Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

MAY 28 2015

The Honorable Jeff Flake
United States Senate
Washington, DC 20510

Dear Senator Flake:

Thank you for your February 25, 2015 letter. Per your request, U.S. Immigration and Customs Enforcement (ICE) representatives briefed your staff on Apolinar Altamirano's immigration history on April 23, 2015.

I appreciate your interest in this important matter. For more detailed answers to the specific inquiries in your letter, please see the enclosed document. A separate, identical response has been sent to Chairman Grassley, who co-signed your letter. Should you wish to discuss this matter further, please do not hesitate to contact Jason M. Yanussi, ICE Assistant Director for Congressional Relations, at (202) 732-4200 or me at (202) 732-3000.

Sincerely,

Sarah R. Saldaña
Director

Enclosures

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The Honorable Charles E. Grassley
Chairman
Committee on Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your February 25, 2015 letter. Per your request, U.S. Immigration and Customs Enforcement (ICE) representatives briefed your staff on Apolinar Altamirano's immigration history on April 23, 2015.

I appreciate your interest in this important matter. For more detailed answers to the specific inquiries in your letter, please see the enclosed document. A separate, identical response has been sent to Senator Flake, who co-signed your letter. Should you wish to discuss this matter further, please do not hesitate to contact Jason M. Yanussi, ICE Assistant Director for Congressional Relations, at (202) 732-4200 or me at (202) 732-3000.

Sincerely,

Sarah R. Saldaña
Director

Enclosures

The U.S. Department of Homeland Security's Response to Chairman Grassley and Senator Flake's February 25, 2015 Letter

1. **Under what applicable law was Mr. Altamirano eligible for bond? Was releasing Mr. Altamirano a discretionary act by ICE officials?**

   In accordance with the requirements of the *Immigration and Nationality Act* (INA), not all criminal aliens are subject to mandatory detention. Based on a review of the facts and circumstances that were available in Mr. Altamirano's case at the time of the bond determination, including his criminal history, U.S. Immigration and Customs Enforcement (ICE) determined that he was subject to discretionary detention under section 236(a) of the INA. As in all cases in which an alien is detained subject to INA § 236(a), an individualized, discretionary custody determination is made based on the information available to the officer at the time of the determination.

2. **Did ICE notify any Arizona state and/or local authorities that Mr. Altamirano would be or was released on bond? If so, how? If not, why not?**

   ICE does not routinely notify local authorities when a detainee is released on bond from ICE custody. However, in an effort to increase information sharing and enhance public safety, ICE is working to implement a new initiative we have developed, the Law Enforcement Notification System (LENS). LENS will leverage the National Law Enforcement Telecommunications System, a secure information sharing system utilized by state and federal law enforcement agencies, to notify the identification bureaus, in both the state from which an alien is being released and the state where the alien is intending to reside (if different), of the anticipated release of certain criminal aliens from ICE custody.

3. **To what extent did ICE monitor the whereabouts of Mr. Altamirano while he was out on bond?**

   a. **Was an order of supervision or any other type of supervision issued?**
      i. **What was the length of his supervision?**
      ii. **What were the conditions of his supervision and how did ICE enforce them?**
      iii. **During the length of his supervision, how many times did Mr. Altamirano check-in with ICE officials? Please provide dates.**

   Mr. Altamirano was not placed on an Order of Supervision because he had not been issued a final order of removal.[1] His case was pending before the immigration court in Phoenix, Arizona. Mr. Altamirano posted a $10,000 bond after his immigration hearing, which means that, like all individuals who post bond, he became obligated to report to ICE upon demand. Failure for him to report upon the agency's demand would have resulted in the forfeiture of the principal bond amount to ICE. At the time of his most recent criminal offense ICE had not triggered his obligation to report on demand.

[1] Orders of Supervision are reserved only for individuals who have been issued a final order of removal.

In connection with ICE's enhanced oversight and release procedures for detainees with criminal records, ICE has taken steps to enhance the supervision of a number of individuals released from custody, including enhanced physical and telephonic reporting and other methods of supervision.

4. **ICE did not revoke Mr. Altamirano's bond despite two injunctions issued against him and despite complaints that he had threatened to kill a person and had brandished a firearm against another. What would it have taken for ICE to revoke bond in this case?**

   ICE was not aware of the injunctions against Mr. Altamirano until after his January 22, 2015 arrest for first-degree murder, armed robbery, and related offenses. From the time an initial bond determination is made, ICE may revoke the bond of a released alien when a change in circumstances warrants such action in accordance with the requirements of 8 C.F.R. § 236.1(c)(9). However, at the time of Mr. Altamirano's release on bond, neither of the injunctions had been filed or served.

   There is currently no systematic process for state and local authorities to notify ICE when an injunction or order of protection is served.

5. **When did ICE become aware of the injunctions issued against Mr. Altamirano?**

   ICE became aware of the injunctions against Mr. Altamirano following his January 22, 2015 arrest by the Mesa Police Department.

6. **Since Fiscal Year 2010, how many aliens in removal proceedings with criminal histories have been eligible for bond and been released in the state of Arizona and in Iowa? Please provide a list of the charges for which the individuals released were found guilty.**

   The number of unique criminal aliens released on bond from facilities in Arizona and Iowa in Fiscal Years (FY) 2010-2014 are listed in the chart below. Please refer to Enclosure A for a list of convictions.

	Arizona	Iowa	Total
FY 2010	509	59	568
FY 2011	992	138	1,130
FY 2012	1,184	194	1,378
FY 2013	1,074	127	1,201
FY 2014	1,173	78	1,251

   As a subset of the data provided above, the number of unique criminal aliens released on bond from facilities in Arizona and Iowa with bond set by the Executive Office for Immigration Review (EOIR) is as follows:

	Arizona	Iowa	Total
FY 2010	411	26	437
FY 2011	733	73	806
FY 2012	669	130	799
FY 2013	451	58	509
FY 2014	634	35	669

7. **Since Fiscal Year 2010, how many aliens in removal proceedings with criminal histories that have been eligible for bond and released in the state of Arizona and in Iowa have reoffended? Please list the charges that have been brought against these individuals.**

   The number of criminal aliens who committed a crime subsequent to their release from ICE custody is as follows:

	Arizona	Iowa	Total
FY 2010	2	0	2
FY 2011	28	5	33
FY 2012	45	3	48
FY 2013	56	8	64
FY 2014	17	0	17

   Please refer to Enclosure B for a list of convictions.

8. **Nationwide, in how many other instances since Fiscal Year 2010 have aliens with criminal histories been released while in removal proceedings and subsequently been charged with murder?**

   Between FY 2010 and FY 2014, there were 121 unique criminal aliens who had an active case at the time of release and were subsequently charged with homicide-related offenses. Of these 121 individuals who were bonded out, 33 were released on a bond set by DOJ EOIR and 24 were released pursuant to the Supreme Court decision in *Zadvydas v. Davis*.

9. **What is the shortest time period a removal proceeding in the state of Arizona can take, the longest time period, and the average time period for removal proceedings in the state?**

   The issue of the length of removal proceedings in the State of Arizona falls under the purview of EOIR. Accordingly, ICE defers to EOIR.

10. **What is the shortest time period a removal proceeding in the state of Iowa can take, the longest time period, and the average time period for removal proceedings in the state?**

The issue of the length of removal proceedings in the State of Iowa falls under the purview of EOIR. Accordingly, ICE defers to EOIR.

11. Were there backlogs or other issues preventing the resolution of Mr. Altamirano's deportation proceedings prior to his release on bond in January 2013?

On January 3, 2013, ICE assumed custody of Mr. Altamirano and issued him a Notice to Appear, which was filed with EOIR on January 7, 2013. Additionally, on January 7, 2013, Mr. Altamirano posted a $10,000 bond and was released from ICE custody pending the outcome of his removal proceedings before EOIR. Mr. Altamirano's first appearance before EOIR was on April 9, 2014.

The issue of potential delay of removal proceedings falls under the purview of the EOIR. Accordingly, ICE defers to EOIR on this issue.

12. Going forward, what is the likely disposition of Mr. Altamirano's case with respect to federal custody, ICE's bonding, and court proceedings?

On January 22, 2015, Mr. Altamirano was arrested by the Mesa Police Department in Arizona for first-degree murder, armed robbery, and related offenses. He remains in state custody. It is likely that ICE will move to administratively close his immigration case pending the outcome of the current criminal charges. Upon resolution of Mr. Altamirano's state criminal charges, ICE would assume custody if appropriate and re-calendar the case for purposes of completing his removal proceedings before EOIR. If convicted, Mr. Altamirano's immigration case will likely be heard before EOIR while he remains in state custody.[2]

13. Are you aware of state and local criminal justice officials taking into account the likely detention of an individual facing criminal charges and the subsequent removal based upon certain convictions in decision-making related to bond and sentencing?

ICE acknowledges that state and local criminal justice officials make law enforcement decisions pursuant to their respective jurisdiction's laws, regulations, and ordinances. ICE cannot confirm the factors that officials take into account.

14. It is our understanding that ICE has put into place a requirement that a senior-level supervisor approve the release of potentially dangerous individuals; was Mr. Altamirano's release approved by a senior-level supervisor? If not, is there an effort to review the past releases of dangerous individuals such as Mr. Altamirano?

Mr. Altamirano's January 7, 2013 release from ICE custody on a $10,000 bond was

[2] The Arizona Department of Corrections participates in the EOIR Institutional Removal Program, which expedites the processing and placement of removable criminal aliens into removal proceedings prior to their release from federal, state, county, or local custody.

approved by an ICE Supervisory Detention and Deportation Officer. On March 25, 2015, ICE instituted enhanced supervisory approval for discretionary releases of certain categories of criminal aliens (i.e., aliens convicted of two or more felonies or any single aggravated felony). While releases were previously approved by a supervisory official, the new procedures require the approval of a more senior supervisory official. ICE continually reviews such cases as part of its case management processes and has the authority to re-detain an alien who at any point is deemed to be a public safety threat.