

REPLY TO:

- 135 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1501
(202) 224-3744
e-mail: grassley.senate.gov/contact.cfm
- 721 FEDERAL BUILDING
210 WALNUT STREET
DES MOINES, IA 50309-2140
(515) 288-1145
- 150 1ST AVENUE NE
SUITE 325
CEDAR RAPIDS, IA 52401
(319) 363-6832

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320 6TH STREET
SIOUX CITY, IA 51101-1244
(712) 233-1860
- 210 WATERLOO BUILDING
531 COMMERCIAL STREET
WATERLOO, IA 50701-5497
(319) 232-6657
- 131 WEST 3RD STREET
SUITE 180
DAVENPORT, IA 52801-1419
(563) 322-4331
- 307 FEDERAL BUILDING
8 SOUTH 6TH STREET
COUNCIL BLUFFS, IA 51501-4204
(712) 322-7103

United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

August 11, 2010

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529

Dear Director Mayorkas:

As a Senior Member of the Committee on the Judiciary, it is my constitutional duty to conduct oversight into the practices and policies of U. S. Citizenship and Immigration Services (USCIS). Recently, it was brought to my attention that there may be changes in instructions governing deportable aliens who are seeking an immigration status adjustment. I refer to a draft guidance entitled, "Interim Policy Regarding Referral of Cases by USCIS Field Offices to ICE for Enforcement Actions, including the arrest of Individuals Seeking Immigration Benefits or Services."

According to the attached guidance, "A USCIS field office director (FOD) may contact Immigration and Customs Enforcement (ICE) to facilitate an enforcement action, including the arrest of an individual in a field office only after consulting with an attorney in the office of the Chief Council (OCC)." The document further states that "A referral to ICE may be considered where an individual...has an unexecuted final order of removal." I'd like to know why the current policy is being changed, and why USCIS officers aren't being required to call ICE when final orders of removal are pending against an alien.

Prior to this apparent change, when an alien arrived at a USCIS office seeking to alter his/her immigration status and USCIS found an order of removal in his/her file, USCIS contacted ICE immediately to take the alien into custody. According to this interim policy guidance, USCIS will no longer provide immediate notice to ICE. Instead, when Immigration Services Officers (ISO) determine that an alien should be referred to ICE, they must first contact the Office of Chief Counsel within USCIS. Additionally the ISO must prepare and provide information, including a copy of the order of removal, sworn statements and a summary of the alien's immigration history, to the Office of Chief Counsel:

As you might expect, this new process could take hours or even days to resolve. This policy may not work when an individual enters a field office expecting an interview. Consequently, a deportable alien could be released only to have to be re-located by ICE, so that ICE can execute

RANKING MEMBER,
FINANCE

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INTERNATIONAL NARCOTICS
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the order of an Immigration Judge. Thus, this new policy guidance appears inefficient, at the very least.

Moreover, the new policy could be infringing on ICE's prosecutorial discretion and placing ICE agents in harms way unnecessarily. Effectuating a deportation apprehension in an office setting at USCIS is far safer than executing an apprehension at an alien's home or in a public setting.

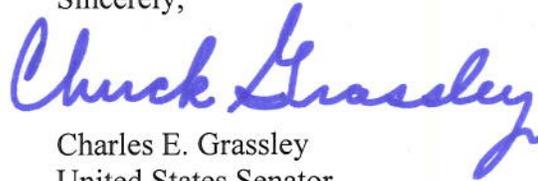
Accordingly, I would greatly appreciate knowing more about USCIS' plans with regard to referral of cases to ICE for enforcement actions. Specifically, I would like answers to the following questions.

1. What is the official policy when an ISO encounters an alien with a removal order? Has the attached draft guidance been made final?
2. Why would an ISO be required to gain permission from USCIS counsel before calling ICE? If the draft policy guidance has been changed, what is the rationale for needing such a change? Were individuals being deported improperly in the past? If so, how many were improperly deported in the last five years?
3. If the draft policy guidance has been made final for field offices, how many aliens with deportation orders have been released by the ISOs since its implementation?
4. How many times has the Office of Chief Counsel at USCIS instructed ISO's not to refer cases to ICE? For each instance, what was the particular reason for not contacting ICE?
5. Why shouldn't USCIS automatically refer cases with final orders of removal to ICE, and give this law enforcement agency the discretion it should have to effectuate removals?
6. The attached draft policy guidance states that "Only matters which fall into the top three Priorities [specified in a June 2010 ICE memo] should be considered for purposes of an arrest referral." This policy would mean that only individuals who are a national security risk, are recent illegal entrants, or who are fugitives would be referred from USCIS to ICE. What about other illegal aliens that USCIS comes in contact with, especially those with final orders of removal and who have a serious criminal history? Why shouldn't ICE be immediately notified of an opportunity to arrest them at USCIS offices?
7. Did ICE participate in the decision to craft this policy guidance? If so, please provide all relevant documentation, including comments and suggestions provided by ICE throughout the drafting process.

As you know, in cooperating with the Committees' review, no documents, records, data or information related to these matters shall be destroyed, modified, removed or otherwise made inaccessible to the Committees.

Thank you for your cooperation and attention to this important matter. Please respond to the questions and requests set forth in this letter no later than September 13, 2010. If you have any questions, please do not hesitate to contact Kathy Nuebel Kovarik at (202) 224-3744.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a prominent "C" and "G".

Charles E. Grassley
United States Senator