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A REVIEW OF THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY

AND THE

SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND ADMINISTRATIVE RULES

OF THE

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A REVIEW OF THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION

Wednesday, June 17, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, JOINT WITH THE
SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND
ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 2:00 p.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the Subcommittee on National Security] presiding.

Present: Representatives DeSantis, Jordan, Russell, Walberg, DesJarlais, Hice, Meadows, Walker, Carter, Lynch, Cartwright, Lieu, Norton, Kelly, DeSaulnier, and Lujan Grisham.

Mr. DESANTIS. Subcommittee on National Security and the Subcommittee on Healthcare, Benefits, and Administrative Rules convenes today to review the President's executive actions on immigration.

On November 20, 2014, just 2 weeks after the 2014 midterm elections, President Obama made far-reaching unilateral changes to our Nation's immigration policy, despite saying on over 22 different occasions that he did not have the authority to do so. In his address on that day, the President said that: We're a Nation of laws. Those who broke our immigration laws must be held accountable, especially those who are dangerous. That's why over the past 6 years, deportations of criminals are up 80 percent. And that's why we're going to keep focusing enforcement resources on actual threats to our security. We will prioritize, just like law enforcement does every day.

The administration's actions, however, have not matched the President's rhetoric. According to documents provided to the House Judiciary Committee by DHS in April of this year, ICE arrests of criminal illegal aliens has declined 32 percent from the same period a year before, with 51,337 administrative arrests of criminal aliens in fiscal year 2015 compared to 75,171 arrests in the same period in fiscal year 2014. Those declines occurred across the board of criminal offenses. We have recently learned that between fiscal year 2010 and fiscal year 2014, 121 criminal illegal immigrants were charged with homicide following their release from ICE custody. The administration failed to remove these criminals from the United States. And 64 of those were released by ICE at its own discretion, not pursuant to any court order.

It was also revealed that the administration has repeatedly released the same criminal aliens. At our March 19 hearing on the President's executive actions, the committee discussed the fact that in fiscal year 2013 ICE released 36,007 criminals, convicted criminals, that were in its custody. And we have learned that 1,000 of those criminals who were released have already been convicted again of new crimes.

And if that were not bad enough, we have since learned that ICE released 156 of those repeat offenders again into American communities instead of returning them to their home country.

Plainly, the President's assertion his administration will keep focusing enforcement resources on actual threats to our security is not—is contradicted by those facts. Simply put, the President's policy changes are not doing a good job of protecting the safety of the American people.

Now, the legality of the immigration policy change has been called into question both by this Congress and by the Federal courts. And, in fact, on February 16, a Federal judge ruled that the administration failed to comply with the law when they implemented the President's executive action. In a subsequent order, on April 7, that same judge stated that he was, quote, "extremely troubled by multiple representations made by the government's counsel, both in the writing and orally, about the administration's implementation of the revisions to his immigration policy."

Taken as a whole, these facts make it clear that the President's unilateral changes are failing to achieve the stated purpose of protecting the American people. They also call into question the legality of certain actions taken by the administration in implementing those changes, and these are changes both in terms of the policy effect and the legality that they—that we will review today.

Without objection, the chairman is authorized to declare a recess at any time.

I now recognize the ranking member of the National Security Subcommittee, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I also want to thank our panelists for your willingness to testify and help the committee with its work.

Today will mark the fourth hearing held by this committee since the beginning of the 114th Congress to examine the executive actions on immigration announced by President Obama in November of 2014. We have also reviewed the Department of Homeland Security's revised immigration enforcement policies at both the subcommittee and full committee level, and we have examined the economic impact of recent executive actions. We have even looked at the questionable premise that those executive actions will somehow encourage voter fraud in State and Federal elections.

Now, I understand that these continued hearings may stem from disagreement over the administration's course of action on immigration. I have my own concerns about the precedent set by executive actions when it comes to other major policy issues that may affect future Congresses. However, I also share President Obama's frustration with the inability of some Members of Congress to support a balanced and sustainable immigration policy.

Too often this immigration debate becomes a battle between the throw-them-all-out crowd and the let-them-all-in crowd. But the truth of the matter is that we simply need to develop a responsible and sustainable immigration policy. And I think we all agree that the current arrangement is not working.

The United States has always been a nation of immigrants and welcoming those who would help build our country and who want to come here for all the right reasons. That's a fundamental American principle. That's why I strongly believe that our primary focus as lawmakers and members of this committee should be to make every effort to overcome the legislative gridlock that has defined immigration reform thus far so that Congress affords itself the opportunity to thoroughly debate and shape our Nation's immigration policy going forward.

In addition, we must ensure that those Federal agencies responsible for immigration enforcement, such as the Department of Homeland Security, have the resources and tools that they need to do their jobs. Regrettably that is not the case. As noted in the Department-wide memo issued by Secretary Jeh Johnson in November of 2014, "Due to the limited resources, DHS and its components cannot respond to all immigration violations or remove all persons illegally in the United States." This is especially true given that the Federal Government is still operating under sequestration. In addition, Congress recently approved a budget blueprint that contemplates cutting nondefense spending, including Homeland Security budget, by $500 million below the sequester-level spending caps.

In spite of budgetary constraints, the Department of Homeland Security has detained and deported more individuals than during any other period in its history. According to the immigration—excuse me, the Migration Policy Institute, roughly 1.95 million people were removed from the United States between 2008 and 2013, those 6 years. That's approximately the same number who were subject to removal during the 8 years of the Bush administration.

In accordance with the guidance issued by Secretary Johnson last year, the Department also continues to conduct its enforcement and removal activities by prioritizing high-level threats to National security, border security, and public safety. Chief among the highest priority threats are undocumented immigrants suspected or engaged in terrorism or espionage, convicted felons, and those convicted of criminal street gang activity.

DHS is also seeking to strengthen its ability to collect and analyze immigration data in response to the recommendations issued by DHS Inspector General Roth, who is a guest of ours today, in May of 2015, regarding how best to enhance enforcement efficiency. Specifically, the inspector general's report notes that DHS agreed with the report's recommendation and plans to initiate a multipronged approach to gathering essential data on its use of prosecutorial discretion through its Office of Immigration Statistics.

Secretary Johnson ordered the Department and its components to fully comply with a February 2015 injunction issued by the U.S. District Court for the Southern District of Texas to halt the expansion of the Deferred Action for Childhood Arrivals program and the

creation of a Deferred Action for Parental Accountability Program. In particular, Secretary Johnson announced on the day after the decision that DHS would not accept requests for expanded childhood arrivals and will suspend its plan to accept requests for the new parental accountability program. He has also requested that the Inspector General Roth investigate the issuance of approximately 2,000 expanded work permits by U.S. citizens ship and immigration services that were already in process but not halted quickly enough in violation of the injunction. And I understand that the Department has been cooperating with the Inspector General's Office thus far.

So, Mr. Chairman, I look forward to discussing the progress of this investigation and other issues pertaining to our improving immigration enforcement with our panelists.

And I yield back the balance of my time.

Mr. DESANTIS. I thank the gentleman from Massachusetts.

The chair now recognizes the chairman of the Health Care, Benefits, and Administrative Rules Subcommittee, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Mr. Chairman. I'll be brief.

Here are the facts. As the chairman indicated, 22 times the President said he couldn't do what he did. Federal judge agreed with the President, what he said 22 times, and said the executive amnesty order was in fact wrong. That judge has said attorneys for the government, when they came before the court, misrepresented the facts. And after the injunction, the Department of Homeland Security violated the judge's order when they sent 3-year work authorizations to approximately 2,000 individuals. Those are the facts. That's what we need to get the answers to. That's why I'm pleased our panel is here, so they can answer our questions.

And I think this is a hearing very necessary, Mr. Chairman. I appreciate the chance to be here. Appreciate you calling the hearing.

With that, I yield back.

Mr. DESANTIS. Gentleman yields back.

The chair now recognizes my friend from Pennsylvania, the ranking member on the Health Care, Benefits, and Administrative Rules Subcommittee, Mr. Cartwright, for his opening statement.

Mr. CARTWRIGHT. Thank you, Mr. Chairman, and thank you to our witnesses for joining us today. I look forward to hearing how the administration is working to uphold this Nation's immigration laws. Following the issuance of the administration's executive actions on November 20, 2014, a lawsuit temporarily halted the rollout of new and expanded deferred action programs. The Department of Homeland Security trained its personnel and has begun implementing and working on new prosecutorial discretion policies, and U.S. Immigration and Customs Enforcement, ICE, prepared for the rollout of the new Priority Enforcement Program.

In the midst of all that's happened, I think some of my colleagues have forgotten the reasons for the actions in the first place. Our immigration system was and continues to be in dire need of reform. DHS faces 11 million undocumented immigrants and does not have the resources available to remove them all. Many of these individuals have been in this country for upwards of a decade, living in

the shadows, raising their children, many of whom were born in the United States.

The Senate passed a bipartisan comprehensive reform bill in 2013, but legislative efforts have ground to a halt in the House because of Republican opposition. In the face of legislative inaction, DHS issued a series of memoranda attempting to address the growing undocumented population. One memo provided guidance to more consistently focus resources on removing the most dangerous criminals and the most serious threats to public safety. Another memo announced efforts to improve the partnership between DHS and State and local law enforcement. Yet another memo modified deferred action policies in order to provide temporary stability to hardworking peaceful immigrants who are willing to pay their dues.

These executive polices attempted to solve problems, but the executive branch can only go so far legally. And the immigration system will remain broken until Congress passes a legislative solution. Republicans in Congress have been happy to challenge and question and criticize the administration for its actions instead of offering solutions. Now, given the recent Texas Federal Court injunction, it is my belief that the USCIS Director Leon Rodriguez understands his responsibility to comply with the law and that he has worked quickly to halt the implementation of the new and expanded deferred action programs as soon as possible.

I also appreciate that the USCIS has taken full responsibility for the release of work permits after the injunction was ordered, and I look forward to hearing today about changes at USCIS that will ensure that this kind of thing doesn't happen again.

But while the courts hear the legal challenges to the administration's actions and while Republicans in Congress criticize those actions themselves, the problems in our Nation's immigration system persist.

I urge that my colleague across the aisle turn their efforts toward lawmaking and away from bellyaching. Moving forward, I hope we can finally focus on comprehensive lasting legislative solutions. This is the work and attention our broken immigration system and the millions affected by it so desperately need.

I thank you, and I yield back, Mr. Chairman.

Mr. DESANTIS. Gentleman yields back. Thank you.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

We will now recognize our witnesses. And I'm pleased to welcome Ms. Sarah Saldana, Director of U.S. Immigration and Customs Enforcement; Mr. Leon Rodriguez, Director of U.S. Citizenship and Immigration Service; and Mr. John Roth, inspector general at the U.S. Department of Homeland Security.

Welcome all.

Pursuant to committee rules, all witnesses will be sworn in before they testify.

If you please rise and raise your right hands.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you. Please be seated.

All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made part of the record.

And, with that, Ms. Saldana, you're up for 5 minutes. Thank you.

Ms. SALDANA. Thank you, Chairman Jordan and DeSantis and ranking member——

[Disturbance in hearing room.]

Mr. DESANTIS. Committee will come to order. Please have the police escort the protesters out. Committee will come to order.

Committee will suspend.

rotesters will leave the hearing room. We ask the people who are watching, watch, listen, learn, but if you disrupt a hearing, you will be removed.

I now recognize Ms. Saldana for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF SARAH R. SALDANA

Ms. SALDANA. Thank you. I don't think I got to thank the Ranking Members Cartwright and Lynch and subcommittee members. I'm pleased to appear before you along with U.S. Citizenship and Immigration Services Director Leon Rodriguez. While Directors Rodriguez and I lead different agencies with certainly distinct missions, we are part of the same Department and are very mindful of the necessity to do all we can to ensure coordination between our components.

In the 2 months since I first appeared before the full committee, I have continued to take steps to enhance ICE's ability to achieve one its primary goals, that of enforcing our Nation's immigration laws and keeping our country safe by ensuring we focus our resources on individuals who pose the greatest threat to our National security and to public safety.

Secretary Johnson has made it clear to all of us that our borders are not open to illegal migration and that I should allocate enforcement resources accordingly, consistent with our laws and with our values. As such, ICE is endeavoring to use appropriate prosecutorial discretion and dedicating resources to the greatest degree possible toward the removal of individuals who are considered enforcement priorities, which includes criminals and recent border entrants.

Guided by DHS' enforcement priorities, the approximately 7,300 personnel of ICE Enforcement and Removal Operations, or ERO, identify and arrest and detain convicted criminals and other removable aliens. We, as appropriate, supervise them through alternatives to detention or remove them from the United States through our immigration courts.

While there is still a lot of work to be done, I've seen progress in my 6 months leading this agency. First and foremost, our employees are dedicated to accomplishing this mission with integrity and with professionalism. As a result of their tireless effort focusing on the priorities I mentioned, they are making our communities safer.

We are now removing a greater percentage of criminals than we have in the past. And I'm committed to continuing this trend. In fiscal year 2014, 85 percent, 85 percent, of individuals removed or returned from the interior were individuals previously convicted of a criminal offense, reflecting a significant increase in the rate of removal of individuals with convictions from 67 percent in fiscal year 2011 compared to 38 percent in fiscal year 2008.

The increasing number of convicted criminals removed from our country is the result of a change in ICE's strategic focus, which revised policies and your initiatives have helped us achieve. That's why I, along with our employees at ICE and the leadership of the Department, have been working hard to implement the new Priority Enforcement Program, PEP, where we engage State and local communities to enhance the agency's ability to remove dangerous individuals.

Recently, both the counties of Los Angeles and Contra Costa in California agreed to continue cooperating with ICE and DHS in implementing PEP. We anticipate they will be the first of many. That's also why I've been working to bolster ICE's ability to obtain travel documents from recalcitrant countries, a problem I know this committee is familiar with. I'll continue to work closely with the Department of State to achieve better compliance from countries in accepting the return of their nationals.

I should also mention my establishment of enhanced oversight and release procedures for ICE custody determinations involving detainees with criminal convictions on their records, to include developing a capability to provide appropriate criminal alien release information to State law enforcement authorities and relevant jurisdictions. I put this procedure in place to enhance public safety and greater public confidence in ICE's enforcement and administration of immigration laws. Part and parcel of this effort is a law enforcement notification system currently being used in Virginia, Louisiana, and my home State of Texas, in its early stages currently and which we expect to be fully implemented across the country sometime before the end of the year.

With respect to family residential centers, last month I announced a series of actions to enhance oversight over these centers to increase access and transparency to ensure that they continue to provide a safe and humane environment for detained families. While we routinely review and evaluate our facilities, all of our facilities, we understand the unique and sensitive nature of dealing with women and children in these settings. Even as we do this, however, we also cannot have an immigration system that encourages criminals to take advantage of people to abuse women and children while they attempt to smuggle them into the United States. And both ERO and HSI are working together to find and dismantle and bring to justice these organizations.

As we move forward, I believe that ICE will be successful in the deliberate implementation of our mission objectives. I look forward to working with this committee, and I echo the sentiments of the Congressman with respect to reform of the laws, which are encompassed in this book, along with the regulations. This is a very complex system that needs to be reformed.

[Prepared statement of Ms. Saldana follows:]

For complete submitted testimony, please see the following website:

https://oversight.house.gov/hearing/a-review-of-the-presidents-executive-actions-on-immigration/

Mr. DESANTIS. Thank you. Gentlewoman's time is expired.

The chair now recognizes Mr. Rodriguez for 5 minutes.

You're up.

STATEMENT OF LEON RODRIGUEZ

Mr. RODRIGUEZ. Good afternoon, chairman—chairmen, ranking members, and members of the committee. Thank you very much for inviting me to be here today.

I have talked about my own personal story before. I am the son of Cuban refugees from south Florida. I have talked often about the sufferings that led them and my grandparents to make the choices to come here to the United States and the hopes and dreams that they brought with them when they came here. This has taught me as Director of USCIS that every file we see, whether it is a DACA request, naturalization request, a refugee filing, a worker visa filing, that all of these cases represent one family's hopes and dreams and, in many cases, that family's sufferings. I believe deeply in the work that we do as USCIS. And I believe in it because it requires us both from a perspective of immigration policy and operating the immigration system to answer fundamental questions about our country.

Will we be a prosperous country, or will we not? Will we keep families together, or will we allow them to be fragmented and destroyed? Will we be guided by the rule of law, or will we not? Will we protect the National security, or will we not? Will we lead when there are issues, or will we just watch as those issues deepen, become worse, become problems and even crises?

Unfortunately, for too long, our political system failed to answer these questions with respect to a number of aspects of our immigration system. Not simply the situation of those who are here in undocumented status, and the many members of their families who are here legally but also those aspects of our immigration system that bear critically on our economic prosperity and our civic stability. It is for this reason that the President issued his executive actions back in November of 2014, focusing on promoting integration of immigrants, promoting actual accountability of those who are here in an undocumented status, a condition that did not exist before the President took that step, and promoting within the confines of what the law allows him, an immigration system that fully promotes our economic success as a country.

The President was building on the success of the 2012 DACA program, and there are many success stories. Young people who have become teachers, nurses, doctors—in one case now, even a lawyer—and who really demonstrate the potential that they have to contribute to the United States. Our work was enjoined by the court in Texas. The one thing I'd like to underscore about that is that it's not over until it's over. We believe in the legality of our policies, and we believe that in the end we will be vindicated by the legal process.

Nonetheless, when the court issues an injunction, I as the Director of USCIS, as an attorney, and as a former prosecutor, ordered the immediate cessation of all activities to implement the deferred action policies under the President's executive actions. One of those actions was to stop the issuance of 3-year work authorizations that had actually been granted the week before the injunction was issued. Unfortunately, through a miscommunication, those work authorizations were issued anyway. I have taken full responsibility, both in this forum and before the court, and to say that I took it before the court is to say something significant. I am an attorney. I am a former prosecutor. And I have said very clearly to Judge Hanen: I am responsible. I am accountable for what my agency did.

The question, now, though is as I take accountability, will we as a political system take full accountability for the challenges that we have in our immigration system. The President made it very clear at the time that he issued the executive orders, that they could be stopped immediately if instead we found a legislative solution to the ongoing now decades-long challenges presented by the undocumented, presented by the insufficiency of our immigration system to meet our economic needs. I stand here today ready to work with all of you to work toward those improvements.

Thank you, and I look forward to your questions.

[Prepared statement of Mr. Rodriguez follows:]

For complete submitted testimony, please see the following website:

https://oversight.house.gov/hearing/a-review-of-the-presidents-executive-actions-on-immigration/

Mr. DESANTIS. Thank the gentleman.

Chair now recognizes Inspector Roth for 5 minutes.

STATEMENT OF JOHN ROTH

Mr. ROTH. Good afternoon, Chairmen Jordan and DeSantis, chairman member—Ranking Members Cartwright and Lynch, and members of the subcommittee. Thank you for inviting me here to today to discuss DHS' collection of prosecutorial discretion data.

DHS has instituted various policies over time that allow the use of prosecutorial discretion in making immigration enforcement decisions. However, the Department does not collect or use such data to help assess immigration policy, evaluate the effectiveness and results of enforcement actions, or be able to assess the reasonableness of the exercise of that discretion on the part of DHS personnel.

Since DHS' formation in 2003, ICE has implemented various policies to focus its efforts on criminal and civil enforcement priorities. It has also used policies for processing aliens with special circumstances, such as crime victims and witnesses, nursing mothers and the elderly, as well as ensuring that enforcement actions are not focused on sensitive locations, such as schools and churches.

At the time of our audit, ICE's removal actions were governed by a series of policy memoranda signed by then-ICE Director John Morton in March and June of 2011 and focused its enforcement resources on three things: One, aliens who pose a danger to national security or risk to public safety; two, aliens who recently violated the immigration controls at the border and ports of entry or know-

ingly abused the visa process; and, three, aliens who were fugitives or otherwise obstruct immigrations controls.

Additionally, a year later, in 2012, the Department issued guidance, known as the Deferred Action for Childhood Arrivals, known as DACA, which allows the use of prosecutorial discretion to defer action or release some aliens who came to the United States as children and meet other criteria. Despite its reliance on discretion to prioritize enforcement resources, ICE often does not collect prosecutorial discretion data and does not always ensure that its statistics are accurate and complete. For example, ICE records its use of prosecutorial discretion broadly, without distinguishing the various types of exceptions to removal, such as DACA-related exceptions.

Additionally, prosecutorial discretion statistics may be inaccurate because enforcement officers may not document every encounter with aliens it considers to be a low enforcement priority. ICE officials told us that field personnel often do not record their use of prosecutorial discretion because it is too time-consuming. As a result, data that supports decisions on the use of prosecutorial discretion may not be available.

DHS should ensure it can support its decisions with solid data. A feedback mechanism for the use of prosecutorial discretion could help DHS identify gaps, set goals, determine budget requirements, and provide information to improve program performance. In terms of overall immigration enforcement policy, such a mechanism could help develop sound future programs and policies. In addition to assisting in the overall policymaking process, capturing the right information would allow the Department to ensure that the proper and evenhanded application of the policies exist.

As it stands now, there's no mechanism by which to assess the reasonableness of an individual officer's exercise of discretion to compare prosecutorial discretion decisions for similarly situated aliens or to compare the use of prosecutorial discretion by various field offices. This data, if collected, could also be used to evaluate the performance of individual officers or field offices.

Uneven or inconsistent policy enforcement can have a negative effect on DHS' immigration enforcement mission. Here because the Department does not collect data on, much less monitor the use of prosecutorial discretion, we are unable to determine whether the Department is using prosecutorial discretion consistently or fairly.

The Department agreed with our recommendations in our audit to improve collection and analysis and reporting of data on the use of prosecutorial discretion. DHS is planning a multipronged approach for assessing and accounting for its immigration enforcement efforts. We believe such a strategy is particularly important given that over the last two fiscal years, ICE, CBP, and USCIS collectively received on average about $21 billion annually for immigration enforcement.

Chairmen DeSantis and Jordan, this concludes my prepared statement. I'd be happy to answer any questions you or members of the committee may have.

[Prepared statement of Mr. Roth follows:]

For complete submitted testimony, please see the following website:

https://oversight.house.gov/hearing/a-review-of-the-presidents-executive-actions-on-immigration/

Mr. DESANTIS. Thank you, Mr. Roth.

Chair now recognizes himself for 5 minutes.

Ms. Saldana, you recently reported to the Senate that 121 illegal aliens that had been released by ICE between fiscal year 2010 and 2014 had been arrested for homicide since they were released. How many total homicides have these 121 individuals been charged with?

Ms. SALDANA. Beyond the specific information——

Mr. DESANTIS. Can you hit your microphone, please.

Ms. SALDANA. I'm sorry. Beyond the specific information we provided with respect to the homicide, I think we broke down the information, and I can't tell you whether there are other homicides involved.

Mr. DESANTIS. So you just know that those folks have been charged with a homicide, but it doesn't rule out that they could have been charged with multiple homicides. Is that correct?

Ms. SALDANA. I can't say sitting here today that that's not the case.

Mr. DESANTIS. And do you know at this point how many convictions have resulted from those charges?

Ms. SALDANA. No. I don't.

Mr. DESANTIS. Is that something that you're interested in finding out?

Ms. SALDANA. Certainly. I think we have, as the inspector general has pointed out, we're working on our systems to try to be more flexible and responsive. We get a lot of inquiries with—in all shapes and sizes, which we're trying to make our information system more flexible, and that's taken a little time. But, yes, absolutely, we're interested in that information, like I know you are, sir.

Mr. DESANTIS. Do you know if any of those individuals had been convicted of a homicide-related offense before they were released by DHS?

Ms. SALDANA. I do not have that information. I don't believe that's the case.

Mr. DESANTIS. Okay. But that's obviously something that's important to know. What, if any, changes does ICE plan on making in light of the fact that you do have 121 individuals who were in ICE custody, were in the country illegally, have been released, and now have been charged with committing homicides. And just the way our criminal system works, I mean, most people who get charged end up getting guilty. I mean, let's just—it's probably over 90 percent. Let's just say it's 60 percent. That's a lot of people who have been killed. That's a lot of families who have lost loved ones, and they can look at ICE and say: Look. Had you just done your job better, maybe my family member would be here today. So what policy changes are you going to make to prevent that from happening in the future?

Ms. SALDANA. And I will say that is particularly disturbing, I know, to all the members of this committee and to myself as a prior U.S. Attorney in north Texas, and Dallas based. That is

something that we're always trying to do is to find criminals and to convict them. As a result, when I first came here——

Mr. DESANTIS. Well, and you probably did that very well. I know people on the state level in Texas and other places do it very well. The problem, though, is, is if they're going and they're being convicted and then ICE knows that they're not here legally, and we know they're convicts, and yet they still get released into society. And, in 2013, I know you weren't ICE director then, 2013 DHS released 36,000 individuals who were in the country illegally had been convicted of crimes. They provided the crimes to us, and they included homicide. They included rape. They included drug trafficking. Some very, very serious offenses. 2014, you had 30,000 individuals, again, who were in the country illegally convicted of crimes and yet still released by DHS.

And so the local and Federal law enforcement officers and the prosecutors, they play an important role, but if DHS is then going to release people who have been proven to be a danger to society into the public, well, then that leaves more Americans to be victimized by, in some cases, very violent crimes.

Ms. SALDANA. And that's why, Mr. Chairman, I established a procedure that I announced back in March for greater oversight over the release of any person who had a prior—serious prior conviction. In particular, I'm asking people to sign off a piece of paper the original person who makes the determination with respect to either custody or bond. I'm asking their supervisors to review it. I've actually put together a panel in headquarters which looks over all of these decisions to determine whether or not they were based on the facts and circumstances known to the individual and that they were right decisions. As I mentioned earlier, this——

Mr. DESANTIS. And if they're not right decisions, what happens? Because I mentioned the 36,000 in fiscal year 2013. These are folks that have been convicted in our courts of, in many cases, very serious offenses. They weren't in the country legally, they're released, and now, even at this point in 2015, of those 36,000, by DHS' own figures, 1,000 of those people have already been convicted of new crimes again in the future. And so, clearly, there is a breakdown there. So when that is not followed, what happens? Who is held accountable? Does anyone lose their job?

Ms. SALDANA. It could be, sir. We'll just have to see.

Mr. DESANTIS. Has anyone lost their job——

Ms. SALDANA. Not yet.

Mr. DESANTIS. —since you have been ICE director?

Ms. SALDANA. No. Not in——

Mr. DESANTIS. So the 1,000 new convictions that we have seen for people who had already been convicted, there's not been any accountability within ICE for that. To me, that's a major failure. Because if I were somebody whose family member was victimized by a crime, I would want to know: Well, wait a minute. You guys should have known. The President's policy is, you know, we're going to go after the criminals, zero tolerance. We're going to make it happen, and yet that hasn't happened. So what do you say to the families who've seen the—who've been victimized?

Ms. SALDANA. If I may, sir, I would say that those are tragedies. And I wish that our deportation officers and others making these

decisions were omniscient and could see into the future and into the heart and soul of these individuals, but we go by the facts that we know——

Mr. DESANTIS. A criminal conviction for, say, aggravated assault, that's not looking into the future, that's looking into the past. I mean, as a prosecutor, if you have people who run afoul with the law and get convicted of violent criminal activity, those are people that are much more likely to commit crimes in the future than somebody who's never committed a crime in their life. So it's not just saying that this is all just trying to look into the future and you need clairvoyance; you can judge whether somebody's a threat to society based on their past conduct.

Ms. SALDANA. If you—if you'll allow me to finish my answer, Mr. Chairman, I would really appreciate it because I think the American people have a right to know the full picture here.

Every decision we make, there is not a single deportation officer or other agent within ERO who wants to let a dangerous criminal out in the streets to threaten the public. I can guarantee and assure you of that. They are law enforcement officers. And with respect to the ability—we have got to look at the record as it is. We don't look at one single factor. We do look at the age of—just like a court of law, the Federal courts in which I practiced. They look at many different factors to determine whether to release an individual, and we are bound by some of the numbers that you threw out by the Supreme Court in its decision with respect to not being able to detain people beyond 6 months, typically. And the immigration courts that set bond and release some of these folks as well. So that is the complete picture and that's what I can assure you of is I'm committed, and I have been doing this since I stepped into this position back in January to keep that number down and to try to avoid future tragedies like the ones you have described.

Mr. DESANTIS. Point taken. Now, you said that there are multiple factors, so you can't just look at one thing. So maybe someone has a blemish on their criminal record, but there's other factors. You mentioned age. Answer me this, because there have been people that have been convicted of sexual assault who have been released, and by ICE's own admission, it wasn't because they—the 6 months was up. Sometimes that happens, but there are other people who did not, where they were discretionary releases. So what other factors would outweigh a conviction for a sexual assault against a woman or a child, and why would we want that person in our society?

Ms. SALDANA. This Congress and in this elaborate system that we're talking about has entitled the individuals to bond and have said things like the age of the criminal conviction, the nature of the crime——

Mr. DESANTIS. No. I understand that. But how does that outweigh the seriousness of the offense when you're talking about people who've committed sexual assaults, crimes against children, crimes against women? That's what I don't understand. I understand if somebody got a speeding ticket or something, but some of those I think there's broad agreement in the American public that that is not something that we want to see where ICE is facilitating people to be back on the street.

Now, I have I'm over my time. So I appreciate you answering the questions. I know some of my colleagues will have more, and I am going to now recognize Mr. Lynch for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

You know, the way we approach the question, the wider question of immigration is really based on what narrative that we use. This committee, this hearing is set up on a narrative that really looks at illegal immigrants who have committed heinous crimes, homicides. And so someone using that narrative will have a very negative view towards immigration policy because you're looking at that consequence.

There's another narrative, though. I had an opportunity as part of this National Security Subcommittee to visit, with the former chairman Mr. Issa, we went to Kandahar, Afghanistan, and I was honored. I have to say I was honored to be asked to participate in an immigration—citizenship ceremony. So here I am at this Godforsaken forward-operating base when about 100 young Marines, men and women, surprised at the number of young women, took the oath of citizenship for this country. Every one of them a noncitizen in American uniforms fighting for this country in a very difficult war zone from 19—and out of those, about 100 marines, a few soldiers as well—19 different countries, from Guatemala to Somalia to Ethiopia to Mexico. And, you know, I was standing there, and we had a chance to spend the afternoon with these young soldiers and marines, and I could not help but think about the quote that John F. Kennedy made famous. He said: Ask not what your country can do for you, but ask what you can do for your country.

And I'm thinking, these young soldiers, these young marines, standing in the place of American citizens in a tough, tough war zone, chasing the Taliban up and down that province—and they're not even citizens—trying to be—trying to be American citizens for all the right reasons, if you take that narrative and you see the good, the good, that is possible by adopting an immigration policy that actually values that desire to be part of this country for all the right reasons, you take a whole different—a much more hopeful view of immigration policy and what we could accomplish if we got it right.

So, Ms. Saldana, or Director Saldana, I want to ask you about some of your comments earlier. You were talking about—look, we all know that if we got sequestration or even the proposed budget is $500 million below sequestration, which really cuts into your ability to do your job, and I've seen numbers that say that 85 percent of ICE's removals from the United States in 2014 were convicted criminals. So it sounds like you're meeting your priorities.

I'm just wondering what impact—what impact is this going to have in going after the, you know, your priority—you said it was National security. So that's going after terrorists and those involved in espionage, criminal activity——

Ms. SALDANA. Gangs. Those——

Mr. LYNCH. So how will this— tell me a little bit about how this might affect your ability to do your job and to try to make sense of this somewhat dysfunctional immigration policy that we have right now.

Ms. SALDANA. Well, I'm glad you asked that question because we have had a number of things working against us and increasing our expenses. For example, obviously, the influx of families, women and children, require even greater services than others. Those beds are much more expensive than a regular adult bed that you would have. We have operations that we conduct because we cannot get people from the State system immediately with some jurisdictions not cooperating with us. We have operations we have to conduct where we pull people off of their regular duties and go out and try to find dangerous criminals. That not only exposes the officers to safety issues, but it also can be a very detrimental situation with respect to the family who is present at the time that the officers show up. So, to us, even the disruption that occurred back in March, before March, with respect to not having even any kind of guarantee with respect to our 2015 budget, it wreaked tremendous havoc, never mind the 20,000 employees who would not be receiving a paycheck if sequestration continues in this manner.

Mr. LYNCH. Right. Now, do you do any work with the victims on the victim side——

Ms. SALDANA. Absolutely.

Mr. LYNCH. —in these cases, and is that piece going to be affected as well?

Ms. SALDANA. Yes. And I'm glad you mentioned that, because we often forget, it's not just ERO, but its HSI, our Homeland Security Investigation side of the house, that is affected by these budget constrictions. We—and they help us with respect to these smuggling networks. As I mentioned in my opening statement, not only do we have to take care of the families once they get across, but we ought to do the best we can to dismantle those smuggling organizations that put them at peril and bring them over into this country. So, yes, sir, that's a more complete picture.

Mr. LYNCH. Very good. Thank you.

Mr. Chairman, I yield back.

Mr. DESANTIS. The gentleman's time's expired.

The chair now recognizes Mr. Jordan for 5 minutes.

Mr. JORDAN. Thank you.

Director Rodriguez, President issues his executive order on November 20 of last year. Court case ensues. There's a hearing on the preliminary injunction January 15, 2015. Your counsel represents to the court: No applications for revised DACA would be accepted until the 18th of February. No action would be taken on any of these applications until March 4.

Did you know at the time that your counsel was misrepresenting the facts?

Mr. RODRIGUEZ. No. And I'm not sure I would characterize it that way, Congressman. The fact was that beginning on November 24, for individuals who were applying for either——

Mr. JORDAN. It's pretty clear—if I could just interrupt for a second, Mr. Rodriguez. It's pretty clear your counsel said, "Just to be clear, Your Honor," and he reemphasized that point that no applications going to the 3-years deferrals would happen until at least February 18—or, excuse me, March 4, and yet the case—isn't it true that you had had 100,000 of these applications—or not appli-

cations, but these actual 3-year deferrals go out to 100,000 individuals?

Mr. RODRIGUEZ. 100,000 individuals under the original 2012 DACA program who were being granted 3-year work authorizations rather than two.

Mr. JORDAN. Exactly. Exactly.

Mr. RODRIGUEZ. I won't characterize my counsel's comments.

Mr. JORDAN. Well, I mean, the judges said it. They were misrepresented to the judge. I'm saying did you know at the time that counsel for your side of the case misrepresented that fact to the judge?

Mr. RODRIGUEZ. I was not aware of the statement made by my counsel at that time.

Mr. JORDAN. When did you learn that there had been a misrepresentation to the court?

Mr. RODRIGUEZ. I learned that the court believed that there had been a misrepresentation in March when we first informed the court in an attempt to be 100 percent clear with the court that we had in fact granted roughly 108,000 3-year work authorizations beginning on November 24, long before the lawsuit was even filed.

And, by the way, Congressman, openly.

Mr. JORDAN. Yeah. So you informed the court when?

Mr. RODRIGUEZ. We advised the court, I believe, at the beginning of March. It would have been something like March 3 or March 4, when of our own initiative in order to be 100 percent frank and clear with the court our counsel took the initiative to advise the court that we had——

Mr. JORDAN. Okay. You advised the court on March 3 or 4, early March. When did you first learn that there may be a problem?

Mr. RODRIGUEZ. We in—immediately after the injunction, we discussed the existence of these 108,000 3-year authorizations, again, individuals under the original 2012 program. This would have been sometime in the few days after the injunction was issued——

Mr. JORDAN. I'm looking for a date because you have got to remember the context, though, Director Rodriguez. We were having an important debate here in Congress relative to the Department of Homeland Security funding bill. The judge issues his injunction on February 16. You're telling us: A few weeks later, we went on our own, just out of the kindness of our heart, even though the judge thinks you misrepresented the case to him, out the of kindness of your heart, you told the judge sometime early March, but that DHS bill came due on February 27. You said you knew about this shortly after the injunction. So sometime between February 16 and February 27, you learned of it. I'm wondering why you didn't tell us right away or tell the judge right away, which we would have known about and the American people would have known about.

Mr. RODRIGUEZ. We told the court within a couple of weeks of the injunction in an effort to be candid with the tribunal, which our counsel felt that it was their obligation, and which certainly had I been counsel, I would have had the same attitude as well. We wanted to make sure that the court understood that.

Mr. JORDAN. All I'm saying is it would have been nice in the heat of that debate, frankly, debate that the whole country was having,

if we'd have had that information before the deadline of the DHS bill, which is February 27. You're telling me you knew there could be a problem, and you decided to tell the judge, but you waited until after the 27th.

Mr. RODRIGUEZ. Congressman, I'm not sure I agree with the characterization. The fact is we told—once we understood that this was an issue that the court may not have understood, we made the decision to let the court know. It was our intention at all times to be candid with the court, and what I underscore is that we were—we had this up on our Web site. This was included in our filings with the court that the directive was to issue 3-year work authorizations immediately. That was part of our initial——

Mr. JORDAN. Well, I tell you what would have been a lot nicer. What would have been a lot nicer is if the counsel for your side, when they were in front of the judge, would have told him what you told the court, would have told him, "Hey, there's already been 100,000 go out," instead of misrepresenting it to the court and saying, "That's not going to happen until sometime in February, sometime in March." That would have been better. But, the fact, that you learned before the 27th day and waited to tell the judge and, therefore, Congress and the American people until after the DHS bill, I think's relevant.

Last question if I could, Mr. Chairman.

Mr. Roth, have you looked into this issue?

Mr. ROTH. We are in the process of doing the field work on this, yes.

Mr. JORDAN. And what does that mean, Mr. Roth? Is that going to be a report sometime soon, or when are we going to have something that—when's your investigation or audit going to be done?

Mr. ROTH. Sure. We're conducting interviews as we speak, reviewing emails, doing the kinds of things that we would typically do. My projected timeline is hopefully weeks, not months, but I can't give you a firmer date than that.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. RUSSELL. [Presiding.] The chair now recognizes the gentleman from Pennsylvania, Mr. Cartwright, for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Well, Mr. Rodriguez, I want to spend a little more time exploring USCIS' rollout of DAPA and expanded DACA. DAPA meaning Deferred Action for Parents of Americans. In light of the Texas Federal Court decision, Director Rodriguez, I understand you have taken great pains to comply with the Texas Federal Court's injunction. Is that correct?

Mr. RODRIGUEZ. That is correct, Congressman. Immediately, literally, this—the court's injunction became known to us around 11:30 p.m. On Presidents' Day. By 1 o'clock in the morning we had issued a directive to cease all implementation of either the expanded DACA policy or the DAPA policy, including to halt any issuance of 3-year work authorizations.

Mr. CARTWRIGHT. Okay. So you immediately swung into action to enforce this injunction. Right?

Mr. RODRIGUEZ. That is correct, Congressman, including rolling back materials on our Web site, forms, instructions, in order to absolutely comply in every respect with the court's injunction.

Mr. CARTWRIGHT. Okay. Now, I understand that DHS has admitted that some work authorizations were provided after the court's injunction was ordered, and your written testimony makes it clear, "USCIS also took immediate steps intended to ensure we ceased issuing 3-year work permits." Director Rodriguez, can you describe what those immediate steps were and why they didn't work?

Mr. RODRIGUEZ. The concrete immediate step that was taken was that all of those work authorizations that we're talking about were in a—what is essentially a giant print queue. What was supposed to—and so we halted them, and what was supposed to have occurred is that they should have been essentially reversed and sent back to the immigration services officers who were reviewing the case. Instead, there was a miscommunication which led those print orders to go to the contractor that actually prints the 3-year work—3- or 2-year work authorizations, as the case might have been, and they were printed.

We discovered this in the process correcting other errors that we had made and immediately notified on our own initiative both the States and the court. We have advised all of the affected requesters of the fact that they are getting 2- rather than 3-year work authorizations. We have required them to return their 3-year work authorizations. In fact, close to half of them already have, and are——

Mr. CARTWRIGHT. Let me stop you there.

So what you're telling us is that it wasn't that you got caught or somebody blew the whistle on you, you picked up the error on your own. Is that correct?

Mr. RODRIGUEZ. Well, let me characterize it. We caught ourselves.

Mr. CARTWRIGHT. Caught yourselves and you reported yourselves——

Mr. RODRIGUEZ. That is correct, Congressman.

Mr. CARTWRIGHT. —is that right?

Mr. RODRIGUEZ. Yes.

Mr. CARTWRIGHT. And that was all out of an effort to be candid with the tribunal in Texas.

Mr. RODRIGUEZ. That is correct, and also, frankly, to be fair with our customers and let them know exactly where they stood with respect to their cases.

Mr. CARTWRIGHT. And then you went to the people that got the 3-year work authorizations and started to explain to them that they didn't—they weren't getting 3 years, they were getting the 2 years, as they supposed to.

Mr. RODRIGUEZ. Each and every one of them, Congressman, was sent a letter advising them of the error, directing them to return their 3-year authorization and advising them that they would be given a 2-year authorization.

As I indicated, we have already recaptured a number of those 3-year work authorizations and are issuing 2-year authorizations.

Mr. CARTWRIGHT. All right. Well, Director Rodriguez, this here is Washington, D.C., and we don't blow anything out of proportion here.

Mr. RODRIGUEZ. Oh, no, sir. Never. Never.

Mr. CARTWRIGHT. But, nevertheless, some reports have indicated that the USCIS intentionally failed to comply with the Texas Federal Court's injection. Director Rodriguez, I just want to clear this up once and for all. How would you react to those criticisms?

Mr. RODRIGUEZ. Congressman, I'm a public servant. I am an officer of the court as an attorney. I think you have already observed, we actually owned up to the error that we had made. That makes it fairly clear that the intent all along had been to comply with the court's order.

Mr. CARTWRIGHT. All right. Now, as it currently stands, are you moving forward with plans to process DAPA applications at that facility?

Mr. RODRIGUEZ. In absolutely no respect, Congressman. As I said, we immediately, literally within minutes, halted all activities that amounted to the implementation of either the expanded DACA or the DAPA program immediately upon the court's injunction. No policies have been developed. No people have been hired. Nothing has been done to implement those programs.

Mr. CARTWRIGHT. Well, I thank you for your work, and I yield back.

Mr. RODRIGUEZ. Thank you, Congressman.

Mr. RUSSELL. The gentleman yields back.

The chair will now recognize himself for 5 minutes. I do appreciate your service. And when we have had you here in hearings before, it is obvious that you serve administration to administration in attempts to make our system both lawful and to secure our country.

However, that doesn't necessarily negate the fact that we still have problems. As Mr. Lynch pointed out earlier about those that were enlisted on fields of battle to gain their citizenship, I just might point out, having commanded some soldiers in foreign fields in that category, they were legally here in this country and had been properly vetted with no criminal histories.

And that's the essence of what we're getting at here today is within the constructs of enforcing the law and doing these things that we must do, we can't just let policies, political, regardless of administration, take away our immigration process and result in the crimes that we are discussing, penetration of our borders that weaken our national security and could open us up even to terrorist attack.

Mr. Roth, is it correct that the Department does not collect and analyze data on the use of prosecutorial direction?

Mr. ROTH. That is correct.

Mr. RUSSELL. Can you explain why this is significant?

Mr. ROTH. Yes. It's best to do it by example. For example, if ERO officers go into, say, a house to look for a specific violent felon, there might be three or four other individuals that would be susceptible to deportation. By the fact that those officers exercise prosecutorial discretion on those individuals means it's really invisible to the policymakers as to, one, who's exercising prosecutorial discretion and why? Is it uniform across the country? Should it be uniform across the country? Are there categories of individuals for, perhaps, we should not exercise prosecutorial discretion, in other words, try to refine the policy as we go? It's really a fundamental

sort of precept of good government that you ought to be able to record and measure the activities that you do.

Mr. RUSSELL. Well, did DHS explain what data it reviewed in setting those priorities for apprehension, detention, removal of undocumented immigrants, illegal aliens?

Mr. ROTH. They did not as far as prosecutorial discretion. Obviously, they capture a number of different data points of information with regard to the number of apprehensions, the number of deportations, those kinds of things, estimates of the number of individuals illegally in the United States. But they do not capture what we think is an important thing, which is the exercise of discretion.

Mr. RUSSELL. I think on this theme, part of the concern is that these data gaps weaken our immigration enforcement efforts. Director Saldana, I have read reports where ICE agents have complained they have not been able to access alien criminal history. What is being done to take corrective action on criminal history record access to make sure that they can see the problem before it becomes a problem?

Ms. SALDANA. And, actually, I've actually sat down and run through our data points and all the information that an officer may have available to them at the time of apprehension, booking, whatever. And there is criminal information that comes through the NCIC and the FBI database with respect to prior convictions.

I will say, the inspector general, that we agreed and concurred that we could be more systematic about our collection of data. But we do have a lot of information on the exercise of prosecutorial discretion. The issue, I understood, was it's not systematic. And that's what we're working towards. In other words, our lawyers, for example, because prosecutorial discretion can be exercised at any point of an immigrant's processing or going through the process, keep a record of when they exercise prosecutorial discretion.

With respect to detention and bond decisions, that exercise of prosecutorial discretion is recorded. The issue is and the reason we concurred with the ultimate finding was we are currently working—and have been actually for several months—on systematically recording that information and consistently. You can imagine a law enforcement officer out there in the field trying to do his job, knocking on a door at 6 in the morning and, yes, they may not stop to——

Mr. RUSSELL. I know you have had some efforts in the Intensive Supervision Program, and that's laudable. But the problem is what is being done to ensure that the Intensive Supervision Program is maintained until the immigration status of the individual is determined? Right now, there have been identified gaps where that supervision is neglected before their immigration status is done. And why is that? And what will you do to correct that?

Ms. SALDANA. Well, actually, that's what I'm saying. I think we have, and I think it was noted in the report, we have, the Department itself, not the agency, has been working to make this systematic actually across all the agencies, this information database, and have committed to working that. I'm not even sure right now I can remember where the report noted, the hope is that we can get that completed some time this year. But that is a huge effort that is

being undertaken by our policy people and our technical people. And I think it's very well underway. It just takes time.

Mr. RUSSELL. Well, I appreciate those answers. Unfortunately, as time moves by, we see some drastic consequences. I am out of time.

And I will now recognize the gentleman from California, Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chair. I would like to spend some time discussing an issue that is very important to me and to many Members of Congress and that is the continued detention of women, children, and infants in prison-like conditions. As you know, in 2009, the Department of Homeland Security shut down the Texas, Hutto, a jail-like family facility, because it was inhumane, because of reports of abuse, and harsh conditions.

So I was surprised in your testimony that you said your agency is opening up additional facilities. And that's particularly surprising to me because, as you know, the American Immigration Lawyers Association has stated that virtually all of these folks can qualify for asylum because they are fleeing terrifying conditions of violence, abuse, and crime, and they have a fear of removal.

You also know that last November, Homeland Security Secretary Johnson wrote in a memo, and "Field office directors should not expend detention resources on aliens who are pregnant or nursing, who demonstrate that they are primary caretakers of children or an infirm person or whose detention is otherwise not in the public interest."

So, in light of that guidance, I'm asking, why does ICE continue to expend precious resources to detain thousands of families en masse, including children and infants, in prison-like conditions?

Ms. SALDANA. Congressman, I want to be sure that I wasn't—that I didn't misstate something. We do not have more new facilities that are being opened. We did, we do have Dilley with additional space that was opened. It's the same residential center. We have three across the country: One in Dilley; one in Karnes; and one in Berks, Pennsylvania.

But with respect to your question, we, you know, up until actually the surge last summer and the spring, we had one facility essentially in Berks, Pennsylvania, with 100 beds. We had to get going quickly to ensure that we had someplace to put these families and the children in sanitary, good, humane facilities. I've been to both Karnes and to Dilley. I've toured the entire facilities. This is detention. It's not prison. I think, in fact, sir, that people have repeated the idea that there are, there is barbed wire at our family residential centers and that the guards are armed. One only has to step into the facility to see that those claims are false.

Mr. LIEU. Thank you. I think 135 Members of Congress would disagree with you. On May 27 of this year, I joined them and signed a letter that said to Secretary Johnson, we are troubled by the Department of Homeland Security's continued detention of mothers and children in secure, jail-like facilities. And it describes some of what happens. We are disturbed by the fact that many mothers and children remain in family detention, despite serious medical needs. In the past year. We have learned of the detention of children with intellectual disabilities, a child with brain cancer, a mother with a heart disorder, and a 12-year-old child who has

not eaten solid food for 2 months. We also learned of a 3-year-old child who was throwing up for 3 days and was apparently offered water as a form of medical treatment. It was only after the child began throwing up blood on the fourth day that the facility finally transferred her to a hospital. This is simply unacceptable. We cannot continue to hear reports of serious harm to children in custody and do nothing about it.

So, Mr. Chair, I would like to enter this letter into the record.

Mr. RUSSELL. Without objection.

Mr. LIEU. I would also like to enter a letter into the record dated June 1, 2015, from 33 Members of the Senate that says similar things. And then I would like to quote from this report, one of many, called "Locking Up Family Values Again," a report on the practice of family detention by the Lutheran Immigration Refugee Service and the Women's Refugee Commission.

Mr. LIEU. It opens up with a quote from the advocacy director of Human Rights Watch: Karnes was quite the visit for me. There's nothing like walking into a prison, and the first thing you hear is a crying baby, two things that should never go together, never ever.

So I note in your testimony that you call these facilities family residential centers. It is so positive sounding. It's like a place you might see at Disney World. These are actually jail-like facilities. They should be called family prison facilities or family detention facilities or family jail facilities but not family residential centers. And every time you use that term, you're misleading the American public. So I'm going to ask you, will you stop using that term and call it what it is?

Ms. SALDANA. No, sir. Have you visited——

Mr. LIEU. Just note, now that you are on notice, every time you use that term, I believe you will now be intentionally misleading the American public.

And I yield back.

Ms. SALDANA. I'm sorry you feel that way, Congressman. I would love to take you through to one of our centers.

Mr. LIEU. Me and 135 Members of Congress feel that way and 33 Members of the Senate still feel that way.

Mr. RUSSELL. The gentleman has yielded back.

And the chair will now recognize the vice chairman, Mr. Mulvaney from South Carolina, for 5 minutes.

Mr. MULVANEY. Thanks very much. Reset the clock please.

Ms. Saldana, who do you report to?

Ms. SALDANA. The Secretary of the Department of Homeland Security, Jeh Johnson.

Mr. MULVANEY. And then he reports to the President?

Ms. SALDANA. Yes, sir.

Mr. MULVANEY. Great. Could we run the video please?

You have a chance to follow along on the video screen for the next 2 minutes or so.

Let me follow up on a couple different things then. You said before that there were communities and local governments that were denying you access. Tell me about that.

Ms. SALDANA. This is one of the challenges I mentioned in my opening statement, sir. And I enlist the help of anybody that I can get help from on this issue. Because our biggest priority is crimi-

nals, convicted felons in particular, we need to work with State and local jurisdictions who are apprehending undocumented workers for offenses against State and local law. They have them in their custody. We can now communicate with the State and local jurisdiction and get some notice in advance through our detainer request to let us know that they're about to release them because they've served their State custody sentence and that we can take possession of them because of their violation of the law, and now we have a convicted criminal here.

Mr. MULVANEY. But they're denying you the ability to do that?

Ms. SALDANA. Some jurisdictions are.

Mr. MULVANEY. Why?

Ms. SALDANA. I can't speak for them. I will tell you it is, some of them have policies and laws that are——

Mr. MULVANEY. Do you believe that you have—I'm sorry to cut you off—do you believe you have the legal right to force them to comply with your request?

Ms. SALDANA. We do not have, I cannot say that the detainer notices are mandatory. They are definitely discretionary.

Mr. MULVANEY. Would it surprise you if the administration had taken a different position on that in the recent past?

Ms. SALDANA. Well, we have argued that, and there's pending litigation everywhere on this topic. I think you may be familiar with the Oregon case. But we are trying to work——

Mr. MULVANEY. Would it help you if we clarified the law to make it clear that it was mandatory that those local communities cooperate with you?

Ms. SALDANA. Thank you, amen, yes.

[video shown.]

Mr. MULVANEY. Thank you. That was Thursday, March 19. Before the papers got printed the next morning, you had retracted that statement. And you went on to say that any effort at Federal legislation now to mandate State and local law enforcement's compliance with ICE detainers will, in our view, be highly counterproductive. So my question is, after you gave that testimony, did you talk to Jeh Johnson or anyone in his office?

Ms. SALDANA. Yes, I have.

Mr. MULVANEY. Okay. I'm sorry, let me be more clear. Between the time that you gave that testimony and the time you retracted that statement later that afternoon, did you talk to anybody at Jeh Johnson's office?

Ms. SALDANA. Yes.

Mr. MULVANEY. What did they tell you?

Ms. SALDANA. What did they tell me? They asked me what I meant by that. And that's what my statement was. It was not a retraction, sir.

Mr. MULVANEY. Oh, no, it was absolutely a retraction.

Ms. SALDANA. It was a clarification of the fact that, I'm used to the law enforcement——

Mr. MULVANEY. I can play it back again, Ms. Saldana, if you want to. But everybody here knows it was a retraction. That's fine. There's nothing wrong with retracting statements. People do it all the time. But I asked you if you would like some help in getting

the localities to cooperate with you, you said, "Thank you, Amen, yes." And we all said: Great, we think we can do that.

And that night, you said any effort to do that would be counterproductive. And I'm asking you, did Jeh Johnson ask you to change your statement?

Ms. SALDANA. He did not.

Mr. MULVANEY. Did anybody else ask you to change your statement?

Ms. SALDANA. Change the—no.

Mr. MULVANEY. Did Jeh Johnson ask you to clarify your statement?

Ms. SALDANA. We discussed a clarification to make sure people understood that we need to work with State and local governments to ensure public safety in our communities.

Mr. MULVANEY. So when I asked you if we could help you by requiring State and local governments to cooperate with you and you said, "Thank you, Amen, yes," that meant, "Thank you, Amen, no," is that what you're telling me now?

Ms. SALDANA. No.

Mr. MULVANEY. Do you still want us to help you force the localities to cooperate with you on turning over criminals to your agency?

Ms. SALDANA. Sir, the forcing part is the issue. The forcing is not going to bring these people to the table. It's the efforts of all of us to make clear that this new program——

Mr. MULVANEY. Would you like us to pass a law that would require local governments to turn dangerous illegal immigrants directly over to ICE?

Ms. SALDANA. No.

Mr. MULVANEY. Why not?

Ms. SALDANA. Because we're in the middle of—not only myself and our employees at ICE——

Mr. MULVANEY. You have given testimony that says——

Ms. SALDANA. May I finish, sir?

Mr. MULVANEY. No. You may not. You have given testimony that says that one of the reasons you're concerned about the lack of cooperation is the safety of your agents. If we were to pass a law that would require towns and cities to turn dangerous criminal illegals directly over to your agents, would that make your agents safer?

Ms. SALDANA. We're working right now with those State and local jurisdictions in order——

Mr. MULVANEY. Great answer to a question I did not ask. If Congress were to pass a law to do that, would your people be safer?

Ms. SALDANA. If you passed a law requiring them?

Mr. MULVANEY. Yes.

Ms. SALDANA. I don't know that that can happen, sir, because we're in the middle of discussions with State and local——

Mr. MULVANEY. I didn't ask you that. If we did it, would it make your—we all know the answer, and the answer is yes. I will get a chance to ask you the last question, the question is this, apparently either you or Jeh Johnson wants to put the politics ahead of the safety of your people. And I find that absolute unacceptable.

Thank you, Mr. Chairman.

Mr. RUSSELL. The chair now recognizes the gentlelady from Illinois, Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair. Ms. Saldana, would you say what you wanted to say?

Ms. SALDANA. Yes. And that is my interest is in public safety and the safety of our officers. And if we are allowed a period of time to work with State and local jurisdictions in order to accomplish what I hope this committee wants to accomplish, and that is removing serious criminal convicted aliens from the United States, then that's what we're working towards. And that's how we got Los Angeles to say they would cooperate with us and Contra Costa, as well, in California. And we're working with several other jurisdictions. Always best, always best to try to get people to come to the table and discuss matters than to force things down their throats.

Ms. KELLY. Thank you.

Mr. Roth, I have reviewed your report from last month on the Department's need to strengthen data collection for its enforcement efforts. I think we all agree that, ideally, DHS would always be collecting more, not less, data. I would like to explore how this can best be done when resources may already be stretched thin. Last November, the Department's memo on exercising prosecutorial discretion stated, "It is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources."

Director, do you agree with that?

Ms. SALDANA. Yes.

Ms. KELLY. And can you explain specifically how the use of prosecutorial discretion helps preserve ICE's resources?

Ms. SALDANA. As I testified earlier, I am, up until December 16 or 22, I was the United States attorney for North Texas, responsible for 100 counties, working with 100 different jurisdictions locally, as well as local police departments. I had the responsibility for over 3,000, the enforcement of over 3,000 Federal statutes as a United States attorney. There's no way with 100 lawyers that I could bring to bear enforcement of all those laws.

So part of my job, and it's a difficult part, is deciding which cases will have the greatest impact on community safety because I can't take every one of them. That is the very reason why these executive actions the Secretary announced on November 20 are essential because we have a multibillion dollar budget, almost $6 billion, but there are 11.5 million people in the country unlawfully. We have over 2 million in process, at one stage or another of immigration proceedings. There is no way, I would think, that this committee would support funding the removal of each one of those because it would cost billions and billions of dollars. So prosecutorial discretion is just essential.

Ms. KELLY. And how frequently would you say a typical ICE agent exercises this discretion on the job?

Ms. SALDANA. Every day it's a part of their job. And they come across different situations at all times.

Ms. KELLY. Thank you.

Mr. Roth, in your written testimony, you said: Given the shear number of removable aliens and the finite resources available to re-

move them, DHS has decided it must focus on those who pose the greatest risk.

As a former prosecutor, you used prosecutorial discretion many times, isn't that right?

Mr. ROTH. That's correct.

Ms. KELLY. Would you agree that this discretion involves making judgment calls?

Mr. ROTH. Absolutely.

Ms. KELLY. And, Mr. Roth, in writing the May 4 report, did your office conduct a cost-benefit analysis as to how more discretion data would improve enforcement outcomes, and why or why not?

Mr. ROTH. We were not able to simply because we don't know how often prosecutorial discretion is used. I think, as Director Saldana noted, we know how much is used later on in the process, when ICE lawyers, for example, take people out of the system. The thing that we don't know—and we think we should know, and the Department agrees that they should know—is how often that discretion is exercised at the very point of encounter, which, as you know, would be the most cost-effective way to do it. But until we actually understand what we're talking about, it's impossible to do a cost-benefit.

Ms. KELLY. So DHS responded to a draft of the inspector general's report by stating this data project will, "provide a framework for measuring and evaluating the Department's enforcement actions from a range of perspectives."

Is it fair to say that sometimes the use of this discretion can be difficult to quantify?

Mr. ROTH. The number of times you use the discretion should be able to be quantified. Now, the reasons that you use it or the judgment that is used is, obviously, something that will vary depending on sort of what situation the officer has. But the raw numbers themselves, and if I could just use an example, we wrote an audit of the workforce enforcement that ICE does. And there they do collect statistics. And one of the things that jumped out at us in that audit was the fact that, for example, New Orleans 5 percent of the time imposed fines, yet Chicago did it 35 percent of the time. That raises the obvious question, how is Chicago different than New Orleans? It might be perfectly appropriate. But it certainly raises questions that you want to ask. So until you collect that data, though, you're not even going to be able to understand which questions you should ask.

Ms. KELLY. I'm out of time. Thank you so much.

Mr. RUSSELL. The chair now recognizes the gentleman from Georgia, Mr. Hice, 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

Ms. Saldana, do you have any idea how many convicted criminals have been arrested by ICE this year?

Ms. SALDANA. I believe that number is, let's say for 2014, it's 177,960. About 56 percent of those that were removed from the country. Are you asking for 2015 thus far, sir?

Mr. HICE. Yes, ma'am.

Ms. SALDANA. I don't have that readily available but I'm happy to provide it.

Mr. HICE. I would appreciate that. Would you have any idea how many have been released this year?

Ms. SALDANA. This year we have I think somewhere in the neighborhood of—actually, I don't have that number, sir.

Mr. HICE. I'm assuming, then, you don't have any projections this year from previous years?

Ms. SALDANA. For?

Mr. HICE. For how many are going to be arrested, how many are going to be released.

Ms. SALDANA. No. Projections?

Mr. HICE. Yes.

Ms. SALDANA. No, we don't.

Mr. HICE. Okay. Well, based on the last couple of years, there's been over 50,00 released. So it would be my assumption, then, we will continue down that trend. Last time that we had, that you appeared here, I had spoken to the sheriff of Gwinnett County, Georgia, which is one of the top five counties in the country dealing with the problem of illegals being released in their county. I was told by the sheriff before coming in here that his department has had no communication whatsoever with Homeland Security or ICE before criminals have been released back into his county. We spoke about that, and you assured me that you would start informing local law enforcement agents when criminal aliens are released back into their communities. Is that system—and, in fairness, you said you didn't know when that would occur. My question is, is that system in place now?

Ms. SALDANA. Well, I think what I said was: It is not systematic. We have relationships all over the country where people pick up the phone and call each other.

What I want is a systematic process. That's what I'm always interested in, in establishing systems and procedures that will assure that. That's what that Law Enforcement Notification System is about that I mentioned in my opening statement, LENS, which we have tested already in Texas, Louisiana, and one other State, Virginia, I think, those three States. And we plan to have all the States connected to a systematic notification system by the end of the year.

Mr. HICE. Well, your comment to me was that your Department, your agency would be informing local law enforcement agents and departments when you release criminals back into their communities. And that is not in place still?

Ms. SALDANA. That has begun, sir, in three States, Texas included, where we have a substantial amount of activity. It is——

Mr. HICE. When is it going to be completed, I want to know next time I call one of my sheriffs, that they will be able to say to me that you contacted them, your Department contacted them when thieves, murderers, rapists, whatever, have been released back into their communities.

Ms. SALDANA. As I said earlier, by year end, we should have the entire country covered. And your department will get a phone call this afternoon.

Mr. HICE. Okay. So you are saying to this committee that by the end of the year, every local law enforcement agent throughout the

country will be notified before an illegal is released back into their community?

Ms. SALDANA. The way I described it, sir, it is a notification system that goes through the State. You know, we can't, I don't know, we have 254 counties in Texas, which is a large number. What we ask them to do is to connect up with the State notification system. We give the information to the State. And the State has already in place——

Mr. HICE. So local law enforcement will not be notified, the State will. So it will be left to the State to communicate it abroad?

Ms. SALDANA. Yes. And we're discussing it with the Governors of those States. And people who implement the system, they're more than happy to do this.

Mr. HICE. Does ICE or any other agency in our government monitor the activities of criminals following their release?

Ms. SALDANA. Many of them are released with conditions, including supervision, reporting in, ankle bracelets, other conditions that are imposed in making the decision to release somebody under those conditions.

Mr. HICE. This is an issue that I think people are sick and tired, Americans cannot fathom, cannot understand why illegal individuals in this country who are repeat offenders of crime are continually released back in their communities. They shouldn't be in the country the first place, let alone walking freely in our communities to the tunes of tens and tens and tens of thousands.

And, Mr. Chairman, I just express my great concern with this. And I yield my time.

Mr. RUSSELL. The gentleman yields back.

The chair now recognizes the gentlelady from New Mexico, Ms. Lujan Grisham, for 5 minutes.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

I'm going to talk about a couple of folks in my district. One young woman, Yuridia Loera was brought to this country when she was 2 years old. She currently attends the University of New Mexico, my alma matter. Because of DACA, frankly, she was able to travel to Nicaragua and volunteer at a nonprofit for underprivileged children. Now, Yuridia wants to attend medical school and provide health care to underserved rural communities. And given that that reflects the entire State and we are in dire straits currently about making sure that we can meet just primary care access issues pre-ACA, during ACA, and the growing number of minority individuals in a minority-majority State, this is a wonderful thing in a State like mine and I can tell you in the Southwest in general.

Another woman, Marian Mendez Setta is a senior at UNM and she's studying psychology and philosophy with a concentration in pre-law. And maybe she'll go to my law school also at the University of New Mexico. She comes from a low-income family. And because of DACA, she's able to work to not only pay for her school, but she helps her parents out financially as well. I do the very same for my mother, very strong cultural values in my Hispanic community.

Now, Chairman Chaffetz, I think, did an interesting thing in this committee, and we're looking all around us at these beautiful walls

with images of hard-working individuals who are dedicated to their work and their families and their communities. Considering that Congress failed to act on comprehensive immigration reform to ensure that everyone has the opportunity to work, learn, and contribute to the country, I support, frankly, the President's actions on immigration.

However, I have heard several concerns about inconsistencies in how the President's actions are being applied. Immigration advocacy groups have been tracking reports concerning violations of the priorities memo. And after receiving hundreds of phone calls, they are hearing that ICE field offices may not be applying the priorities appropriately. Furthermore, on April 15, over 100 organizations wrote to DHS, Secretary Johnson, expressing similar concern. That letter states, "we have received numerous reports indicating that several ICE offices are failing to comply with the priorities memo." Even people who do not fall under any priority whatsoever have been removed. Mr. Chairman, I would like to enter this letter into the record.

Mr. RUSSELL. Without objection.

Ms. LUJAN GRISHAM. Thank you.

On top of this, we have most recently heard concerning reports that ICE may be mining DMV databases to target low or non-enforcement priority individuals, issues that I heard about well before I was elected in 2012, not particularly related to this priorities memo but consistent in patterns and practice that I find not only very concerning but offensive.

Even as we speak, immigration advocates are fasting in protest at ICE headquarters just down the street over ICE's failure to apply prosecutorial discretion in line with the memo.

Director Saldana, these mounting reports are extremely upsetting. Can you explain to me the inconsistencies in how the priorities, frankly, are being applied on the ground?

Ms. SALDANA. Yes, of course.

As a matter, again, we're talking about priorities and the fact that decisions on even arresting, removal, bond are all made on the basis of these priorities and the judgment of the person of all——

Ms. LUJAN GRISHAM. Are you arguing that there are no inconsistencies? Because so far, your statement to me is it's being applied consistently, correctly, and adequately. I just want to make sure I'm following you.

Ms. SALDANA. No. No. No. I'm sorry, I didn't mean to say that if I did. What I'm saying is every case is different, Congresswoman. Every case is different. We have specifically trained all our folks on the legal side and on the officer side to look at all the facts and circumstances of that matter. So——

Ms. LUJAN GRISHAM. I want to reclaim part of my time. Does that mean that you don't think that—do you agree that you're applying the priorities memo effectively? Because I don't think that you are. And what I really want to know is what you can do to assure me and this committee of your full compliance.

Ms. SALDANA. As an example, the perception is not the reality. Ninety-six percent of the people we currently detain in our facilities meet priorities 1 and 2.

Ms. LUJAN GRISHAM. I'd have to say that I don't believe that that's accurate in my community. And I will demonstrate that in a much more direct way.

And I would like, Mr. Chairman, for that to also be included as part of the record.

Mr. RUSSELL. Without objection.

Mr. RUSSELL. And the gentlelady's time is now expired. Votes have just been called.

However. I do believe that we will have time to get through the next two members' questions.

And, with that, the chair will now recognize the gentleman from North Carolina, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

Obviously, today, we are talking about a very emotional issue, this goes beyond policy and really has to deal with human life.

I'm very grateful for Mr. Roth, Mr. Rodriguez, and Ms. Saldana for coming in today. But I do believe that we have got to look at very closely as far as some of the problems we are seeing.

The gentlewoman from New Mexico just talked a young lady from DACA and how it was working out for her. Let me tell you another example of someone from the—that was released even after a drug charge, a gentleman by the name of Emmanuel Hernandez, in my home State of North Carolina, murdered four people. This was after he was a known gang member and after he was picked up with a drug offense. He applied for DACA, and his deportation was halted.

Ms. Saldana, earlier you brought in a book and laid it there on the desk. The book basically is the Immigration National Act. And I don't know if you're familiar with section 236–C, which is basically the detention of criminal aliens. Are you familiar with that section, Ms. Saldana?

Ms. SALDANA. Yes.

Mr. WALKER. Let's take a look at that. And I'll read what it says. It says: The Attorney General shall take into custody any alien who is, A, is inadmissible by reason of having committed any offense covered in section 212 and is deportable by reason of having committed any offense covered in section 237. There's four offenses under that: Aggravated felony, controlled substance, firearm possession, and espionage. That's custody.

Now let me jump to the section that is No. 2, that's release. It says: The Attorney General may release, okay, only—"only," very key word—only if the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.

Now, what is confusing to many of our American citizens is why the lack of consistency here. So my question for you today is, can you guarantee, is it safe that the most serious, noncitizen illegals and aliens who have been recently ordered to be deported, will they be removed under the President's executive actions?

Ms. SALDANA. They will, sir. But with respect to those that are under an immigration court, I can't predict what the immigration court will do. And, of course, that's a large portion of the people that come through our proceedings. They end up claiming some ex-

emption or seeking asylum or something. Their considerations are with USCIS and with the immigration courts.

Mr. WALKER. But according to the Immigration National Act that you brought in and the paragraph that I just read under release, that contradicts what the Attorney General says as far as grounds to be released. Do you see the contradiction in that?

Ms. SALDANA. We're talking about the mandatory release—mandatory custody provisions?

Mr. WALKER. Yes.

Ms. SALDANA. We abide by those.

Mr. WALKER. Then please tell me why there is a growing number, millions of noncitizens continue to remain in this country illegally, of which some, obviously, are criminals, how does the Department expect to address this increased danger to our citizens? Tell me what is being done proactively to follow basically the letter of the law by the Attorney General.

Ms. SALDANA. Let me mention the, again, the, my guidance to the field on March 13. I've actually visited with all the field office directors—there's 26 of them, I believe—across the country and have advised them how it is we're going to go about our business and with respect to the considerations for any individual being flight risk and safety, public safety. It's just like any bond decisions that a court would make. And we have trained them accordingly as well.

And then I want to point out the fact that I've established this system back in March which specifically sets an extra enhancement of supervisory approval over any release of a convicted criminal that is being considered by a supervisor with a signoff, by a pool of experts that I have at headquarters who come in and review all of these releases. I'm talking about March of 2015. The data that has been quoted has been information relating to fiscal years 2008 through 2014. I can't speak for what happened then. But I do know that we take this very seriously at the agency. And that's why I instituted that additional supervisory review of release of criminals.

Mr. WALKER. Final question before I run out of time here, what is the recidivism rate for all aliens who were previously apprehended, subsequently released, and who have committed a new crime? Do you have that number?

Ms. SALDANA. I don't have it with me, but it's very low, I mean, compared to certainly the recidivism rate in the general——

Mr. WALKER. Would you like to take, is there a round number that you would like to suggest what it is?

Ms. SALDANA. I can't. I won't speculate, sir. I can provide that number.

Mr. WALKER. Thank you, Mr. Chairman.

I yield back.

Mr. RUSSELL. Gentleman or, I'm sorry, the chair now recognizes the gentlelady from D.C., Ms. Norton. And I would ask for brevity so that we can accommodate the last two members here.

Ms. NORTON. I will remember that, Mr. Chairman.

There's concern in the District of Columbia because the D.C. Council passed a law, it allows driver's licenses. There have been some reports in the papers about ICE's use of DMV data to initiate

removal proceedings against immigrants. I would have some concerns. And I'm wondering if you can tell me whether DMV databases are being used for removal purposes.

Ms. SALDANA. Not for removal purposes, ma'am. I will tell you, since I've been in this position, since January, I've had to run down more allegations and reports in the media that end up yielding a case quite contrary to that which was reported.

Ms. NORTON. You do have access, though, to these databases?

Ms. SALDANA. We can check in with the Departments of Public Safety of the different communities, may be required as part of an investigation, for example. But not for removal purposes.

Ms. NORTON. So you have to be granted them by the jurisdiction?

Ms. SALDANA. I'm pretty sure that it's the department of public safety itself whatever jurisdiction we're in that maintains that. And we would communicate with them to see if we could get that information.

Ms. NORTON. And if they wanted to refuse them, they could?

Ms. SALDANA. Yes.

Ms. NORTON. That's very important to clarify.

Mr. Chairman, I have here and would like to ask be entered into the record the briefs filed in Texas v. The United States. There are 15 States plus the District of Columbia that have filed briefs in this case that say that there would be improvement in their own economies. And I ask that these briefs be entered into the record.

Mr. RUSSELL. Without objection.

Ms. NORTON. Thank you, Mr. Chairman. I yield back.

Mr. RUSSELL. The gentlelady yields back.

The chair now recognizes the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Ms. Saldana, Mr. Walker asked you earlier about the recidivism rate for aliens who were previously apprehended, subsequently released, and who have committed a new crime. You said you do not have those numbers available?

Ms. SALDANA. We have looked at them because we had this question previously. And I just remember that it was comparative to the regular criminal——

Mr. CARTER. All right. Can you provide this committee with those numbers please?

Ms. SALDANA. Yes. Absolutely.

Mr. CARTER. Okay. Mr. Chairman, will you note that those numbers will be provided to us?

Mr. RUSSELL. So noted.

Mr. CARTER. Thank you. Thank you.

Mr. Roth, in your report, you found that ICE field officers said they might not have access to an individual's criminal history or their country of origin. Is this correct?

Mr. ROTH. The criminal history in their country of origin. For example, if it's a Mexican national, they may not be able to have the criminal history that may have occurred within their country of origin.

Mr. CARTER. So what happens when an ICE field agent doesn't have this history?

Mr. ROTH. Well, they're not able to evaluate it in the use of their discretion.

Mr. CARTER. Do other ICE officials have this, that information?

Mr. ROTH. This is a vulnerability that we found during the course of our fieldwork that we notified ICE of. But my understanding is largely the answer is no.

Mr. CARTER. Why would the field officers not have that information but some of the other officers may have it?

Mr. ROTH. Well, I'm not 100 percent sure as to which countries and what parts of ICE may have access to that information.

Mr. CARTER. Ms. Saldana, why would some of the ICE field officers not have access to some of this information?

Ms. SALDANA. Well, it needs to be provided by the country—by the country in question. And some countries are more cooperative with the United States than others.

Mr. CARTER. So we just depend on them to give it to us? We don't demand that they give it to us?

Ms. SALDANA. Oh, we can demand. But there's not much we can do. I'm working with the Department of State to try to help with respect to countries that have been recalcitrant in their cooperation with us to urge them to assist us. I even went to China a couple of months ago to sign a repatriation agreement, which is a very notable event, where they agreed to come to the United States, send two people to the United States to actually assist with repatriation. So we're making inroads. But, diplomatically, it's a huge world.

Mr. CARTER. I understand. But how can we expect the ICE field agents to apply prosecutorial discretion without access to those records? That's a lot to expect out of them, don't you think?

Ms. SALDANA. Yes, it is, sir. Again, as I said earlier, every decision we make on custody bonds, decisions to remove or put someone in immigration proceedings is made on the basis of the information we have available. That's——

Mr. CARTER. What if the information is not available? What do we do then?

Ms. SALDANA. With respect to other countries, we can try MLAT, our procedure through countries asking for information regarding a person's criminal history. We can try gentle persuasion. But when push comes to shove, you all have provided, the Congress has provided for certain punitive measures to be taken against recalcitrant countries. But that's something the Department of State is involved in.

Mr. CARTER. Do we, so we ask the illegal aliens, we ask their country for their criminal records?

Ms. SALDANA. Yes.

Mr. CARTER. But we don't always get it?

Ms. SALDANA. Right.

Mr. CARTER. And if we don't get it, then we're just—we can't—we can't use discretion. I mean, I really—you know, we want to do everything we can to give our field agents the opportunity to perform their work and to do their duty. Yet, if we can't get the information, I don't know how we're going to do that. Would you agree? I mean, that's a real problem.

Ms. SALDANA. It is a real problem. And we certainly appreciate any help this committee can provide.

Mr. CARTER. What can we do? Tell us what we can do to help you.

Ms. SALDANA. Well, I mean, I think there are statutes on the book that provide for working with our countries. And when they don't cooperate, perhaps going further with respect to some punitive measures. But that's not something ICE does. That's something the Department of State is charged with, the laws that you all, the Congress, has passed with respect to that.

Mr. CARTER. Okay.

Mr. Chairman, that's all I have today. Thank you. I yield back.

Mr. RUSSELL. The gentleman yields back. I would like to thank our witnesses for taking the time to appear before us today.

Seeing no further business, without objection, the subcommittees stand adjourned.

[Whereupon, at 3:50 p.m., the subcommittees were adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Congress of the United States
House of Representatives

May 27, 2015

Secretary Jeh Johnson
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

We are troubled by the Department of Homeland Security's continued detention of mothers and children in secure, jail-like facilities. For nearly one year we have been closely following the troublesome conditions of confinement, due process issues, and serious developmental and medical concerns of those being detained. Many of us have raised these matters in writing and continue to bring concerns to DHS through individual case examples and systemic complaints. We believe your Department has heard many of our concerns but has not fully grasped the serious harm being inflicted upon mothers and children in custody. We believe the only solution to this problem is to end the use of family detention.

The recent announcement by Immigration and Customs Enforcement on family detention does not acknowledge that even detention for a brief period of time, especially in a secure setting, is detrimental to child development. Based upon his 39 years of clinical experience and interviews with families at the Karnes Residential Center, the Dean of Social Work at the University of Texas, Dr. Luis Zayas, found that the children at Karnes are "facing some of the ***most adverse childhood conditions of any children I have ever interviewed or evaluated.***"[1] In his affidavit, Dean Zayas concluded that "[d]etention has had serious and long-lasting impacts on the psychological health and well-being" of the families at Karnes and that these impacts were evident in families who were detained for as little as two weeks.

We believe it is undeniable that detention in a secure facility is detrimental to mothers and children and is not reflective of our values as a Nation. Children require special protections and should not be placed in jail-like settings.

We are particularly troubled by the current practice of family detention because the detained population is largely comprised of refugees fleeing violence and persecution in their home countries. We have heard horrific stories of sexual assault, intense physical violence,

[1] Declaration of Luis H. Zayas (December 10, 2014) *available at:* http://chu.house.gov/sites/chu.house.gov/files/documents/Declaration%20of%20Luis%20Zayas_0.pdf

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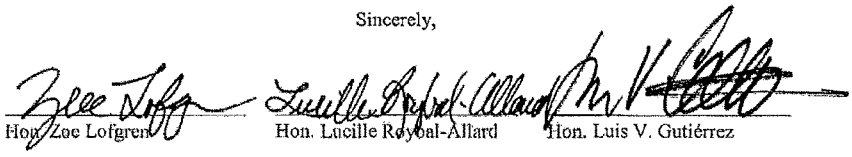
kidnapping, and sex trafficking. These stories come not only from adult mothers, but also from young children who have been victims of such abuse. Detaining children who have already been victims of abuse exacerbates past trauma and raises unique and serious problems.

DHS has repeatedly used deterrence as a justification for the existence of family detention, but this theory has not been substantiated with compelling evidence. Moreover, a federal court in the District of Columbia rejected this argument and found that DHS cannot detain asylum-seeking mothers and children from Central America for the purpose of deterring other migrants from entering the country.[2] We agree and believe that the hypothetical recurrence of a future refugee flow does not justify the very real harm being inflicted upon mothers and children in a secure setting.

Lastly, we are disturbed by the fact that many mothers and children remain in family detention despite serious medical needs. In the past year, we have learned of the detention of children with intellectual disabilities, a child with brain cancer, a mother with a congenital heart disorder, a 14-day-old baby, and a 12-year-old child who has not eaten solid food for two months, among many others. Recently, we learned of a three-year-old child at the Berks County Residential Center who was throwing up for three days and was apparently offered water as a form of medical treatment. It was only after the child began throwing up blood on the fourth day that the facility finally transferred her to a hospital.[3] This is simply unacceptable. We cannot continue to hear reports of serious harm to children in custody and do nothing about it.

We must prioritize the health and well-being of mothers and children while also prioritizing our enforcement objectives. Detaining mothers and children in jail-like settings is not the answer. We have an opportunity to do the right thing and are confident that DHS has the capacity to honor our Nation's longstanding commitment both to the protection and well-being of refugee families and to law enforcement and public safety.

Sincerely,



Hon. Zoe Lofgren Hon. Lucille Roybal-Allard Hon. Luis V. Gutiérrez

[2] RILR, *et al.*, v. Johnson, Legal Documents, (updated Feb. 23, 2015) *available at:* https://www.aclu.org/cases/rilr-v-johnson?redirect=immigrants-rights/rilr-v-johnson.

[3] Ed Pilkington, *Child immigrant detainees: 'There's an overwhelming sadness among them,'* The Guardian, May 12, 2015 *available at:* http://www.theguardian.com/us-news/2015/may/12/immigration-detention-centers-children

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Hon. Debbie Wasserman Schultz

Hon. Brad Sherman

Hon. Filemon Vela

United States Senate

WASHINGTON, DC 20510

June 1, 2015

The Honorable Jeh Johnson
Secretary of the Department of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

We appreciate that U.S. Immigration and Customs Enforcement (ICE) acknowledged in its recent announcement that the family detention system is in need of oversight and accountability. However, we believe the announced reforms do not go far enough. As many of us expressed to you in a letter last October, the prolonged detention of asylum-seeking mothers and children who pose no flight risk or danger to the community is unacceptable and goes against our most fundamental values.

Most of these families have come seeking refuge from three of the most dangerous countries in the world, countries where women and girls face shocking rates of domestic and sexual violence and murder. Treating these victims like criminals is wrong. The latest data from the United States Citizenship and Immigration Service Asylum Division confirm the misguided nature of this detention policy, showing that 88% of the families detained across the government's three family detention facilities have been found to have legitimate refugee claims by establishing a credible fear of persecution if returned to their home countries.

While these mothers and children wait their turn before an immigration judge, there are many alternatives to detention that are more humane, cost-efficient, and will keep families together. We are deeply concerned by the growing evidence that detention of young children, particularly those who have experienced significant trauma, is detrimental to their development and physical and mental health. That evidence has been reinforced by specific examples of individual children in these detention facilities struggling to eat or sleep, and exhibiting signs of serious depression.

We appreciate all that you have done to improve conditions at family detention facilities, however we do not believe there is any system of mass family detention that will work or is consistent with our moral values and historic commitment to provide safe and humane refuge to those fleeing persecution. We urge you to end the practice of presumptive detention of families and return to the policy of utilizing detention only as a last resort, when there is a serious public safety or flight risk that cannot be mitigated by alternatives to detention.

Sincerely,

Patrick Leahy
PATRICK J. LEAHY
United States Senator

Patty Murray
PATTY MURRAY
United States Senator

The Honorable Jeh Johnson
June 1, 2015

HARRY REID
United States Senator

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The Honorable Jeh Johnson
June 1, 2015

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United States Senator

ROBERT P. CASEY, JR.
United States Senator

The Honorable Jeh Johnson
June 1, 2015

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United States Senator

MARTIN HEINRICH
United States Senator

JACK REED
United States Senator

CHRISTOPHER MURPHY
United States Senator

BARBARA A. MIKULSKI
United States Senator

cc: The Honorable Sarah R. Saldaña, Director of Immigration and Customs Enforcement

April 15, 2015

The Honorable Jeh Johnson
Secretary, U.S. Department of Homeland Security

Re: Implementation of the November 20, 2014 prosecutorial discretion policy

Dear Secretary Johnson:

We write on behalf of immigrant, faith, and labor groups, as well as legal experts from across the country, to express concerns regarding the implementation of the prosecutorial discretion policy articulated in your November 20, 2014 memorandum, "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants" (Priorities Memo). We urge you to ensure that these new guidelines are implemented consistently and in a manner that ensures immigration enforcement is fair and just.

We are dismayed by recent statements by officials that contradict or undermine the goals of the Priorities Memo. Moreover, we have received numerous reports indicating that Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) offices are failing to comply with the Priorities Memo. Long-time resident business-owners, homeowners, workers, community leaders, and dedicated family members are being taken from their families, detained, and sometimes even removed from the country without a meaningful review of their prosecutorial discretion requests, or without even an opportunity to request discretion. Recent enforcement actions, such as Operation Cross Check, stoke fears within immigrant communities about a return to overly aggressive enforcement that runs counter to the humane approach to which this Administration has publicly committed.

To avoid repeating mistakes of the past, we strongly urge you to institute more robust and effective training methods, accountability mechanisms, and oversight procedures for all relevant Department of Homeland Security (DHS) components and, in particular, ICE.

DHS policy on prosecutorial discretion and enforcement priorities

On November 20, 2014, President Obama announced significant changes to our nation's immigration enforcement system including the release of the Priorities Memo. The changes responded to the widely acknowledged failure of the existing enforcement regime, and were intended to ensure that DHS "conduct[s] enforcement more humanely within the confines of the law."[1] It is well-established practice for law enforcement agencies to set enforcement priorities and exercise prosecutorial discretion. Such prioritization ensures the smart use of finite enforcement resources. If consistently and properly carried out, such policies promise to promote efficiency and fairness, thereby better protecting the public while improving faith in the integrity of the immigration system more generally.

[1] Press Release, The White House, Readout of the President's Meeting with Congressional Hispanic Caucus Leadership (March 13, 2014), *available at* https://www.whitehouse.gov/the-press-office/2014/03/13/readout-presidents-meeting-congressional-hispanic-caucus-leadership.

The Priorities Memo accomplishes these goals by focusing finite immigration enforcement resources on those who pose "a threat[] to national security, public safety, and border security" while deprioritizing those who do not.[2] The Priorities Memo establishes three categories of immigration enforcement priorities depending on the type of immigration or criminal law violations an individual has committed. The fact that an individual may have committed an offense or immigration violation at some time in the past does not automatically make that person ineligible to receive a favorable exercise of prosecutorial discretion. Instead, under the policy, immigration enforcement personnel must evaluate whether each and every individual qualifies for prosecutorial discretion at every relevant stage of enforcement proceedings.

The Priorities Memo specifies that DHS will pursue removal against an individual who engaged in conduct identified as a priority, *unless* mitigating factors or conditions apply, in which case the person is no longer an enforcement priority at all.[3] These "unless" clauses are included within every priority category. In that way, the Priorities Memo establishes a framework under which all individuals—including those who may appear to meet one or more priority factors but have strong equities and therefore do not constitute enforcement priorities—may receive a favorable exercise of prosecutorial discretion. The Priorities Memo describes some of the factors DHS personnel should consider:

> extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative.[4]

Importantly, persons whose conduct does not fall within *any* of the priority categories are not required to demonstrate mitigating factors at all. Rather, they are not to be removed unless an ICE Field Office Director determines that removal of a specific individual would "serve an important federal interest."[5]

Concerns about implementation of the prosecutorial discretion policy

Developments since the Priorities Memo was issued appear to validate our concerns. ICE Director Saldaña misstated the goals of the Priorities Memo in her recent testimony before the House Oversight and Government Reform Committee. Specifically, she testified that *all*

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[2] Memorandum from Jeh C. Johnson, Secretary of Homeland Security on Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants to Thomas S. Winkowski, Acting Director of U.S. Immigration and Customs Enforcement, et al. (Nov. 20, 2014), *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf [hereinafter "Priorities Memo"].

[3] For example, in the Priority 1 category, the memorandum states:

> removal of these aliens must be prioritized *unless*...in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the [noncitizen] is not a threat to national security, border security, or public safety and *should not therefore be an enforcement priority*.

Id. at 3 (emphasis added).

[4] *Id.* at 6.

[5] *Id.* at 5.

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"criminal aliens" should be deported.[6] That position contradicts the Priorities Memo, which requires that DHS review each and every case for prosecutorial discretion before pursuing removal.

The Administration deserves praise for clarifying that the Priorities Memo was unaffected by the preliminary injunction in *State of Texas, et al v. United States, et al.*, No. 1-14-CV-254 (S.D.Tex.).[7] However, there appears to be confusion within DHS ranks about how the policy should be implemented. Already, we have received numerous reports indicating that several ICE offices are failing to comply with the Priorities Memo. The failure to provide clear reasons for prosecutorial discretion denials combined with short review periods suggest that some field offices are not reviewing submitted evidence. We have also received reports that some ICE offices have recently detained individuals who had previously been released from custody despite the fact that their circumstances had not changed. Even people who do not fall under any priority whatsoever have been removed.

If left uncorrected, the poor implementation of prosecutorial discretion threatens to unravel the policy announced on November 20th. We ask you to ensure that implementation of the policy is consistent with the Priorities Memo throughout DHS immigration enforcement agencies.

Lessons from the 2011 prosecutorial discretion initiative

Our organizations closely monitored the implementation of the 2011 prosecutorial discretion policy issued by then ICE Director John Morton and were deeply disappointed. Some ICE offices implemented the policy effectively, while other jurisdictions required considerable pressure from local advocates to make any operational changes at all.[8] The 2011 memorandum was perceived as a failed attempt to set rational priorities and keep families together. Indeed, as late as February 2015, prosecutorial discretion had led to the closure of only 6.7 percent of all cases closed by the immigration courts, with wide variation from one court to another.[9] Based on prior experience, we believe without adequate training and accountability, and streamlined review processes, implementation of the updated prosecutorial discretion policy will once again be inconsistently and unfairly applied.

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[6] Transcript of March 19, 2015 hearing before House Oversight and Government Reform Committee, Homeland Security Department Policies and Procedures for Non-Citizens.

Representative Hurd: "So do you think all criminal aliens should be deported?"

Director Saldana: "Yes. If we encounter them, get our hands on them, sure."

[7] Press Release, Secretary of Homeland Security, Statement by Secretary Jeh C. Johnson Concerning the District Court's Ruling Concerning DAPA and DACA (Feb. 17, 2015), *available at* http://www.dhs.gov/news/2015/02/17/statement-secretary-jeh-c-johnson-concerning-district-courts-ruling-concerning-dapa; Press Release, Immigration and Customs Enforcement, DACA Statement (undated), *available at* http://www.ice.gov/daca-statement.

[8] Julia Preston, *Deportations Under New U.S. Policy Are Inconsistent*, N.Y. TIMES, Nov. 12, 2011, *available at* http://www.nytimes.com/2011/11/13/us/politics/president-obamas-policy-on-deportation-is-unevenly-applied.html?_r=0.

[9] *See* TRAC, Syracuse University, Immigration Court Cases Closed Based on Prosecutorial Discretion, Feb. 28, 2015, *available at* http://trac.syr.edu/immigration/prosdiscretion/.

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Prosecutorial discretion is being applied inconsistently or, in some cases, not at all

As the cases below illustrate, the implementation of the Priorities Memo during the past several months has led to the very injustices you structured this policy to avoid. We have received very few reports of ICE officers exercising discretion in favor of individuals who have negative priority factors under the Priorities Memo but satisfy the relevant "unless" clause and therefore do not constitute enforcement priorities. In addition to the well-known case of Pastor Max Villatoro,[10] we view the following cases as indicative of a troubling trend of DHS officers failing to consider the totality of the circumstances before taking enforcement action:

Individuals with no negative priority factors at all have faced enforcement action:

- **Henry David Alvarado Mendoza. Detained in October 2014 and removed in February 2015.**

  Henry David Alvarado Mendoza lived in Houston, TX continuously from 2005 until October 2014. He had a voluntary return in early 2005 to Honduras but came back into the country soon after. In October 2014, Mr. Alvarado was being driven to work by his wife when the car was pulled over, Border Patrol arrived, and he was taken into custody. Mr. Alvarado is married to a legal permanent resident and they have one U.S. citizen child together as well as one U.S. citizen step-child from his wife's past marriage. He also has two other U.S. citizen children from a different marriage. He is the sole custodial parent for the two children from his first marriage as their mother is no longer in the picture. He does not have a criminal history and is not an enforcement priority.

  When he was apprehended in October, DHS reinstated the previous removal order from 2005. A reinstated removal order does not, even if entered after January 2014, fall under any of the priorities set forth in the Priorities Memo.

  Throughout this process his attorney made several attempts to get an answer as to why Mr. Alvarado continued to be detained when he did not meet any of the enforcement priorities. Mr. Alvarado's attorney filed three separate written requests for release over a three-month span. The final written request was sent to the San Antonio field office on February 16, 2015. Ten days later, Mr. Alvarado's attorney received a response stating that her client was removed to Honduras on February 25, 2015.[11]

[10] Elise Foley, *Iowa Pastor Max Villatoro Deported After Community Rallies To Keep Him in U.S.*, HUFFINGTON POST, March 20, 2014, *available at* http://www.huffingtonpost.com/2015/03/20/max-villatoro-deported-n_6911610.html.

[11] For more information about Mr. Alvarado's deportation, *see* Lomi Kriel, *Immigration Order Muddle Leads to Wrongful Detention*, HOUSTON CHRONICLE, March 9, 2015, *available at* http://www.pressreader.com/usa/houston-chronicle/20150309/281479274884013/TextView.

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- **Huerta Molina, married and father of three children. Detained by ICE since July 2014.**

  Since July 2014, ICE has been detaining Huerta Molina at the Essex County Detention Center in New Jersey. Mr. Molina has lived in the United States continuously since 2005. He is married and has four children, three of which are U.S. citizens and one that is DACA eligible. Mr. Molina was the primary care taker for the children while his wife worked. When Mr. Molina was detained, his wife became the sole caretaker. Mr. Molina has a pending U visa application (from a violent crime that involved an arson attack against his family) that was verified as *prima facie* approvable by USCIS. Mr. Molina has one prior misdemeanor conviction from 2000 for an assault. This assault is not a "significant misdemeanor" and as a result would not trigger the enforcement priories. Mr. Molina also has a pending reasonable fear determination from an immigration judge which has been pending since October 2014. Mr. Molina is not currently removable because of this pending reasonable fear determination, which will not likely be decided until October 2015.

The following case examples reveal that ICE officers are failing to exercise discretion in favor of individuals who fall within the lowest enforcement priority, and who have factors that qualify them under the "unless" clause.

- **Mr. L, father and provider of three children, with no criminal history. Detained by ICE.**

  Mr. L, is a father and provider of 3 children, ages 16, 14, and 8. The two youngest are U.S. citizens. Mr. L was issued a final order of removal in the summer of 2014. However, Mr. L has no criminal history apart from two convictions for driving on a revoked license. Upon reporting for an order of supervision, Mr. L was taken into ICE custody and transferred to an ICE detention center in a neighboring state. He is married and has a solid employment history. He attends church and enjoys the support of his community. Mr. L has been continuously present in the United States since his only entry in 1999. Notwithstanding these equities, ICE denied Mr. L's request to stay his removal and continues to detain him.

- **Jose (pseudonym), father of U.S. citizen daughter. ICE declined prosecutorial discretion.**

  Jose has been in the U.S. since 2007. He entered the country on a visa, and has a young United States citizen daughter. He was charged as a visa overstay and granted voluntary departure on October 31, 2014. Prior to the end of his voluntary departure period, he filed for a stay as he believed he could apply for potential relief under the November 20th memo. However, the decision on his request for a stay was not made until after his voluntary departure period ended. When Jose went to ICE to learn the results of his stay request, he was detained. ERO believed Jose was a priority because he had a removal order entered after January 1, 2014. ERO confirmed that Jose was not otherwise considered a priority as he does not have any criminal convictions. His attorney asked

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OCC to join in a motion to reopen Jose's case but OCC declined, stating that Jose is a Priority 3 due to the recent removal order. OCC did not exercise any prosecutorial discretion in this case. The motion to reopen was ultimately granted by the Immigration Judge and Jose was released on an order of recognizance.

We have heard reports that ICE officers have taken a strict approach to certain crimes, especially DUIs. However, as noted above, proper implementation of the memo requires ICE officers to consider the totality of the circumstances in all cases. The cases that follow suggest that ICE officers are failing to consider equities by individuals with criminal convictions.

- **Mr. Pablo Fabian Cardenas, father of 2 young children. Deported after Operation Cross Check.**

  Mr. Cardenas lived in Philadelphia since 2000 with his wife and 2 children, ages nine and one. Mr. Cardenas was arrested during Operation Cross Check because of a 2009 DUI conviction and an order of deportation. He complied with all conditions and had not had any other interaction with the law since 2009. Mr. Cardenas was immediately transferred to Jena, Louisiana.

  Mr. Cardenas was a local business owner of an auto repair shop with his US citizen brother. His auto repair business made him the sole financial provider for his family. Mr. Cardenas received a removal order in 2014. On March 19, he applied for a stay of removal. Within hours, the officer informed the attorney the stay was denied. He was deported on March 20, 2015. Mr. Cardenas met a priority factor under the prosecutorial discretion memo, but had submitted evidence of equities demonstrating he was not an enforcement priority.

- **Mr. Sanchez-Ponce, a father and DACA eligible-man in detention**

  Mr. Sanchez is a twenty-four year-old father of a seven-year-old US citizen daughter, Ileana. A construction worker from Tennessee, he has lived with his family in Tennessee since he was 10 years old. His brother was granted DACA two years ago. In 2013, he was convicted for simple possession of marijuana and one count of paraphernalia possession. ICE detained him in October 2014 and transferred him to a facility in Jena, Louisiana. ICE refuses to release him or administratively close pending removal proceedings. Under the policy, Mr. Sanchez is not a priority and is eligible for DACA.

- **Elvis Omar Cano-Morales. A father and husband whose sole offense was an immigration-status crime.**

  Elvis was deported recently because of a re-entry conviction that occurred four years ago. Elvis came to the United States from Honduras in 2007 and settled in Kentucky where he met his future wife. In 2011, Elvis' father became ill and he returned to Honduras to take care of him. After his father's death, Elvis was apprehended returning to the United States. He was prosecuted and then deported. Elvis later returned to the

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United States and to reunite with his wife. They soon became the parents of a U.S. citizen daughter.

Elvis was detained by ICE at a bus station in Louisiana, while traveling for work to provide for his family. He tried to submit a request for a stay of removal but, because he lacked the filing fee, ICE rejected it. Instead of offering Elvis an opportunity to gather the necessary funds, ICE deported him.

Elvis's wife—who is currently pregnant with their second child—has already lost their home as a consequence of his deportation.

ICE continues to detain vulnerable populations.

- **Nicoll Hernández-Polanco, a transgender woman who passed her credible fear interview, remains in detention in an all-male facility**

  Nicoll is a Guatemalan transgender woman currently being detained at an all-male ICE facility in Florence, Arizona. In October 2014, Nicoll presented herself to CBP officers to seek asylum due to persecution she suffered on account of her gender identity.

  In detention, Nicoll experiences sexual harassment and abuse at the hands of Florence staff for being a transgender woman. In her first month in detention, Nicoll was patted down 6-8 times a day by male guards, who Nicoll reported would grope her breasts and buttocks, make offensive sexual comments and gestures, and sometimes pull her hair. Verbal abuse is rampant and witnesses have heard a female guard refer repeatedly to Nicoll as "it."

  In addition to harassment by guards, Nicoll is particularly vulnerable to abuse from male detainees. Nicoll is required to shower, use the restroom, and sleep in the presence of men. As a result, in early December, Nicoll was sexually assaulted by another detained person.

  Nicoll proved to an immigration officer that she has a credible fear of persecution if she were forced to return to Guatemala. Notwithstanding that, ICE continues to detain her while her physical and mental health deteriorates.

Recommendations

- To ensure the effective implementation of the Priorities Memo, DHS should train all immigration enforcement personnel to consider not only whether an individual has engaged in conduct enumerated in Priority 1, 2 or 3 but also whether other countervailing factors are present that warrant a favorable exercise of prosecutorial discretion. This training should furnish personnel with clear guidance and examples highlighting when the exercise of discretion is appropriate for individuals who appear to fall within one of the enumerated enforcement priorities but should not be considered an enforcement priority under an "unless" clause.

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- Training and accountability should emphasize that vulnerable populations who suffer greater hardship in detention than others should not be detained unnecessarily. The Priorities Memo states that DHS should not detain immigrants "who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are the primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest." We believe LGBTQ populations are likewise a vulnerable population whose detention is not in the public interest and that they should therefore be given special solicitude.

- DHS and the relevant component agencies should institute measures to hold accountable officers and attorneys who fail to adhere to the Priorities Memo. DHS should likewise institute effective oversight mechanisms to identify instances of noncompliance with the Priorities Memo.

- DHS should require responses to prosecutorial discretion requests to be made in writing with a detailed explanation of the basis of the denial.

- DHS should clarify that references in the memo to persons who "qualify for asylum or other form of relief" are meant to include those who demonstrate *prima facie* eligibility. To require a higher standard of proof, such as a grant of asylum by an immigration judge, would render the language and the exercise of prosecutorial discretion meaningless since an individual is—by definition—no longer subject to enforcement once he or she wins asylum or other relief.

- To ensure the effective implementation of the Priorities Memo, DHS should build upon existing efforts to engage with legal service providers and community-based organizations on the local level across the country.

Thank you very much for your consideration of these recommendations. If you have any questions or would like further information, please contact Patrick Taurel, Legal Fellow, American Immigration Council, at ptaurel@immcouncil.org or (202) 507-7526 or Greg Chen, Director of Advocacy, American Immigration Lawyers Association, gchen@aila.org.

Sincerely,

The Advocates for Human Rights
African Services Committee
Alabama Coalition for Immigrant Justice, ACIJ
Alliance for a Just Society, AJS
Alliance for Citizenship
Alliance San Diego
American Civil Liberties Union
American Immigration Council
American Immigration Lawyers Association

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Americans for Immigrant Justice
Arkansas United Community Coalition, AUCC
ASI, Inc. - Asociacion de Servicios para el Inmigrante
Asian Americans Advancing Justice
Asian Americans Advancing Justice - Asian Law Caucus
Asian Americans Advancing Justice, Los Angeles
ASISTA Immigration Assistance
California Rural Legal Assistance Foundation, Inc.
CASA
Casa Latina Seattle, WA
Catholic Legal Immigration Network
Causa Oregon
Center for Community Change, CCC
The Center for Popular Democracy
Church Council of Greater Seattle
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights Los Angeles, CHIRLA
Colorado Immigrant Rights Coalition, CIRC
Comunidades Unidas, CU, Utah
Consejo de Federaciones Mexicanas, COFEM
Deverall Immigration Law, LLC
EL CENTRO de Igualdad y Derechos, New Mexico
Entre Hermanos
Fair Immigration Reform Movement, FIRM
Farmworker Justice
Florida Immigrant Coalition, FLIC
Franciscan Action Network
The Freedom Network USA
Helen Tarokic Law PLLC
HIAS Pennsylvania
Human Agenda
Idaho Community Action Network, ICAN
Illinois Coalition for Immigrant and Refugee Rights, ICIRR
Immigrant Defense Project
Immigrant Justice Corps
Immigrant Legal Center of Boulder County, Colorado
Immigrant Legal Resource Center
Iowa Citizens for Community Improvement, Iowa CCI
Junta for Progressive Action, JUNTA, Connecticut
Kids in Need of Defense (KIND)
Laborers local 270

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Latin American Coalition, LAC, North Carolina
Law Office of Lawrence M. Cobb
Legal Aid Society – Employment Law Center
Lowcountry Immigration Coalition Hilton Head/Bluffton, SC
Lutheran Immigration and Refugee Service
Maine People's Alliance
Make The Road New York
MALDEF
Massachusetts Immigrant and Refugees Advocacy Coalition, MIRA
Michigan United
National Council of La Raza (NCLR)
The National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Justice for Our Neighbors
National Korean American Service and Education Consortium
National Latin@ Network: Casa de Esperanza
National Partnership for New Americans, NPNA
National People's Action, NPA
Nebraska Appleseed
New Hampshire Alliance for Immigrant Rights-MIRA
New Mexico Immigrant Law Center
New York Immigration Coalition
North Carolina Justice Center
Oakland Law Collaborative
OCA - Asian Pacific American Advocates
One America, Washington
Organization
Our Lady of Guadalupe Parish
Pennsylvania Immigration and Citizenship Coalition, PICC
Pineros y Campesinos Unidos del Noreste, PCUN, Oregon
Progressive Leadership Alliance of Nevada, PLAN
Promise Arizona, PAZ
Refugee and Immigrant Center for Education and Legal Services
Rights for All People, RAP, Colorado
San Diego Immigrant Rights Consortium
Schooler Law Firm
SEIU 775
SEIU Local 49 – Oregon
SEIU-UHW
SEIU United Service Workers West
Service Employees International Union

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Services, Immigrant Rights, and Education Network (SIREN)
Skagit Immigrant Rights Council, Mount Vernon WA
Somos un Pueblo Unido, New Mexico
Southeast Asian Resource Action Center (SEARAC)
Southern Poverty Law Center
Southern Region, Workers United, SEIU
Stein Legal LLC
Sunflower Community Action, Kansas
Tacoma Community House
Tennessee Immigrant and Refugee Rights Coalition, TIRRC
TK Immigration Law
United Farm Workers Foundation (UFWF)
United Farm Workers of America (UFW)
United We Dream
Voces de la Frontera, Wisconsin
Washington Defender Association's Immigration Project
Washington-CAN!
We Belong Together
Workers Defense Project, WDP, Texas

cc: Alejandro Mayorkas, Deputy Secretary, U.S. Department of Homeland Security
Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement
León Rodríguez, Director, U.S. Citizenship and Immigration Services
R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection

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Question#:	1
Topic:	March 19 statement 1
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Mick Mulvaney
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: During our discussions on June 17, 2015, I referenced a conversation we had during your March 19, 2015, appearance in front of this Committee where I asked you: "[would] it help if we clarified the law to make it clear that it was mandatory that those local communities cooperate with [your detainer requests]?" You answered: "Thank you. Amen. Yes." The next day, you released a statement that read, in relevant part: "Any effort at federal legislation now to mandate state and local law enforcement's compliance with ICE detainers, will, in our view, be a highly counterproductive step."

Later, during your June 17, 2015, appearance before this Committee, I asked you if Sec. Jeh Johnson asked you to change your statement following your March 19, 2015, testimony and you responded: "He did not." I followed up that question by asking you if anyone else asked you to change your statement. You responded: "No." Then I asked if you met with Sec. Johnson between the hearing and the statements release and you responded affirmatively. And finally, I asked you if Sec. Johnson asked you to clarify your statement, and you responded: "We discussed a clarification to make sure that people understood that we need to work with state and local governments to ensure public safety in our communities."

To that end, I'd like you to help me understand the events that took place following your testimony on March 19, 2015, but before you released your statement the following morning. Please respond to the following with as much detail as possible:

Please describe exactly what you discussed with Sec. Johnson, either orally or in writing, concerning the specifics of what you needed to "clarify" about your March 19 statement before this Committee. Please provide any documents or materials that relate or pertain to this dialogue.

Response: As a law enforcement agency, U.S. Immigration and Customs Enforcement (ICE) is primarily responsible for enforcing our Nation's laws that promote national security, border security, and public safety. As the Director, I ensure we focus our resources on individuals that pose the greatest threat. This is best done through robust and active cooperation with our law enforcement partners. This was my thinking during my March 19 testimony and at every point since.

Any conversation I had with the Secretary did not change my position or lead to my clarification. As reflected in my testimony, my clarification was issued at my direction, to articulate my support for a cooperative approach toward public safety.

Question#:	2
Topic:	March 19 statement 2
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Mick Mulvaney
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: Please describe exactly what you discussed with Sec. Johnson's staff, either orally or in writing, concerning the specifics of what you needed to "clarify" about your March 19 statement before this Committee. Please provide any documents or materials that relate or pertain to this dialogue.

Response: Please see my response to question one.

Question#:	3
Topic:	March 19 statement 3
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Mick Mulvaney
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: After your testimony on March 19, but before you released your statement on March 20, did you have any conversations or correspond in any way with the Department of Homeland Security Legislative Affairs Office? If so, did they suggest in any way that you either change or clarify the statements you made before our Committee on March 19? Please provide any documents or materials that relate or pertain to this dialogue.

Response: Any conversation I had with others, including the Office of Legislative Affairs, did not change my position or lead to my clarification. My clarification was issued at my direction, to articulate my support for a cooperative approach toward public safety.

Question#:	4
Topic:	March 19 statement 4
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Mick Mulvaney
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: After your testimony on March 19, but before you released your statement on March 20, did you have any conversations or correspondence with any other Administration officials regarding your March 19 testimony? If so, with whom did you have these conversations and/ or with whom did you correspond? Please provide any documents or materials that relate or pertain to this dialogue.

Response: Any conversation I had with others did not change my position or lead to my clarification. My clarification was issued at my direction, to articulate my support for a cooperative approach toward public safety.

Question#:	5
Topic:	press release
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Mick Mulvaney
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: Who prepared or drafted your press release on the morning of March 20? Who was given the opportunity to edit, review, or in any way approve of your March 20 press release? Please name everyone that was given the opportunity to read this statement before it was published and describe their role in the process. Please also provide any documents or materials that relate or pertain to this process.

Please provide any and all documents or communications relating or pertaining to the press release that you issued on March 20, 2015 that are not otherwise covered by the questions above.

Response: As is customary in preparing public statements, multiple individuals provided input in my drafting process. The statement reflected my views, and any involvement of other officials did not change my position or lead to my clarification.

Question#:	6
Topic:	Priority Enforcement Program 1
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Brenda Lawrence
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: I understand there were serious problems with how Secure Communities affected the relationship between local law enforcement and the communities they serve. These included widespread concerns that crime went unreported because undocumented immigrants were afraid of going to the local police.

Can you please explain how you will work to implement the Priority Enforcement Program (PEP) so that it does not lead to this distressing effect at the local level?

Response: The Department of Homeland Security's (DHS) objective with the Priority Enforcement Program (PEP) is to implement a new interior enforcement approach in a way that supports community policing and public safety, working with state and local law enforcement to take custody of dangerous individuals and convicted criminals—including national security threats, felons, significant/repeat misdemeanants, and gang members—before they are released into the community. PEP, by design, is thoughtful and narrowly focused on identifying and arresting criminal aliens who meet DHS's civil enforcement priorities. Additionally, PEP is designed to be flexible and is not a "one size fits all" solution, but rather an approach that allows us to tailor the program and develop processes to fit the needs of each jurisdiction, ensuring that law enforcement is able to remove convicted criminals without damaging trust with local communities—trust that is critical so victims and witnesses feel secure reporting crimes and thereby, make all communities safer.

Prior to its implementation, DHS conducted extensive outreach with external stakeholders, to include law enforcement agencies and non-governmental organizations. This outreach will continue at the local level by ICE Enforcement and Removal Operations (ERO) Field Office Directors. In support of this effort, on June 16, 2015, ERO disseminated PEP engagement materials to its field offices, including talking points, the new detainer and notification forms, and a PEP brochure, which will be used as part of this engagement effort.

Question#:	7
Topic:	Priority Enforcement Program 2
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Brenda Lawrence
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: I also understand that ICE is releasing new forms it will use to request notice or detention of an individual through PEP. The detainer request form for action, or I-247D, will include several possible boxes that can be checked explaining why the person is an enforcement priority.

This form exists to give some clarity and confidence to the state or local jurisdiction that the individual being requested is, in fact, a priority. Is that correct?

And when an ICE official is making that decision about whether someone is an enforcement priority, according to the executive actions, they are supposed to take into account any mitigating factors that might merit prosecutorial discretion. Is that correct?

So can you please explain to me why this form as drafted does not include any check boxes about mitigating factors?

As you prepare for the full rollout of PEP, what are you doing to ensure that there will be a process in place to detect biased policing that may result from PEP?

Given the concerns I had about the program, I was pleased to learn that Secure Communities was ending. However, I urge you to please ensure that the same community policing problems are not replicated in PEP, and that PEP works to ensure that ICE is fully complying with the priorities memo.

Response: An immigration detainer, DHS Form I-247D, is a notice to state and local law enforcement agencies (LEAs) to inform them that U.S. Immigration and Customs Enforcement (ICE) intends to assume custody of an individual upon release from the LEA's custody. As stated, it gives clarity and confidence to the state or local jurisdiction that the individual being requested is, in fact, an ICE priority.

The Department of Homeland Security (DHS) modified its previous detainer form in an effort to increase LEA support of ICE's public safety mission. The new form contains the necessary information to indicate to the LEA receiving the form why the individual falls under ICE's priorities and the probable cause basis for that determination. When an ICE official is making the decision about whether an individual is an enforcement priority, according to the executive actions, the official accounts for any mitigating factors that might merit prosecutorial discretion. The prosecutorial discretion process, and any associated mitigating factors, are taken into account by ICE prior to the placement of a detainer request whenever possible, and these actions are recorded in ICE

Question#:	7
Topic:	Priority Enforcement Program 2
Hearing:	A Review of the President's Executive Actions on Immigration
Primary:	The Honorable Brenda Lawrence
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

databases. That said, prosecutorial discretion can happen at any stage of the enforcement process, including as new, relevant information is brought to ICE's attention.

The Priority Enforcement Program, by design, is thoughtful and narrowly focused on identifying and arresting convicted criminal aliens who meet DHS's civil enforcement priorities. In addition to the information identified above, the new I-247D is required to be served on the alien prior to it taking effect, and also provides the alien with toll-free contact numbers that allow him or her to file a complaint related to the detainer itself and any alleged violations of civil rights.

Additionally, as directed by Secretary Johnson's November 20, 2014 memo entitled *Secure Communities*, the DHS Office for Civil Rights and Civil Liberties will be responsible for monitoring the transfer of priority aliens from state or local law enforcement agencies, including through the collection and analysis of data, to detect inappropriate use to support or engage in biased policing, and will establish effective remedial measures to stop any such misuses.

U.S. Immigration and Customs Enforcement Responses to the House Oversight and Government Reform Committee, National Security and Health Care, Benefits, & Administrative Rules Subcommittees

1. **Question from Representative Hice:**
   How many convicted criminals have been arrested by U.S. Immigration and Customs Enforcement (ICE) in fiscal year (FY) 2015 year-to-date?

   In FY 2015 year-to-date through July 4, 2015, ICE Enforcement and Removal Operations conducted 77,395 arrests of criminal aliens.

2. **Question from Representative Hice:**
   How many criminal releases has ICE made in FY 2015 year-to-date?

   Through the first two quarters of FY 2015, ICE released 10,082 criminal aliens from custody. These releases were made pursuant to the requirements of precedential case law, including *Zadvydas v. Davis*, 533 U.S. 678 (2001), individual court orders, or otherwise in accordance with controlling law and regulations.

3. **Question from Representatives Walker and Carter:**
   What is the recidivism rate for aliens who were previously apprehended and subsequently released for FY 2014 and FY 2015 year-to-date?

   Of the 30,558 criminal aliens released from ICE custody in FY 2014, 1,423 (or approximately 4.7 percent) have been convicted of 1,790 crimes subsequent to their release, as of May 6, 2015.

   At this time, ICE is unable to provide a breakdown of aliens released from ICE custody in FY 2015 who have been convicted of a crime subsequent to their release.

Statement for the Hearing Record

United States House of Representatives Subcommittee on National Security and Subcommittee on Health Care, Benefits and Administrative Rules of the Committee on Oversight and Government Reform

"A Review of the President's Executive Actions on Immigration"

June 17, 2015

Chairman Jordan, Chairman DeSantis, Ranking Member Cartwright, Ranking Member Lynch, and members of the Subcommittees, on behalf of the National Council of Asian Pacific Americans (NCAPA) and our thirty-four national Asian Pacific American organizations, we thank you for the opportunity to submit this statement for inclusion in the record for today's hearing.

Based in Washington, D.C., NCAPA serves to represent the interests of Asian American, Native Hawaiian, and Pacific Islander communities and to provide a national voice for our communities' issues. Asian Americans are the fastest growing racial group in the United States, currently making up about six percent of the population. Nearly two-thirds of Asian Americans are foreign born. Our communities continue to commend President Barack Obama on his leadership in announcing his Executive Actions on Immigration on November 20, 2014. Through these actions, nearly 5 million immigrants, including more than 400,000 Asian Americans and Pacific Islanders (AAPIs), could be eligible for temporary relief from deportation. The creation of the expanded Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs, without question, signaled a major step forward in addressing the needs of the AAPI community, immigrant families and workers in our economy. These programs also underlined the desperate need for permanent and human legislative solutions.

In addition to announcing the deferred action programs, as part of the executive actions, Secretary Jeh Johnson issued the memorandum titled, "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants." In this memo, Secretary Johnson set forth categories of individuals who should be prioritized for removal in an effort to both acknowledge the realities of finite enforcement resources and conduct enforcement more humanely.

NCAPA strongly believes that all ICE personnel must be trained in the Johnson priorities memo to ensure its effective and consistent implementation. ICE agents should be provided clear guidance, with examples, demonstrating when favorable discretion should be used. This guidance should specifically clarify that favorable discretion may be applied even in cases where individuals have criminal records, if other factors set forth in the Johnson memo can be shown, such as any extenuating circumstances surrounding the conviction, military service, community ties or compelling humanitarian factors. ICE leadership should establish meaningful accountability measures when there is noncompliance with the priorities memo. When requests for prosecutorial discretion are denied, ICE personnel should be required to provide written notices, detailing the basis for denial and these data should be tracked and made publicly available. In addition, the Department should increase outreach to AAPIs, including providing translated materials and in-language resources for AAPIs, to increase awareness about discretion. ICE should ensure that no individuals who may be eligible for DAPA or DACA are the subject of enforcement actions.

In recent weeks, NCAPA member organizations and other AAPI leaders have spoken critically about ICE's recent practice of detaining women and children in immigration detention facilities. The locking up of children and families, under the guise of national security, is far too reminiscent of the internment of American citizens of Japanese ancestry and is an inhumane and un-American practice that must be ended immediately.

In conclusion, NCAPA strongly supports the President's use of executive action to expand DACA and create DAPA, as well as revamp ICE enforcement priorities to ensure enforcement is conducted more humanely and in the interest of keeping families intact. NCAPA will continue to engage with ICE to advocate for enforcement practices to remain grounded in our constitutional framework of due process and fairness. We look forward to the day when the President's executive actions can be fully implemented and all AAPI community members can emerge from the shadows and fully contribute to our economy and country. NCAPA will also continue to work with Members of Congress towards enacting comprehensive legislative solutions that promote human rights and dignity for all those impacted by our immigration system.

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