



# U.S. Immigration and Customs Enforcement

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STATEMENT OF

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BEFORE

U.S. House of Representatives  
Committee on Homeland Security  
Subcommittee on Border and Maritime Security

ON

“Stopping the Daily Border Caravan: Time to Build a Policy Wall”

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Washington, DC

## INTRODUCTION

Chairwoman McSally, Ranking Member Vela, and distinguished members of the subcommittee:

Thank you for the opportunity to appear before you today to discuss the role of U.S. Immigration and Customs Enforcement (ICE), in promoting homeland security and public safety through the broad enforcement of approximately 400 federal laws governing immigration, border control, customs, and trade.

ICE enforces the immigration laws of the United States against all removable aliens, consistent with federal law. Immigration enforcement operations have always been a regular part of ICE's duties and are necessary to identify, arrest, detain, and remove those who present a danger to our national security, are a threat to public safety, or otherwise undermine the integrity of our immigration system. All those in violation of U.S. immigration laws may be subject to immigration arrest, detention, and removal from the United States.

The "caravan" is the latest example of the need for an integrated approach to border security, which combines physical barriers and monitoring tools with the administrative tools necessary to regulate the orderly flow of goods and people into the United States. Moreover, the situation highlights the need for Congress to act to address the loopholes that exist in current immigration laws, as many individuals seeking to cross the border hold expectations that long-term entry to the United States can be garnered by laying false claims to credible fear, or otherwise thwarting our lawful immigration processes.

The current statistics are sobering. Overall, the number of illegal aliens encountered at the border increased more than 200 percent when compared to this same time last year. Perhaps more troubling, the number of unaccompanied alien children encountered has increased over 800 percent. And the number of families encountered increased over 680 percent. While DHS has been apprehending and processing these crossers with historic efficiency, our ability to actually remove those who come here illegally cannot keep pace with the influx unless we make a number of key changes to close existing loopholes in the system.

These legal loopholes are strong pull factors that entice those looking to circumvent our laws, including groups who profit from smuggling people. As Secretary Nielsen has made clear, interdiction without the ability to promptly remove those without legitimate cause undermines border security. And border security is national security. For border security to work, illegal activity must have consequences, and these loopholes must be closed. They are unacceptable, and more than that, they are dangerous. We must do more to secure our borders against these threats that are making our country vulnerable.

While this administration has taken initiative and made strident efforts to address the pull factors that lead to illegal immigration, the most essential reforms require legislation. Congress needs to address sanctuary jurisdictions and affirm ICE's detainer authority. Congress needs to end catch and release by ensuring adequate funding for detention beds, mandatory detention for convicted criminals, and a legislative fix for the *Zadvydas v. Davis* court decision.

## **CREDIBLE FEAR CLAIMS AND THE IMMIGRATION COURT BACKLOG**

While those with legitimate claims of asylum must be protected, many of those seeking to enter this country illegally know that there is no significant downside to making a claim of “credible fear” and only a few key words are all it takes to keep an alien in the country longer. A fact that is exploited by the smuggling organizations who profit from them. DHS experience has shown that individuals seeking to enter the country illegally know they can delay their removal by making false claims of credible fear. Indeed, the standard for credible fear screenings at the border has been set so low that aliens may easily meet this threshold by including certain phrases and claims during their credible fear interview. The smuggling organizations know this, and they coach to aliens to make certain claims and to recite “magic words” during their interview.

To compound this issue, family units who arrive at our border are nearly always released from ICE custody into the interior of the United States, as recent rulings in the *Flores* consent decree litigation places a constraint on ICE’s authority to detain an entire Family Unit. This litigation requires that children be released from DHS custody within a few days of arrival if they are not removed. In FY 2017, approximately 71,500 members of family units were apprehended, and ICE believes this number is on track to increase significantly in FY 2018.

With many of those arriving at the border claiming credible fear and an immigration court backlog of more than 700,000 cases, it is clear that we must elevate the threshold standard of proof in credible fear interviews, as aliens who falsely claim credible fear in expectation of parole or release are placing a strain on Department resources, and preventing or delaying legitimate asylum cases from being adjudicated. DHS and the Department of Justice (DOJ) are working together to explore options for addressing this increasing threat to the security of our border.

## **PROMPT REMOVAL FOR THOSE WHO CROSS ILLEGALLY**

A critical component of border security is being able to quickly remove illegal aliens when they are apprehended by immigration enforcement officers. However, the combination of legal loopholes, lack of detention funding, and court backlogs often results in illegal aliens being released shortly after their apprehension. Many of these illegal aliens never appear for their immigration court hearings and then, go undetected unless they get arrested for another criminal violation, which happens repeatedly, with often tragic results. These are preventable crimes, and more importantly, result in preventable victims of criminal activity, that needlessly occurs as a result of Congressional inaction.

Aliens arrested in the interior may be more likely to have protracted immigration proceedings and appeals, which delays the issuance of an executable final order of removal. Specifically, many such aliens are not amenable to expedited removal—an accelerated removal process in which aliens cannot apply for relief from removal and when only very limited avenues for judicial review are available. Only if aliens subjected to expedited removal are found to have a credible fear of returning to the proposed country of removal are such aliens referred to full section 240 removal proceedings, in which they can apply for all forms of relief or protection from removal for which they are eligible. Such cases also frequently require a more complex

and lengthy process to obtain travel documents, which further delays the removal process. As a result, ICE is working with DHS and its other components to evaluate options for returning aliens to their home countries in a safe, humane, and lawful fashion.

## **END CATCH AND RELEASE POLICIES**

“Catch and release” policies are a significant pull-factor for illegal immigration. Recent increases of illegal immigrants, of which the migrant caravan is but a small part, require immediate Congressional action to close loopholes that frustrate ICE’s ability to enforce the laws.

Court rulings which force “catch and release” for alien families have long posed significant challenges for ICE in maintaining effective control of the border, particularly when alien families decide to break our immigration laws en masse, as is currently happening. These court rulings have stripped ICE of the ability to detain these families, meaning they must be released into communities across the United States. In many cases, families do not appear for immigration court hearings, and even when they do, many more fail to comply with the lawfully issued removal orders from the immigration courts.

Additionally, DHS and ICE support making detention mandatory for all convicted criminals, to ensure our communities stay safe. Some judicial decisions, such as *Zadvydas v. Davis*, restrict ICE’s authority to keep criminal aliens, who are pending removal, in custody. This decision significantly restricts the ability of DHS to detain aliens with final orders of removal, including serious felony offenders, if their home countries will not accept their return. As a result, foreign nationals who have been convicted of murder and rape—among other crimes—are released back onto the streets of America instead of being detained until they can be returned to their home country. In 2017, more than 2,300 aliens were released because of that court decision, including more than 1,700 convicted criminal aliens. Going forward, we would like to work with Congress to address this serious public safety issue.

## **SANCTUARY CITY LEGISLATION**

Though clear legal authority exists for state and local law enforcement to cooperate with ICE in its immigration enforcement efforts<sup>1</sup>, not all state and local jurisdictions cooperate with ICE. Some jurisdictions refuse to honor ICE detainers, or even to share information relating to potentially removable aliens. Some even prevent ICE access to their jail population for purposes of conducting interviews. This is a significant impediment because ICE often requires interviews to determine alienage, gang affiliation, and removability.

The cooperation ICE receives from state and local law enforcement agencies is critical to its ability to identify and arrest aliens who are subject to removal from the United States pursuant to federal law, and who may be a threat to the public because they have been arrested or convicted for criminal activity, much of it violent. ICE places detainers on individuals whom it has

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<sup>1</sup> The U.S. Supreme Court has repeatedly recognized the broad discretion of the Federal Government in the area of immigration enforcement, as the authority of ICE officers to issue detainers is firmly rooted in federal law and practice. (Adapted from 93037).

probable cause to believe are removable aliens in federal, state and local law enforcement agency custody on criminal charges.

Unfortunately, some of the aliens who have been released after local jurisdictions refuse to honor an ICE detainer have gone on to commit additional crimes, including violent felonies. While these crimes could have been prevented if ICE had been able to take them into custody upon release from state or local criminal custody, and remove them from the country, state or local laws and policies prevented ICE from intervening, and these aliens were released back into the community to reoffend. Such laws and policies that limit or prohibit cooperation with lawful immigration enforcement needlessly jeopardize public safety, waste government resources, and send the wrong message to those who seek to enter this country illegally, including criminals.

Furthermore, when jurisdictions fail to honor ICE detainers, ICE must conduct at-large operations to locate these criminal aliens. Such releases increase the risks to everyone involved; from members of the public who may later become victims of crime, to the law enforcement officers and aliens involved in subsequent arrests. Logistically speaking, the failure to honor ICE detainers also increases the need for ICE's presence in communities, and requires additional resources to locate and arrest potentially dangerous aliens.

As always, ICE seeks to build cooperative, respectful relationships with law enforcement partners, and continues to collaborate with them to help ensure that aliens who pose a threat to our communities are not released onto the streets to reoffend.

ICE is committed to using its unique enforcement authorities to promote national security, uphold public safety, and preserve the integrity of our immigration system. The use of detainers is a lawful, efficient, effective, and safe means to carry out ICE's mission, and ICE, DHS, and the Department of Justice continue to work together to ensure that ICE is able to carry out this aspect of its public safety mission.

#### **ENSURE ADEQUATE BED FUNDING AND MANDATORY DETENTION FOR CRIMINALS**

Detention is a necessary tool utilized in its primary mission to effectuate the removal of aliens ordered removed from the United States. ICE's increased interior enforcement initiatives, as well as the efforts of other agencies, resulting from EO 13767, *Border Security and Immigration Enforcement Improvements*, and EO 13768, *Enhancing Public Safety in the Interior of the United States* necessitates additional detention capacity. The lawful detention of illegal and criminal aliens ensures that they appear at their removal proceedings, increases the likelihood that orders of removal are executed, enhances public safety, and restores integrity to the immigration laws of the United States. In addition, mandatory detention for all convicted criminals will help ensure our communities are safe—for citizen and lawful immigrant alike.

Currently, ICE's FY 2018 budget provides funding for 40,520 average daily population (ADP) (2,500 family beds and 38,020 adult beds); this is approximately 675 adult ADP lower than current ADP levels (FY 18 ADP 40,830). The current funding levels do not allow for any increase in detention due to seasonal increases in border apprehensions, or additional interior apprehensions, even though ICE has identified additional detention capacity near the southern

border to accommodate the surge in apprehensions stemming from seasonality or the deployment of the National Guard.

The FY19 budget includes nearly \$2.8 billion to expand detention capacity to support an average daily adult population of 49,500 and an average daily family population of 2,500, for a total of 52,000 beds. ICE believes these numbers would provide appropriate detention space for enforcement activities and ensure the end of “catch and release” at the border for those aliens ICE is lawfully able to detain. Additionally, the budget also includes funding for the Alternatives to Detention (ATD) program to sustain 82,000 average daily participants.

## **CONCLUSION**

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. We appreciate the chance to discuss the importance of immigration enforcement and border security, and how we can work together to keep our communities safe by closing legal loopholes that exist within current enforcement authorities. I look forward to answering any questions you may have at this time.