Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

May 6, 2013

The Honorable Carl Levin
The Honorable John McCain
United States Senate
Washington, DC 20510

Dear Senators Levin and McCain:

I am writing in response to your April 12, 2013 letter to Secretary Napolitano regarding U.S. Immigration and Customs Enforcement's (ICE's) recent release of certain detained immigrants, as well as Senator McCain's March 7, 2013 letter on the same subject.

ICE released approximately 2,226[1] detainees in February to ensure that the agency stayed within budget as the first Continuing Resolution Appropriation of this fiscal year came to a close and sequestration approached.[2] For purposes of this release, ICE headquarters instructed the field to consider only aliens that (1) were not subject to mandatory detention by statute and (2) posed no significant threat to public safety. Accordingly, aliens without a criminal history were prioritized. Beyond that, ICE focused on those with less serious criminal histories. As is the case generally, authority to release a particular individual rested with ICE officers in the local field office subject to the operational chain of command flowing from ICE headquarters.[3]

All of the aliens released remained in immigration proceedings. Some have since been removed or re-detained, and the rest are all on some form of supervised release (such as bond, order of recognizance, order of supervision, telephonic monitoring, or Global Positioning System monitoring). ICE continues to review and monitor all of the individuals released, and the agency reserves the right to re-detain any alien released if circumstances warrant or new information

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[1] ICE initially reported the release of 2,228 aliens. Upon a review, two cases were found to be duplicates.

[2] ICE released an additional 150 cases due to special circumstances, primarily because they were not removable, seriously ill, or the primary caregiver for family members.

[3] Several policies guide ICE officers' discretion, including the following memoranda:

- *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship* (November 19, 2009);
- *Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions* (August 20, 2010);
- *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011); and
- *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011).

All of the above policy memoranda can be viewed at http://www.ice.gov.

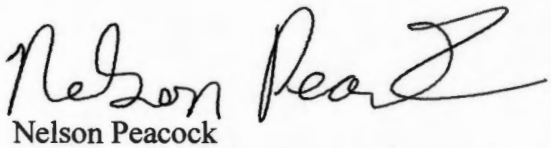
comes to light. ICE also works closely with state and local law enforcement, and follows a practice of responding to specific requests from law enforcement.

Of the approximately 2,226 aliens released, 1,604 have no known criminal convictions, while 622 have been identified as having some type of criminal conviction. ICE headquarters subsequently reviewed all of the level 1 and 2 releases to ensure that the instructions it had given to the field were properly carried out and that the criminal history categories were accurately recorded. This review established that there were 32 Level 1 and 80 Level 2 detainees released. Following this review, ICE decided to re-detain 58 aliens who had initially been released. The review also determined that as of April 11, 2013, the remaining level 1 and level 2 classification detainees continue to be appropriately released on conditions approved by ICE.[4]

Regarding resources, currently ICE's detention bed funding has been reduced by $127 million below FY 2012 funding. This is part of a more than $400 million reduction to ICE's overall budget through the end of FY 2013 –7 percent less than last year. The cuts required by sequestration necessitate significant reductions, affecting both criminal and civil enforcement missions for the remainder of the fiscal year. To meet these new budget reductions, ICE will focus its limited resources on the detention of detainees subject to mandatory detention, recent border crossers, and Level 1, 2, and 3 criminals, as well as other priority cases that involve public safety threats.

We would be happy to provide you further information in a briefing. Please do not hesitate to contact me at (202) 447-5890 should you have any further questions or requests.

Respectfully,



Nelson Peacock
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[4] One level 1 case and two level 2 cases are in the custody of local authorities on unrelated matters.