

**AILA/ICE Liaison Meeting
April 6, 2017**

Tracy Short, Principal Legal Advisor, OPLA
Kenneth Padilla, Deputy Principal Legal Advisor for Field Legal Operations, OPLA
Michael Davis, Executive Deputy Principal Legal Advisor, OPLA
Philip Miller, Deputy Executive Associate Director, ERO
Joanna Hall, Special Counsel to the Executive Deputy Principal Legal Advisor, OPLA
Richard Rocha, Deputy Assistant Director, Stakeholder Engagement / Victims of Immigration
Crime Engagement (VOICE), Office of Public Affairs
Heather Drabek Prendergast, Chair, AILA ICE Liaison Committee
Jesse Lloyd, Vice Chair, AILA ICE Liaison Committee
Sui Chung, AILA ICE Liaison Committee
Raymond Bolourtchi, AILA ICE Liaison Committee
Kenneth Schmitt, AILA ICE Liaison Committee
Olsi Vrapic, AILA ICE Liaison Committee
Amanda Keaveny, AILA ICE Liaison Committee
Annaluisa Padilla, AILA President-Elect
Marketa Lindt, AILA Second Vice President
Laura Lynch, AILA Senior Liaison Associate

Staffing/Organizational Updates

1. Please provide an overview of any key staffing changes or other organizational/structural updates that have been implemented since our last meeting on December 1, 2016.

Answer: The updated organizational chart is posted on ICE's website- (<https://www.ice.gov/leadership>). Please note that many individuals are still in acting roles at this time.

- Tom Homan is currently the Acting Director of ICE.
 - Matt Albence is the Executive Associate Director for Enforcement and Removal Operations (ERO).
 - Tracy Short is the new Principal Legal Advisor.
 - Joe Maher is currently the Acting General Counsel for DHS.
 - The new Chief Counsel in Phoenix, Arizona is Nicole Guzman.
2. Section A of the February 20, 2017 DHS memorandum, "[Enforcement of the Immigration Laws to Serve the National Interest](#)" (hereinafter "DHS interior memo") directs ICE to "hire 10,000 officers and agents expeditiously, subject to available resources..."
 - a. What steps has ICE taken to carry out this directive?
 - b. Please provide the number of new hires that will be allocated to each of the following ICE components: ERO, OCC, and HSI. How will new staff be allocated geographically?

Answer to 2.a. and 2.b.: This hiring initiative depends on congressional appropriations but ICE is currently working on a staffing model. DHS Secretary Kelly is not going to alter training or sacrifice quality in order to expedite the hiring process.

3. Section D of the [DHS interior memo](#) directs ICE to establish the Victims of Immigration Crime Engagement (VOICE) Office to act as a liaison between ICE and known victims of crime committed by removable aliens. What steps has ICE taken to establish this office and how, from a resources standpoint, has the creation of this office impacted other ICE initiatives and offices?

Answer: The Office of Public Affairs (OPA) is responsible for launching the VOICE office. ICE's Community Relations Officers (CROs) will participate in this initiative and CROs will now report to OPA. VOICE will provide legally releasable information to victims of any crimes committed by removable aliens. The type of information that could be released on a typical case includes general information about custody status, whether a detainer has been issued, and detainee transfer. OPA is working with ICE's Privacy Office to address any privacy concerns about the VOICE office.

AILA Note: DHS [announced](#) the launch of the new VOICE office on April 26, 2017.

Directives

4. Question 26 of the February 21, 2017 DHS Q&A, "[DHS Implementation of the Executive Order on Border Security and Immigration Enforcement](#)," (hereinafter "DHS Border Q&A") states that the "sensitive locations guidance remains in effect for both ICE and CBP." Please confirm that ICE will not conduct enforcement operations at or near locations outlined in the "[Enforcement Actions at or Focused on Sensitive Locations](#)" memo without specific operational approval by ICE leadership.

Answer: As of June 6, 2017, the "Enforcement Actions at or Focused on Sensitive Locations" memo remains in effect.

5. Please confirm that the following memoranda remain in place: (1) the [parental interests directive](#); (2) the [directive regarding identifying and monitoring pregnant women](#); and (3) the oversight of [segregation directive](#).

Answer: As of June 6, 2017, all of the above referenced memos remain in effect.

Enforcement Memos

6. Section A of the [DHS interior memo](#) directs Department personnel to prioritize removable aliens that fall under seven enumerated categories.
 - a. The memorandum states that the "Department should prioritize removable aliens who... (2) have been charged with any criminal offense that has not been resolved...." How does ICE define "resolved?"

Answer: ICE defines “resolved” as the end of the criminal process (i.e. criminal offenses that have a final adjudication).

- b. The memorandum states that the “Department should prioritize removable aliens who... (3) have committed acts which constitute a chargeable criminal offense...”

- i. How does ICE determine whether an individual has “committed acts which constitute a chargeable offense”?

Answer: ICE makes arrest determinations based upon probable cause of alienage and removability. ICE will make determinations regarding whether an individual has committed acts which constitute a chargeable offense, through various investigative methods and sources, such as criminal history records.

- ii. Does this include those who have committed acts which constitute a chargeable immigration violation such as entry without inspection or failure to maintain a current address?

Answer: This applies to any acts which constitute a chargeable criminal offense.

- iii. Does this provision apply to cases where the alien has been charged but the case has been dismissed?

Answer: Yes, it can apply to such cases. ICE will enforce the law based on the probable cause test of alienage and removability and will consider priorities outlined in the Executive Order when evaluating enforcement options.

- c. The memorandum states that the “Department should prioritize removable aliens who... (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States...” Does this provision apply to individuals with final orders of removal that have pending benefits applications?

Answer: This is a case-by-case determination.

7. The February 21, 2017 DHS Fact Sheet, “[Enhancing Public Safety in the Interior of the United States](#),” states that DHS personnel should act consistently with the President’s enforcement priorities identified in the executive order along with any further guidance issued by the Director of ICE, Commissioner of CBP, and Director of USCIS. In addition, the Fact sheet specifies that personnel should prioritize the removal of “particularly dangerous aliens, such as convicted felons, gang members, and drug traffickers.”

- a. Regarding the criminal removal priorities, does ICE consider factors such as the seriousness of the crime, or time since it was committed when determining appropriate actions?

Answer: Yes, ICE may take these factors into consideration.

b. What other factors does ICE take into consideration?

Answer: ICE takes into consideration the totality of the circumstances including criminal and immigration history, and any other aggravating or mitigating factors.

8. If a removable foreign national is detained as an enforcement priority based on pending criminal matters, what will ICE do to make sure the person shows up for criminal court proceedings?

Answer: ERO will continue to work with relevant state and local law enforcement agencies to arrange for the smooth transfer of custody, provided that those agencies commit to returning the alien to ICE custody upon the completion of any criminal confinement. ICE will engage with the District Attorney (DA) to find out whether the DA has the resources to prosecute the case and the Sheriff's office regarding custody decisions.

9. The [DHS interior memo](#) states that the [June 15, 2012 DACA memorandum](#) and the [November 20, 2014 DACA+/DAPA memorandum](#) are *not* rescinded. However, some DACA recipients have previous criminal convictions and may fall within the newly articulated ICE priorities that are outlined in the interior enforcement memo.

a. Will ICE pursue enforcement actions against DACA recipients that previously disclosed criminal convictions on their initial DACA applications or DACA renewal applications?

b. Is ICE undertaking any efforts to obtain information from USCIS regarding DACA recipients, including application information such as addresses, family information, criminal records, and court records, etc.?

Answer to 9.a. and 9.b: If ICE encounters an individual with DACA that is deemed a public safety threat, ICE may elect to pursue an enforcement action. Each individual is evaluated on a case-by-case basis. ICE most frequently apprehends individuals through its Criminal Alien Program (CAP) and its Fugitive Operations Team. ICE is not undertaking any efforts to obtain USCIS's data (i.e. DACA recipients) for enforcement actions.

10. Is ICE contemplating taking enforcement actions against individuals whose underlying nonimmigrant status has expired but who have a pending adjustment application?

Answer: All aliens who are removable may be subject to arrest and placement in removal proceedings. This is done on a case by case basis, based on the totality of the circumstances, and at the discretion of the individual ICE officer.

11. Is ICE contemplating taking enforcement actions against individuals that are out of status but have a U visa application pending?

Answer: If an alien is encountered and ICE is provided with proof of a pending U visa, ICE counsel will seek a *prima facie* determination of the U visa from the Vermont Service Center (VSC), and then make a case by case determination.

12. Section G of the February 20, 2017 DHS memorandum, “[Implementing the President’s Border Security and Immigration Enforcement Improvements Policies](#)” (hereinafter “DHS border memo”) states that the Department will publish in the Federal Register a new Notice Designating Aliens Subject to Expedited Removal Under INA §235(b)(1)(a)(iii). Within what time frame can we expect to see publication of this notice?

Answer: ICE does not have an estimated timeline. The Secretary of Homeland Security makes the determination to designate certain categories of aliens for expedited removal proceedings in his discretion.

13. Section B of the [DHS interior memo](#) directs DHS to make full use of all “statutory authorities to the greatest extent practicable” to remove aliens expeditiously from the United States. In addition to expanding expedited removal and the Institutional Hearing and Removal Program (IHP) pursuant to INA §238(a) and INA§238(b), does ICE anticipate utilizing other fast-track removal procedures?

Answer: In order to relieve the hearing backlog, ICE is working closely with EOIR in order to move detained cases quickly and to expand the IHP program. A list of IHP locations was not available at the time of the meeting.

AILA Note: On 5/2/17, AILA received records from EOIR in response to AILA’s FOIA request for a list of additional IHP locations. [Attorney General Sessions announced](#) the expansion and modernization of the IHP program on 3/30/17, implementing President Trump’s [Executive Order 13768](#) on interior enforcement.

14. Subsection (g) of section 5 of the January 25, 2017 Executive Order, “[Enhancing Public Safety in the Interior of the United States](#)” directs the DHS Secretary to prioritize for removal those foreign nationals who “[i]n the judgment of an immigration office, otherwise pose a risk to public safety or national security.” Will ICE issue guidance for officers to use in forming such “judgment”?

Answer: ICE officers make this determination based on their training and judgment and must provide their supervisors with rationale for probable cause.

Prosecutorial Discretion

15. Section C of the [DHS interior memo](#) states that “General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.” Has General Counsel issued any guidance related to the exercise of prosecutorial discretion by ICE attorneys and officers in accordance with the new border and interior enforcement memo?

Answer: DHS's Office of the General Counsel has not finalized guidance regarding the exercise of prosecutorial discretion.

16. Please confirm that ICE attorneys and officers continue to have the authority to exercise their discretion with respect to the following actions on individual cases:

- Deciding to issue or cancel a notice of detainer;
- Deciding to issue, reissue, serve, file, or cancel a Notice to Appear (NTA);
- Deciding whom to stop question, or arrest for an administrative violation;
- Deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition;
- Settling or dismissing a proceeding;
- Granting deferred action, granting parole, or staying a final order of removal;
- Agreeing to voluntary departure, the withdrawal of an application for admission, or other action in lieu of obtaining a formal order of removal;
- Pursuing an appeal;
- Executing a removal order; and
- Responding to or joining in a motion to reopen removal proceedings and to consider joining in a motion to grant relief or a benefit.

Answer: In general, OPLA's role is to litigate cases that have been placed into the stream of litigation by an NTA issuing office as long as the NTA is legally sufficient. Prosecutorial discretion has always been a part of immigration litigation and OPLA will continue to exercise prosecutorial discretion under a totality of the circumstances approach, such as deciding which cases to appeal, which bars to raise in litigation, and whether to stipulate to facts or bond, etc.

Practitioners will see a shift in ICE practices related to administrative closure, termination, and not filing a NTA. In fact, the local Offices of Chief Counsel (OCCs) will no longer be accepting requests for prosecutorial discretion through the electronic mailboxes established under the prior Administration. Moreover, the OCCs will make a final decision on prosecutorial discretion and OPLA headquarters will no longer be reviewing prosecutorial discretion requests.

17. Please confirm that ICE officers continue to have the authority to exercise discretion in deciding whether to detain or release on bond, supervision, or personal recognizance as well as setting the bond amount.

Answer: Yes, ICE officers maintain such discretion, with appropriate supervisory and management approval and oversight.

Arrest and Detention

18. Section J of the [DHS border memo](#) states that the Director of ICE and Commissioner of CBP "should take all necessary action and allocate all available resources to expand their

detention capabilities at or near the border with Mexico...” Please provide an update on the status of ICE and CBP efforts to set up joint temporary structures.

Answer: Due to time constraints, this question was not asked.

19. Section A of the [DHS border memo](#) states that “detention resources should be prioritized based upon potential danger and risk of flight if an individual is not detained...”

- a. Is the ICE still utilizing the Risk Classification Assessment (RCA) tool to help officers determine whether to detain or release noncitizens? Have there been any changes to the RCA criteria to make custody determinations?

Answer: The RCA tool, which is used to document custody determinations, is still in effect and has not yet been revised. Decisions to detain or release aliens are based on Executive Order guidance.

20. Please provide an update on any new policies or guidance from DHS/ICE regarding removals to Cuba.

Answer: There have been no updates since the [joint statement](#) was signed on 1/12/2017 by the U.S. and Cuba, outlining the treatment of arriving Cuban nationals and Cuban nationals in removal proceedings. ICE continues to collaborate with Cuba and has executed several removals.

21. Given the focus on expanded detention, AILA requests the following information:

- a. A list of any new contracts and renewed or modified contracts that ICE has entered into with detention facilities since January 1, 2017.
- b. A list of all of ICE’s facilities that are only authorized to hold detainees for under 72 hours.
- c. A list of all facilities where ICE holds mentally ill/incompetent persons, as well as any associated treatment facilities where ICE may send an individual for further care.
- d. A list of ICE officer contact information for all ICE facilities. Please include a telephone number, email address, and fax and if possible.
- e. Please provide a list of all detention facilities that ICE is currently utilizing. In this list please specify the “type” of detention facility, date of contract, and indicate which detention standards govern each facility (i.e. [2000 National Detention Standards](#), [Family Residential Standards](#), [2008 Performance-Based National Detention Standards](#) (PBNDS 2008), [2011 Performance-Based National Detention Standards](#) (PBNDS 2011), or [Revisions to the 2011 Performance-Based National Detention Standards](#)).

Answer: Due to time constraints, these questions were not asked.

Post Order Issues

22. Previously, local ERO offices were not pursuing removal of individuals who did not qualify as enforcement priorities pursuant to the November 20, 2014 [memo](#). ICE HQ provided local ERO offices with discretion to determine whether to accept Form I-246, Applications for Stays of Removal. Many local ERO offices declined to accept stay applications from individuals who were not enforcement priorities.

- a. Given that the November 20, 2014 memo has been rescinded, will ICE now accept Form I-246 stay applications from these individuals?

Answer: Yes. Individuals are advised to keep their stays of removal current.

- b. Citing workload, some local ERO offices will not accept Form I-246 stay applications from individuals whose next OSUP report date is not imminent. Please confirm that stay applications can be submitted at any time.

Answer: It is generally recommended that individuals submit stay applications within 30-60 days of the expiration of the stay, but local practices may vary. Applicants should abide by the policies of the local office.

23. AILA has received reports which indicate an increase in cases where individuals remain in detention beyond 180 days post-removal order.

- a. Please provide statistics on the number of post-order cases where custody has exceeded 180 days.

Answer: ICE declined to provide statistics.

- b. Please provide point of contact, name, email, phone number, and fax at ICE Headquarters (HQ) that attorneys can contact for post-order custody review.

Answer: The post-order custody review docket is managed at the local level. ICE advises practitioners to work with the local field office.

- c. How often does ICE review detention data to identify detainees who have been held over 180 days?

Answer: Custody decision authority is maintained by ERO Headquarters for detainees held over 180 days post final order. ERO routinely reviews detained cases that meet this threshold. Individuals with removal orders currently may be held beyond 180 days in part because it is now more likely than before that ICE will be able to remove them. Previously recalcitrant countries are becoming more cooperative, including Iraq, countries in Sub-Saharan Africa, Europe and Central Asia.

287(g)

24. ICE's [website](#) indicates that the latest 287(g) MOAs were signed on February 28, 2017 by the Mecklenburg County Sheriff's Office and Henderson County Sheriff's Office in North Carolina.

- a. Have any new 287(g) MOAs been signed since that date?
- b. Are any task force models being discussed or already in place?

Answer: Due to time constraints, these questions were not asked.

Community Engagement

25. AILA chapters have reported that some ICE components are not conducting liaison, despite engagement with Community Relations Officers (CRO). Indeed, some CROs have declined invitations to meet with community organizations including AILA. In addition, AILA Chapters have reported particular difficulty in conducting liaison with ICE Homeland Security Investigations (HSI). What guidance has been given to the field, if any, by Headquarters in maintaining liaison and community outreach?

Answer: ICE has 25 CRO positions allocated across the country who are each assigned to a field office and responsible for community engagement on behalf of the local HSI, ERO and OCCs. OPA has instructed the CROs to continue engaging as they routinely have. In order to ensure that meetings are productive, some OCCs may be waiting on guidance from the DHS General Counsel's office before meeting with AILA Chapters.