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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 19, 2014

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

The President has made clear that he plans to unilaterally grant amnesty by executive fiat to untold millions of individuals who broke the law to enter and remain in the country. Despite the warnings of Congress, it appears the President is intent on condoning contempt for the rule of law and ignoring his Constitutional duty to “take Care that the Laws be faithfully executed[.]”¹

That is unsettling. However, the threats of executive action become even more disturbing in light of the Department’s admitted failure to deport 36,007 convicted criminals—including 169 homicide convicts—who were all released back onto the streets, in Fiscal Year 2013 alone.² According to the New York Times, the Administration’s response to this concern is as follows:

A new enforcement memorandum . . . will make clear that deportations should still proceed for convicted criminals, foreigners who pose national security risks and recent border crossers³

Yet, the release of 36,007 criminal aliens in FY 2013 occurred *despite* the issuance of a similar enforcement memorandum in June 2011, which instructed officers, agents, and attorneys of U.S. Immigration and Customs Enforcement (ICE) to prioritize the deportation of:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;

¹ U.S. CONST. art. II, § 3.

² Letter from Thomas S. Winkowski, Principal Deputy Assistant Secretary of DHS and Acting Director of ICE, to Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (August 15, 2014), <http://www.grassley.senate.gov/sites/default/files/judiciary/upload/Immigration%2C%2008-15-14%2C%20ICE%20response%20to%20CEG%2006-09-14%20letter%20on%20homicide%20convicts.pdf> [hereinafter “ICE Letter”].

³ Michael D. Shear, Julia Preston, and Ashley Parker, “Obama Said to Plan Moves to Shield 5 Million Immigrants,” *The New York Times*, Nov. 13, 2014, <http://www.nytimes.com/2014/11/14/us/obama-immigration.html?smid=tw-bna&r=1>, last accessed Nov. 13, 2014.

- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.⁴

Reportedly, the 36,007 criminal aliens whom ICE failed to deport and instead released in FY 2013 were convicted of a total of 87,818 crimes, including: violent crimes (1,075 aggravated assaults, 228 kidnappings, and 790 robberies); sex crimes (426 sexual assaults, 606 commercialized sexual offenses, and 727 “other” sex offenses); and traffic crimes (15,635 DUI-Liquor offenses, 435 DUI-Drug offenses, and 647 hit-and-runs).⁵ In addition, the 36,007 criminal aliens whom ICE apparently allowed back onto the streets rather than deport in FY 2013 had convictions for arson (47), extortion (53), embezzlement (51), smuggling (26), bribery (15), forgery (1,216), immigration (3,958), treason/sabotage (4), larceny (5,055), burglary (2,510), obstruction⁶ (5,349), and dangerous drugs (9,187).⁷

The June 2011 memorandum also lists “positive factors” that weigh against deportation, such as whether the detainees in question are “victims of domestic violence, trafficking, or other serious crimes[.]”⁸ Yet, in FY 2013 alone, ICE apparently extended that same deportation relief to *perpetrators* of domestic violence who were convicted of 1,317 such offenses.⁹

Further, in a recent report, ICE explained that it reserves the highest priority of deportation for “Level 1 offenders . . . convicted of ‘aggravated felonies,’ as defined in § 101(a)(43) of the Immigration and Nationality Act.”¹⁰ That definition includes: murder; rape; crimes of violence; drug trafficking; sex trafficking; sex offenses involving a minor; theft; burglary; crimes relating to the demand for or receipt of a ransom; treason; alien smuggling; obstruction of justice; commercial bribery; and forgery.¹¹

Yet, as noted above, it is precisely those who were convicted of these aggravated felonies—Level 1 offenders whose deportation should have been the highest priority—whom ICE reportedly released by the hundreds, if not thousands, in FY 2013.

⁴ U.S. Immigration and Customs Enforcement, John Morton, Director, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens,” June 17, 2011, <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>, last accessed November 12, 2014, at 5 [hereinafter “June 2011 Memo”].

⁵ Jessica Vaughan, “ICE Document Details 36,000 Criminal Alien Releases in 2013,” *Center for Immigration Studies*, May 2014, <http://cis.org/ICE-Document-Details-36000-Criminal-Aliens-Release-in-2013>, last accessed Nov. 7, 2014 [hereinafter “CIS Report”].

⁶ *Id.* (listing 2,104 “Obstructing the Police” and 3,245 “Obstructing Judiciary, Congress, Legislature, etc.” offenses).

⁷ *Id.*

⁸ See June 2011 Memo, *supra* note 4, at 5.

⁹ See CIS Report, *supra* note 5.

¹⁰ U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, “ERO Annual Report: FY 2013 ICE Immigration Removals,” <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>, last accessed November 12, 2014, at 5.

¹¹ See 8 U.S.C. § 1101 (a)(43).

On June 9, 2014, I wrote to ICE's Acting Director, Thomas Winkowski, and requested a case summary of each homicide convict released in FY 2013. ICE's August 15, 2014 response confirmed that ICE released 169 homicide convicts in FY 2013, but the response left several questions unanswered and raised new ones. So, on August 26, 2014, I wrote the Acting Director again and reiterated the unanswered questions. In addition, I requested new information, including the number of detainees who were released in FY 2013 despite convictions of sexual assault and whether they registered as sex offenders upon release. I also asked for the number of aliens who were rearrested or convicted of another offense after being released in FY 2013, whether ICE provides notice of releases to victims and the public, and other basic information pertaining to public safety.

To date, I have not received a response to any of these questions, even though a response was requested by September 23, 2014.

Given ICE's admitted failure in FY 2013 to pursue the removal priorities identified in the June 2011 enforcement memorandum, there is a genuine concern as to whether deportations of convicted criminals and those who pose a national security risk will be any different under a new enforcement memorandum. According to the President:

[T]he main concern I have is to make sure we get it right. And that's what we're focused on at this point. Because any executive action I take is going to require some adjustments to how DHS—the Department of Homeland Security—operates . . . I want to make sure that we've crossed all our T's and dotted all our I's.¹²

The Department appears to have overlooked the many T's and I's in its own June 2011 memorandum and those in my August 26, 2014 letter to ICE's Acting Director. Whatever the President's threshold for readiness is, releasing convicted murderers and sex offenders back into our neighborhoods—instead of deporting them—without even providing basic information about post-release rearrests, reconvictions, and sex offender registration, is surely not it.

Accordingly, please respond to the questions set forth in my August 26, 2014 letter. In addition, please provide responses to the following new questions by December 8, 2014:

1. In FY 2014:
 - a. How many aliens did ICE release from its custody?
 - b. How many of these individuals had a criminal conviction?
 - c. How many total criminal offenses were these aliens convicted of?
 - d. What crimes were these aliens convicted of? Please specify by NCIC Offense Code each type of crime. In addition, for each type of crime, please provide the total number of convictions aliens released in FY 2014 accounted for.
 - e. How many of these aliens have been granted an employment authorization document?

¹² Jim Avila, Mary Bruce, and Chris Good, "President Obama Defends Executive Authority on Immigration," *ABC News*, Nov. 16, 2014, <https://abcnews.go.com/Politics/president-obama-defends-executive-authority-immigration/story?id=26949251>, last accessed Nov. 16, 2014.

2. Of the 36,007 criminal aliens whom ICE released in FY 2013:
 - a. How many total criminal offenses were these aliens convicted of?
 - b. What crimes were these aliens convicted of? Please specify by NCIC Offense Code each type of crime. In addition, for each type of crime, please provide the total number of convictions aliens released in FY 2013 accounted for.

3. Of the detainees whom ICE released in FY 2014, how many were Level 1 offenders? For *each* Level 1 offender whom ICE released in FY 2014, please specify:
 - a. The crime(s) he or she was convicted of;
 - b. The “positive factors” that sufficiently outweighed the risk he or she posed to public safety or national security so as to justify release; and
 - c. The country of citizenship.

4. Of the detainees whom ICE released in FY 2013, how many were Level 1 offenders? For *each* Level 1 offender whom ICE released in FY 2013, please specify:
 - a. The crime(s) he or she was convicted of;
 - b. The “positive factors” that sufficiently outweighed the risk he or she posed to public safety or national security so as to justify release; and
 - c. The country of citizenship.

5. How many aliens with treason or sabotage convictions did ICE release in FY 2013? In FY 2014? For *each* alien so released, please specify:
 - a. The crime(s) he or she was convicted of;
 - b. The “positive factors” that sufficiently outweighed the risk he or she posed to public safety or national security so as to justify release; and
 - c. The country of citizenship.

Please number your responses according to their corresponding questions. If you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you.

Sincerely,



Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary