

Good morning, Chairman Van Drew, Ranking Member Crockett, and distinguished members of this subcommittee. Thank you for the privilege of speaking with you today to discuss “Examining Threats to ICE Operations.”

My name is Scott Mechkowski and I am a retired law enforcement officer with over 24 years of experience at both the legacy Immigration and Naturalization Service (INS) and U.S. Immigration and Customs Enforcement (ICE) . I retired as the Deputy Director in New York City. The views I express in this testimony are my own and should not be construed as representing any official position of ICE.

I have been asked to speak today about the importance of ICE Detention Centers and Threats to ICE Operations both in general and in the context of the happenings at the new Newark Detention Facility that resulted in the arrest the Mayor of the City of Newark, during a protest of an ICE facility in Newark, NJ.

I will first speak about the overall importance of ICE Detention Centers and ICE Operations. My remarks come from over 22 years of experience with Enforcement Removal Operations as both a field officer and leader within the agency. Importantly, a lot of my time with ERO was in New York City which is one of the largest field offices and an office that has historically met many challenges to immigration enforcement that we are talking about today. Relevant to today, during my time with ERO in NYC, I coauthored several relevant operations plans that targeted some of the most violent criminal in our nation including gang members, terrorists, human rights violators, Drug Dealers and The Most wanted Foreign Fugitives Interpol Red Notices. These operations included “Operation Matador”, targeting MS-13 on Long Island NY and “Operation All-In” that targeted human smugglers and other human rights violators, focusing on major cartels while assigned to the DHS Joint Task Force West. This also comes from other experiences that I have in the security sector including 34 years in the United States Army which included multiple humanitarian deployments, in Kosovo and other countries, and serving in Iraq at a theater internment facility NCOIC at Camp Cropper Baghdad, Iraq.

After I conclude my general remarks, I will relate those remarks to the occurrences that recently happened in Newark, New Jersey and give my personal perspective.

Congress has mandated that ICE keep a minimum number of detention beds through congressional appropriations for DHS. The detention bed mandate is the number of detention beds that are to be available to detain immigrants each day in the United States. The detention bed mandate was introduced in 2009 into DHS’s Appropriations Act. ICE’s mission, and specifically Enforcement and Removal Operations, or ERO, is to protect the homeland through the arrest and removal of aliens who undermine the nations immigration laws or pose a safety threat to our nation’s communities, laws related to immigration and nationality in the United States are codified in Title 8 of the Code of Federal Regulations (CFR), commonly referred to as 8 CFR.

ERO oversees civil immigration detention facilities nationwide for two primary reasons, both dictated by law:

- 1) to secure their presence for immigration proceedings, and
- 2) to secure their presence and processing for immigration removal.

The law requires that certain aliens stay in ICE custody during the immigration hearing process. Aliens that are subject to “Mandatory Detention” are aliens that pose a public safety or flight risk during the custodial determination process. What is also important to note is that the immigration process is civil in nature and not punitive – ICE does not house aliens as punishment for a crime. ICE Detention Centers are facilities that house aliens for a specific purpose: to ensure immigration courts can swiftly determine if an individual is legally allowed to stay in the United States and to effect removal for violations that is proscribed by US law related to the US immigration system. Detention ensures that individuals who may abscond are present for immigration hearings. Detention also ensures that individuals that pose a security threat to the United States are in custody during the pendency of their immigration proceedings. Not all individuals going through immigration proceedings are held in immigration detention facilities. In fact, a very small number are compared to the overall number of individuals who are going through immigration proceedings daily in the United States. A large percentage of individuals in detention are mandatory detention. Over 60% of people in ICE custody are mandatory detention. This means that ICE is holding them subject to legal obligations under the Immigration and Nationality Act.

Various factors can make somebody subject to mandatory detention but amongst those reasons are criminal records and national security threats.

Detention also ensures safe and efficient removal. Detention ensures that individuals who would abscond are present for actual removal after a final order of removal is entered. Detention also ensures an efficient, transparent, organized and documented removal processing. Processing individuals for removal is costly and time consuming. Individuals being removed have exhausted all avenues of due process and have received an order of removal from an immigration judge. Ensuring that is the case is a job taken seriously by ERO. ERO is also responsible for ensuring that the individuals being removed have valid travel documents to ensure they’re reentry into the country where they are being removed. This oftentimes includes conversations with third party countries and guarantees no diplomatic issues. Safety of the individuals being removed is achieved through this process which also includes checks on their due process rights and any other civil rights concern. Flight lines and travel costs must be managed through an organized process which is improved when individuals are housed in immigration detention facilities prior to removal.

ICE follows national detention standards. Detention standards, such as the National Detention Standards (NDS) and Performance-Based National Detention Standards (PBNDS), which are stringent and outline requirements for facilities and staff in various areas like safety, security, order, care, activities, justice, and administration. These standards exist to ensure the safety and security of both the officers and the detainees. These standards also exist to ensure that there is order and discipline within the facility for those who violate the order. Perhaps most importantly, these standards also dictate a requisite level of care for detainees,

which include medical care and judicial care, ensuring that they have access to due process, immigration hearings, and their attorneys.

My Field Office spent countless hours ensuring that detainees receive proper medical attention, had the opportunity to consult with their legal representative and had access to their families. We had fully coordinated systems that would ensure the proper transportation of individuals to their hearings in court, and to other appearances that required them. One of the most difficult obstacles for federal law enforcement, and specifically ERO, is the interaction between local law enforcement and state laws who have been dictated to abide by laws that do not allow them to cooperate or work with ICE. These types of laws have practical ramifications far beyond political dynamics. When local law enforcement cannot alert ICE to the detention or release of a criminal alien, secure and quick transfer into ICE custody cannot be accomplished. Local laws and sanctuary city provisions forbid local and state governments from cooperating or working with ERO.

The practical effect of that is that it drives immigration enforcement outside of the area where you are operating which includes sending detainees far away from the operational theater in which you are working. This not only increases costs on both transportation and enforcement and restricts access to the aliens by both ERO, their families, and their local attorneys. Data related to criminal enterprises, illicit activity, investigations, or known suspects is not shared and there is a missed opportunity for collaborative enforcement. Plea negotiations cannot include stipulated removal orders that promote prompt and effective removal of criminal aliens. Additionally, and importantly, Protections for survivors, victims and witnesses cannot be streamlined and properly captured between local and federal systems. The restriction on access to protected spaces, such as court houses, creates an unsafe operational environment for ICE officers where enforcement activities are moved to unsafe and uncontrolled spaces.

Note that there are nearly 8 million aliens on the Non-Detained Docket, as opposed to the less than 50,000 aliens that are currently detained. The ballooning size of the Non-Detained Docket has also contributed to a threat to enforcement of our immigration laws. ICE's ability to supervise and monitor aliens via GPS monitors and electronic technology provides an additional enforcement tool when detention beds are full or otherwise unavailable. Not utilizing or not funding this effective alternative to detention program, and the demonization of it by the immigrant advocates, essentially allow unauthorized aliens to roam the country without assurance they will show up for immigration proceedings or removal when ordered.

Transitioning now to the happenings recently at Delaney Hall Newark, NJ.

In my career, I have seen several incidents that have unfolded much the same way that the Newark situation unfolded. An example is one I dealt with personally while in New York. At the time, an individual who we had been working with on removal, who was a known public figure in New York, was notified that his stay request and request for Deferred Action was Denied. Immediately he fainted, and EMS was called to provide medical aid. His spouse and attorneys were present and witnessed EMS personnel ask him if he wished to be transported to the hospital. He clearly responded, "Yes." What followed, however, mirrored a deeply disturbing precedent. A similar incident occurred during the emergency transport of this individual and it quickly devolved into chaos. At that time, protestors, fueled by misinformation and false

assumptions, accused ICE of staging a medical emergency to remove this individual from federal custody. Despite the medical legitimacy of the situation, protestors, including known community activists, state assembly members, and even sitting members of Congress, physically laid down in the street to block the FDNY ambulance from leaving inciting chaos all around the Federal Building. The situation became not only volatile but dangerously unmanageable. The crowd's refusal to allow the ambulance to go ahead posed a direct threat to this individual's health and safety, as well as to EMS responders and federal personnel. Most astonishingly, the individual's wife was inside the ambulance providing live updates to community organizers and elected officials, escalating tensions outside the entire time. This event underscores the extreme and coordinated efforts by some activist groups and political figures to interfere with lawful and medically necessary operations. The incident was more than disruptive — it was frightening, unpredictable, and put lives at risk.

When individuals, whether in position of power or trust, use ICE facilities as a location of political activity, they put the officers and agents of DHS lives at risk. They also put other individuals in the area's life at risk. Their behavior disrupts ICE's ability to conduct the functions of their job, as mandated by Congress. This behavior also creates a heightened security risk, provoking violence and unsafe conditions for all who are involved, including the individuals within the facility. The ICE officers. The aliens. The bystanders. The protesters. Everyone is at risk. Such activity impedes the ability to enforce the immigration laws of the United States. While the First Amendment protects the right to peacefully protest, violence and assault against law enforcement officers are not protected and carry legal consequences.

Thank you again for the honor of addressing this subcommittee. I trust that the insights provided today underscore the need to examine threats to ICE Operations. I just would like to add that the men and women of ICE are conducting enforcement functions at the direction of the U.S. Government, and they are constantly being criticized for it by one side and its shameful. I look forward to your answering your questions and working together to ensure the safety and security of our nation.