic
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: In circumstances where a detainee has been transferred and venue has not been changed, there are some cases in which trial attorneys have opposed teleconferencing and immigration judges have refused to allow detainee's counsel in Los Angeles to appear telephonically, even for master calendar proceedings. Do you believe that it is in the best interest of ICE to oppose Respondents' counsels' motion for telephonic appearance where Respondents have been transferred to a distant facility? Why or why not?

Response:

DHS counsel represents their client interests, just as counsels for the respondents' do theirs. Whether telephonic hearings are appropriate is a case by case determination made by the immigration judge. DHS counsels need to be guided by client considerations and the facts of each case in deciding to join or oppose such requests. EOIR Los Angeles has limited video teleconferencing hearing capability, thus each case was evaluated and prioritized for VTC hearings based on the individual circumstances of the case. One factor that may be considered is the length of proceedings already conducted, and priority was given to cases where lengthy proceedings had already been conducted before the immigration judge.

Question#:	16
Topic:	delays
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: The combination of problems described above has caused excessive delays in many cases (e.g., delays due to multiple rounds of scheduling, attempts to find new attorneys, etc.). As a result, in many of the cases, the Executive Office of Immigration Review is very unlikely to be able to complete removal proceedings in an efficient manner or reasonable period of time.

What do you believe constitutes an excessive delay in disposing of an immigration case?

Where the delays have been excessive do you believe that ICE should release these detainees on bond, given that their detention has been prolonged due to ICE's decisions to transfer people? Why or why not?

In addition, do you believe that ICE should assign personnel whose sole responsibility would be to deal with problems arising out of the mass transfer? Why or why not?

If no, what plans do you have to deal with the significant delays in individual's cases, caused by the transfer?

What do you believe constitutes an excessive delay in disposing of an immigration case?

Response:

ICE strives to complete removal proceedings in an efficient manner. This allows ICE to manage its resources more effectively. Delays can occur for a variety of reasons, including but not limited to witness availability, court calendar congestion, private counsel's request for adjournment and cases where an alien may have to be transferred. What constitutes an "excessive" delay is a case-specific analysis and depends on the specific circumstances and reasons for such delay.

Question#:	16
Topic:	delays
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
Primary:	The Honorable Linda T. Sanchez
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Question:

Where the delays have been excessive do you believe that ICE should release these detainees on bond, given that their detention has been prolonged due to ICE's decisions to transfer people? Why or why not?

Response:

All aliens eligible for a bond are considered for release on bond and where appropriate, ICE sets a bond. In addition, bond re-determinations are made at the discretion of the Field Office Director. In all cases, ICE reviews each individual's circumstances and makes custody determinations based on that individual's flight risk and danger to the community. It may be appropriate to release an individual on bond; on an order of recognizance or supervision; or under other alternatives to detention. Each individual circumstance is different and is carefully evaluated to ensure that the most appropriate form of custody or release is employed. In addition, aliens can also request a custody re-determination with the Executive Office of Immigration Review.

Question:

In addition, do you believe that ICE should assign personnel whose sole responsibility would be to deal with problems arising out of the mass transfer? Why or why not?

Response:

ICE is cognizant of the inefficiencies of transferring a detainee in immigration proceedings to another detention location. These transfers require additional logistical resources in the form of ground and air transportation, staffing, re-processing and protracting the immigration hearing process in a new location. For this reason it discourages these types of transfers. Each Field Office Director is responsible to manage mass transfers and to address problems that might result using whatever local resources are required. ICE works to be responsive to inquiries and addressing problems that result from mass transfers. Also, the National Detention Standards address transfers and local field offices assign personnel as needed depending on the number of aliens being moved.

For example, after the San Pedro Detention Facility was closed, ICE took painstaking measures to ensure that attorneys of record for detainees were notified as soon as possible after the completion of the transfers.

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Topic:	delays
Hearing:	Problems with ICE Interrogation, Detention, and Removal Procedures
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In furtherance of these efforts, ICE reviewed all files, identified cases in which aliens were represented and created a spreadsheet listing attorneys of record that were identified through file reviews. In addition, ICE contacted the local office of the Executive Office for Immigration Review and requested a list of those aliens with attorney representation. The day each transfer was completed ICE initiated the attorney notification process. This process was comprised of two actions: first, ICE personnel called each attorney of record and provided verbal notification as to the date, time, place, and telephone contact number for the locations their clients were transferred; second, ICE personnel faxed a letter to each attorney of record with the same information. In addition, ICE set up a dedicated phone lines for attorneys and family members to obtain information regarding detainee transfers.

Question:

If no, what plans do you have to deal with the significant delays in individual's cases, caused by the transfer?

Response

As described above, in some cases, transfers are unavoidable; however, delays in the removal process are kept to a minimum. The transfer program is under constant review with an eye towards identifying and eliminating inefficiencies. Cases accepted by offices pursuant to transfers are handled the same as any other case.

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