

United States Senate

WASHINGTON, DC 20510

July 18, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20528

The Honorable Ronald D. Vitiello
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Dear Secretary Nielsen and Acting Director Vitiello:

We are writing to express our concern over reports of U.S. Immigration and Customs Enforcement's ("ICE") ongoing practice of arresting undocumented immigrants at United States Citizenship and Immigration Services ("USCIS") offices. We are also troubled by some of the information that you provided in your response to a letter on this matter from Senator Richard Blumenthal, such as that ICE does not document the number of arrests that occur at each USCIS location. In addition, we have concerns about some of the issues that you did not address in your letter, such as whether there is guidance that governs when and where ICE makes arrests at USCIS sites. In light of our concerns, we request further information about ICE's reported arrests of undocumented immigrants at USCIS offices.

Many of the people who have reportedly been arrested are married to U.S. citizens and are attempting to comply with U.S. immigration laws to obtain a green card or other legal status.¹ Many of these individuals do not have criminal records, and present no national security or public safety risk and should not be a priority for arrest, detention, and removal.²

In January, ICE officers arrested a woman in the middle of her interview with USCIS officials where she was demonstrating the legitimacy of her marriage to a U.S. citizen.³ In another case that same month, an undocumented man was visiting a USCIS office in Philadelphia with his

¹ Vanessa Guillen Matheus, "ICE detains man during green card interview with American husband," NBC News, February 27, 2018, <https://www.nbcnews.com/feature/nbc-out/ice-detains-man-during-green-card-interview-america-husband-n851661>; <https://www.bostonglobe.com/metro/2018/02/21/january-ice-arrested-people-they-sought-permanent-status-mass-and-rhode-island/EE4jLM6HkytwrHDUjYpdqL/story.html>

² Shannon Dooling, "ICE Arrests Green Card Applicants in Lawrence, Signaling Shift in Priorities," WBUR, March 30, 2017, <http://www.wbur.org/news/2017/03/30/green-card-ice-arrests-lawrence>.

³ Maria Cramer, "'I was blindsided': How a routine immigration interview turned into an arrest," March 11, 2018, <https://www.bostonglobe.com/metro/2018/03/11/was-blindsided-how-routine-immigration-interview-turned-into-arrest/9LwpYaPNcqPgeLcJ4L7LGN/story.html>

husband to obtain his I-130 form, a necessary step in the process to obtain a green card.⁴ In the middle of his interview, ICE officials entered the room and arrested him.⁵ Although both couples were legally married, the undocumented spouses in each case had outstanding deportation orders that they were trying to remedy through the appropriate process as prescribed in U.S. law. Ripping apart families and punishing those who are trying to come out of the shadows does not make us safer, nor is it the best use of ICE's time and resources. Moreover, it sends a chilling effect to other immigrants who seek to adjust their status and therefore must interact with USCIS.

As you know, ICE and USCIS's relationship is governed by a 2016 memorandum that allows ICE to utilize USCIS facilities for the "questioning, apprehension, and/or arrest of Persons of Interest (POIs)."⁶ ICE is required to give no less than 24 hours' notice when requesting to utilize USCIS facilities, and in matters of exigent circumstances, as much advanced notice as possible.⁷ These visits are for the purpose of "conduct[ing] authorized enforcement activities when addressing emergent matters of national security, public safety, marriage fraud, asylum fraud, or other types of immigration benefit fraud...to strengthen the integrity of the lawful immigration system."⁸

We fail to see how ICE's use of USCIS offices to arrest undocumented immigrants as they take routine steps toward legal status strengthens the integrity of the lawful immigration system. These arrests should be made only under exigent circumstances where national security and public safety are truly at risk. Absent those circumstances, it would be an inappropriate for ICE to use its enforcement authority to arrest undocumented immigrants in USCIS offices, particularly given that USCIS is an administrative agency, not an enforcement agency. Immigrants come to USCIS with the expectation that they will be interviewed in good faith. Reports that these interviews have resulted in arrests have instilled fear in undocumented immigrants who now feel increased pressure to remain in the shadows. Therefore, the current practice illustrates the recklessness of the administration's immigration priorities and contradicts its assertions that it is going after immigrants who are serious criminals.

In addition, Attorney General Jeff Sessions' recent decision to eliminate the Board of Immigration Appeals' authority to administratively close court cases compounds the danger of these USCIS office arrests.⁹ This decision limits an immigration judge's ability to close a case to

⁴ Vanessa Guillen Matheus, "Ice detains man during green card interview with American husband," NBC News, February 27, 2018, <https://www.nbcnews.com/feature/nbc-out/ice-detains-man-during-green-card-interview-america-husband-n851661>.

⁵ *Id.*

⁶ United States Citizenship and Immigration Services & United States Immigration and Customs Enforcement. (2016). *Memorandum of Agreement Between United States Citizenship and Immigration Services (USCIS) and United States Immigration and Customs Enforcement (ICE) Regarding Coordination of ICE Operational Visits to USCIS Facilities.*

⁷ *Id.*

⁸ *Id.*

⁹ *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018). Interim Decision #3926 (May 17, 2018) <https://www.justice.gov/eoir/page/file/1064086/download>

allow USCIS to adjudicate applications under which it exercises exclusive jurisdiction. Without the ability to administratively close cases, immigration judges will face larger case backlogs and deprive immigrants the chance to fully argue their case for legal status outside of court.¹⁰ This greatly increases the chances of deportation without due process, and undermines the independence of immigration judges.¹¹


In light of ICE's increased arrests at USCIS sites, please answer the following questions:

1. Why does ICE fail to document the number of arrests that occur at each USCIS location?
2. Is there specific guidance that governs when and where ICE makes arrests at USCIS sites? If so, please provide any and all documentation and guidance.
3. Has there been a change in policy affecting ICE's ability to make arrests at USCIS facilities? If so, what is that policy change?
4. Does USCIS provide individuals with a warning that, by appearing at a USCIS facility, they may be at risk for arrest? What mechanism does ICE utilize to provide this warning?
5. How does ICE define "Persons of Interest" in determining who poses a threat to national security and public safety?
6. Is ICE prioritizing a certain class of undocumented immigrants for arrest at USCIS facilities that are not matters of national security, public safety, marriage fraud, asylum fraud, or other types of immigration benefit fraud? If so, please provide a breakdown and any and all documentation outlining those priorities.
7. Does USCIS notify ICE about the date, time, or place of any appointments, including those with undocumented immigrants? If so, under what circumstances? Please provide this information by month from January 2017 to May 2017.
8. What existing privacy and confidentiality policies does USCIS adhere to when sharing information about someone applying for an immigration benefit with ICE? Please provide a copy of any updated guidance or policies as of January 2017.

Thank you in advance for your timely response.

Sincerely,


Robert Menendez


Richard Blumenthal

¹⁰ Id.

¹¹ Id.

Mazie K. Hirono

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