Holiday on ICE:
The U.S. Department of Homeland Security's New Immigration Detention Standards

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Chairman Gallegly, Ranking Member Lofgren, and other committee members, thank you for the opportunity to be here today to discuss ICE's new Performance Based Detention Standards. While no reasonable person would be against the humane treatment of detainees, this Obama Administration initiative goes too far and puts the interests of removable aliens ahead of the national interest. The initiative undercuts immigration laws passed by Congress by eliminating reasonable deterrents to illegal entry. It is a waste of taxpayer dollars that is motivated not by a genuine need for reform, but as part of a larger strategy to trivialize immigration law enforcement and minimize the consequences of illegal immigration, which imposes enormous fiscal, economic, national security and public safety burdens on American communities.

Instead of softening immigration detention standards and helping illegal aliens game the system, the Department of Homeland Security should be expanding ICE detention capacity in order to keep more lawbreakers off the street until they are removed, and to deter others from remaining. A better way to help immigration detainees would be to reduce the amount of time they spend in detention by making more use of the tools Congress has provided to process removable aliens more expeditiously. DHS should not be helping illegal aliens prolong their stay; they should be devoting more effort to helping the people who were victims of their crimes and illegal actions.

New Standards Pamper Immigration Detainees. Descriptions of the brand-new ICE detention facility in Karnes City, Texas evoke images of college campuses where parents pay room and board of $10,000 or more a year, not facilities that temporarily hold people who have violated U.S. laws. "Behind tall walls, the grassy compound offers inmates a salad bar, a library with Internet access, cable TV, and indoor gym with basketball courts, and soccer fields. Instead of guards, unarmed 'resident advisors' patrol the grounds in polo shirts and khakis," reported the *Los Angeles Times*.[1]

Reads another:

> "Airport-style chairs line the waiting area instead of cold, hard prison benches. Small, locking rooms with large glass windows line the walls. Glass appears like a motif, as do framed prints of paintings, like those by Georgia O'Keefe. The spacious dining hall, its linoleum floors marked by colorful pinwheels, summon memories of wood parquet, or the shiny halls of suburban mega-schools. The theme shifts to summer camp with two large interior courtyards housing volleyball and basketball courts, along with an AstroTurf soccer field. The quad dorm areas are named after

[1] Brian Bennett, "New prison for detained immigrants features salad bar, unarmed guards," *Los Angeles Times*, March 18, 2012.

trees – Cedar Hall, Oak Hall, merging the summery and more autumnal thoughts of school. A private college, perhaps."[2]

Even before these standards were issued, ICE detention centers were already softer than those at other federal and local facilities. "ICE is a country club compared to anything else," one career federal detention manager told me, with centers equipped with the most modern recreational amenities. One of ICE's existing larger centers has a huge artificial turf soccer field; volleyball and basketball courts; new kitchens and dining areas – complete with juice and soda bars and unlimited refills; flat screen TVs in the housing units, with personal headphones so each detainee can watch their choice of English or Spanish satellite TV in peace; movie nights; potted flowers; and a vegetable and herb garden.

In addition, the standards dictate very generous and flexible visitation policies for detainees' friends and family (including contact visits) and freedom of movement within the facility. Another explicit goal is to improve detainees' access to lawyers and other advocates who seek to help them contest their charges and fight to remain here longer.

New Facilities Costly. Naturally, none of this comes cheaply. The 608-bed Karnes facility cost the private operator, GEO Group, $32 million to build. This works out to $52,632 per bed. ICE is expected to pay GEO Group about $15 million a year to run the center.

A 1,040-bed facility was built just a couple of years ago in Farmville, Virginia by a group of private investors for $21 million, or $20,192 per bed, which is less than half the cost per bed of the Karnes center.

ICE must balance its obligation to house immigration detainees humanely with its responsibility to perform its mission efficiently and cost-effectively. Before giving DHS a blank check for detention facility projects, Congress should ask the agency leaders to explain the fiscal impact of the new standards, why the new center is so much more expensive than similar recent projects, and how this center compares in cost to alternatives such as IGSA agreements and leasing space at local corrections centers.

Most ICE Detainees are Short-timers. It is important to evaluate this initiative in the context of the overall ICE/ERO caseload. The vast majority of those eligible for detention in one of these centers represent less than half of ICE's removal caseload, and typically are not held in ICE detention for long periods of time. According to ICE field office supervisors, the average length of stay in detention for a "non-criminal" citizen of Mexico or Central America is 10 to 21 days. They are held just long enough for travel documents to be issued and flights to be arranged. These cases make up 87% of the ICE "non-criminal" removal cases.

A large share of "non-criminal" detainees, namely Mexicans apprehended near the border, stay less than one day in detention. These are individuals who are apprehended by the Border Patrol and bused north to an ICE detention center for quick processing and return to Mexico. Their stay in detention is about 12 hours. ICE detention centers in the southwest border areas handle groups of 100 of these illegal entrants twice a day. They are processed as Voluntary Returns, which means they face no penalties or repercussions, are not barred from future legal admission, and cannot be prosecuted as a repeat violator if they try to enter illegally again. The only reason this group is in detention at all is for the purpose of padding ICE's year-end removal statistics. These quick turn-backs numbered about 75,000 last year, or nearly 20 percent of ICE's total reported removals.

[2] Scott Andrews, "What design elements at Karnes facility tell us about the state of immigrant detention," *San Antonio Current,* March 21, 2012.

Return to Catch and Release. For a large number of detainees, these fancy civil detention centers are really just a brief way station in a massive catch and release program. Far too many illegal aliens who are apprehended and whom ICE euphemistically refers to as "non-criminals" (because in most cases they were discovered as a result of being booked into jail for local non-immigration crimes) are quickly whisked back on to the street, usually with a work permit.

This is because under current Obama administration policies, ICE removal officers and trial attorneys have been instructed to focus their efforts nearly exclusively on those individuals who have been convicted of crimes, while enabling those who are identified but not yet convicted remain at large. Some are released on bonds, some on electronic monitoring or other forms of supervision, and some on their own recognizance. In effect, ICE is largely conditioning the exercise of its authority to the disposition of these cases at the local level. According to ICE guidelines, which have been outlined in a well-publicized series of announcements and policy memos, unless an illegal alien is a repeat offender, they should be allowed to remain at large, no matter the seriousness of their charges, and regardless of the likelihood that they will actually appear in court to face either their criminal or their immigration charges. Officers are instructed to be especially lenient if the illegal alien offender has been here long enough to acquire a U.S. citizen spouse or child, or other ties to the community.

With a few exceptions, the small number who remain in ICE detention facilities for long periods are there because they continue to challenge their deportation. And they often do so because they are given false hope by open-borders advocacy groups intent on using such people as pawns in a political effort to hamper enforcement of American immigration laws. The humane thing to do would be to make clear to these illegal aliens that immigration to the United States is a false dream for them and help them return home and get on with their lives. Instead, they languish in detention – a needed detention, given the virtual certainty that they would ignore a negative decision on their cases if set free– but languish nonetheless.

In addition, according to ICE managers, an increasing number of individuals are taking advantage of the administration's new lenient policies on asylum seekers that went into effect in January, 2010. Illegal aliens apprehended by immigration officers, whether at the border or at the port of entry, who find themselves in detention are offered the opportunity to express their fear of return to their home country. According to ICE detention center supervisors, often this fear is articulated shortly after the alien has attended the biweekly "know your rights" presentations that have recently become a fixture in ICE detention centers – and that are a key component of the new detention standards we are discussing today. The most commonly expressed fears are of domestic violence or gang or drug cartels. According to ICE statistics, the asylum officers who evaluate these cases find the fear to meet the new standards of "credible" in about 80 percent of the cases. Aliens then receive a Notice to Appear before an immigration judge, which makes them eligible for release from detention, even if they have been deported before. They are awarded parole status, which makes them eligible for a work permit. This process, from claim of fear to release on parole can be completed in about 30 days. It is no wonder that the number of "credible fear" applications went up nearly 500 percent from 2009 to 2010. The number of grants of parole in these cases went up from 71 percent in 2009 to 80 percent in 2011.

"Non-Criminals" Not Necessarily Harmless. Advocates for illegal aliens are quick to point out that, despite the Obama administration's claimed focus on the removal of aliens who are a threat to public safety, a large share of the individuals in immigration detention are classified as "non-criminals." The reality is that a large share of the so-called "non-criminals" selected for removal processing have in fact been involved in criminal activity, sometimes violent, and their placement in these new "soft" detention centers could place detention officers, resident advisors, and other detainees at risk. The decisions to release of many of these individuals, rather than remove them, can possibly put everyone at risk.

The detained aliens who are labeled "criminals" are those who have been convicted of a crime. The "non-criminal" category includes a large number of unsavory characters who may or may not have been prosecuted for their activities, including alien smugglers, gang members, drug dealers, drug users, drug mules, sexual predators, identity thieves, petty criminals, drunk drivers, prostitutes and pimps. Some may have a criminal history in their home country that is unknown to agencies here. Some are serial traffic offenders who have been a menace on the roadways. Those local law enforcement agencies that are able to keep track report that anywhere between 10 and 50 percent of the illegal aliens who are booked into their jails were arrested for drunk driving, often multiple times.

There can be a variety of reasons why these non-citizen miscreants lack a criminal conviction. Many drunk driving and traffic offenses are thrown out by local courts or end up in continuance for technical reasons. Some criminals get off because their victims are afraid to testify; this is especially true in domestic violence or gang cases. But the most common reason some alien offenders are not convicted of crimes is because local prosecutors or investigators are prone to drop charges when they become aware that ICE has issued a detainer and the offender is potentially removable. It is common for these agencies to use ICE and the opportunity of immigration charges as a substitute for local charges as a pressure valve to relieve their crowded local dockets, saving everyone the time and effort required to follow through with the prosecution of what they may see as relatively minor offenders who should not be present in the community anyway.

Convicted or not, ICE still has the responsibility to remove individuals who are here in violation of our laws; especially those who have been troublesome. Nothing in immigration law provides for violators to avoid enforcement and be allowed to stay here simply because they have not been convicted of another crime.

One case out of Chicago illustrates the absurd and irresponsible lengths to which ICE now goes to avoid holding aliens in custody and to rationalize the use of "prosecutorial discretion." Amado Espinoza-Ramirez was arrested in August, 2011 by Chicago police and charged with multiple sex offenses, including incestuous child rape. He was ultimately charged with 42 counts of child molestation. Two days after Espinoza was arrested, ICE properly issued a detainer, so when a "friend" appeared with $10,000 to bail him out, ICE was able to keep him in custody. But the next day, ICE turned around and let him go. According to agency statements, Espinoza was released with an electronic monitoring bracelet because he had "no prior criminal convictions, no prior immigration violations, and is the parent of a U.S. citizen child" (no mention of whether that child was also a victim). Not surprisingly, Espinoza has not appeared for any of his hearings. ICE has issued a statement saying that because Espinoza did not appear for his immigration hearing in November, he is now a priority for enforcement and will be held in custody if anyone ever finds him.[3] .

While the circumstances of the Espinoza case may be unusually serious, it is not an isolated case. In recent years, ICE has made increasing use of electronic monitoring, supervision, and bonds as alternatives to detention. The results are not encouraging. Newspapers periodically report on offenders who had been in ICE custody recently and were released only to re-offend. According to data I have reviewed from the Secure Communities program, about nine percent of the aliens identified through this screening, which occurs at the time of an arrest, are found to be already in removal proceedings – meaning that they were caught once, released to await a hearing, and got arrested again. As of one year ago, this was more than 40,000 aliens across the country who had re-offended while waiting to be ordered removed. That's a lot of unnecessary victims. Other reports are beginning to surface suggesting that a large share of individuals released on ICE bonds also have absconded.

[3] Michael Volpe, "ICE admits releasing alleged child rapist," *The Daily Caller*, March 21, 2012, http://dailycaller.com/2012/03/21/ice-admits-releasing-alleged-child-rapist/.

The Alternative to Detention Is Fugitives and Absconders. It is worth re-stating that the main point of immigration detention is not to keep criminal aliens off the street (even though that is a real benefit), but to enable the enforcement of immigration laws. The only way to ensure that illegal aliens actually appear before an immigration court (for the sub-set of removable aliens who are actually entitled to that form of due process) is to physically compel them to do so through detention. While it can be worth experimenting with various alternatives to detention, in the real world their likelihood of success is limited. Pilot programs to assess the viability of alternatives to detention often either include people who would not have been detained anyway (i.e., cream-skimming or cherry-picking those most likely to yield the "right" result) or fudge the statistics to make the results appear more favorable, or both. For instance, a *Houston Chronicle* investigation two years ago found that nearly one in five suspected illegal immigrants who went through an experimental ICE intensive monitoring program absconded while under supervision.

Experience and studies have shown that illegal aliens who are not detained, especially those who are facing criminal charges, often will flee from proceedings in order to avoid prosecution and removal. One recent study published by my organization found that nearly 60 percent of aliens who are not detained while in proceedings will fail to appear for their hearings or will ignore orders to depart.[4] Some of these individuals, such as illegal alien Saul Chavez, a repeat drunk driving felon who killed a pedestrian named Dennis McCann in Chicago last year[5], also flee from local criminal proceedings, leaving in their wake victims and families of victims who are unable to obtain the closure they deserve through the justice system.

Absconders are a huge problem in our immigration system. In 2010, there were 715,000 aliens present here who had failed to appear in immigration court or who had disobeyed orders to depart. This is a 28 percent increase over 2008. Today there are more than one million unexecuted orders of removal, and the number has increased more than 84 percent since 2002. [6] It is no wonder that the size of the illegal population has stopped shrinking in the last two years.[7]

Despite this record, the Obama administration is trying to move away from using detention centers, even the softer ones we have been discussing, in favor of alternatives such as electronic monitoring and other forms of supervision. The administration has asked Congress in its recent budget request for the flexibility to shift funds from detention beds, which are specified by Congress and which must be used by DHS, to these less effective alternatives.

Given this abysmal record of enforcement, Congress would surely come to regret awarding such flexibility to DHS under this administration. Instead, Congress should preserve the requirement that all the funded space be used for that purpose, and increase the number of funded detention beds to a level that enables ICE to meet its needs and the expectation of lawmakers and the public. DHS should be expected to use the most cost-effective options possible, including IGSA agreements with local sheriffs

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[4] Mark H. Metcalf, *Built to Fail: Deception and Disorder in America's Immigration Courts*, Center for Immigration Studies, May 2011, http://www.cis.org/Immigration-Courts.
[5] Jessica Vaughan, "Cook County Pressured to Reverse Sanctuary Policy," Center for Immigration Studies Blog, January 6, 2012, http://cis.org/vaughan/cook-county-pressured-to-reverse-sanctuary-policy and "The Alternative to Immigration Detention: Fugitives," October 18, 2011, http://cis.org/vaughan/alternative-to-detention-fugitives.
[6] Metcalf, op.cit.
[7] Steven Camarota, "New DHS Estimates Confirm That the Illegal Immigrant Population Stopped Declining Under Obama," Center for Immigration Studies, March 26, 2012, http://www.cis.org/camarota/new-dhs-estimates-confirm-illegal-immigrant-population-stopped-declining-under-obama.

and private contractors, to manage its detainee population within reasonable detention standards. In addition, Congress should provide additional funding for contract transportation or transportation agreements with local law enforcement agencies. Some local jurisdictions have devised creative low-cost ways to transport detainees, and ICE should be directed to explore and pilot more such options where feasible.

Most importantly, rather than looking for ways to avoid removing illegal aliens, DHS should be exploring ways to streamline the removal process so that their time in detention is reduced. Specifically, DHS agencies should be expanding use of expedited and stipulated removal. Our review of a sample of cases from ICE's Secure Communities and Criminal Alien Program suggests that in a number of cases, ICE officers are choosing more drawn-out proceedings rather than taking advantage of these tools that can benefit both aliens and the government.

Detention Standards Include Advocate for Detainees, No Help for Victims. Another curious aspect of the Obama administration's efforts on behalf of immigration law violators is the establishment of a complaint hot line and new official advocate within the ICE bureaucracy.[8] Meanwhile, those who are the victims of this unlawful activity have no one in these agencies to speak to for for them. Congress should direct ICE to establish a Victim's Advocacy Unit to address the concerns of those who are victims of crimes and other damaging actions committed by removable aliens. Currently these victims and their families have no voice within the DHS bureaucracy, no avenue to get their questions answered, and no way to help ensure that immigration law enforcement failures that have tragic consequences are not repeated. In fact, ICE appears to have no interest whatsoever in meeting and discussing their cases with surviving family members, much less providing basic information on how they were handled. The Victims Advocacy Unit would provide a point of contact for those directly affected by alien crime and be empowered to investigate incidents and trends with the goal of identifying system breakdowns and correcting policy or procedural gaps. In addition, the unit staff would work with established local and national victims organizations on issues of common concern.

Respectfully submitted by,

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[8] Andrew Lorenzen-Strait, "ICE Announces First Ever Public Advocate," http://blog.dhs.gov/2012/02/ice-announces-first-ever-public.html.