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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

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October 21, 2010

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Nebraska Avenue Complex
245 Murray Lane, Mailstop 0150
Washington, DC 20528-0150

Dear Secretary Napolitano:

Recently, media reports have revealed that pending removal proceedings are being dismissed in record numbers. That sharp increase in dismissals is the result of a directive from Immigration and Customs Enforcement (ICE) Director John T. Morton to all ICE attorneys to review pending cases and seek dismissal if the cases do not involve Level I offenders (aliens convicted of aggravated felonies or two or more felonies). Specifically, ICE attorneys are directed to seek dismissal of cases involving Level II^[1] and Level III^[2] criminal aliens so long as the aliens have no felony convictions and no more than two misdemeanors. As we understand it, cases involving aliens with misdemeanors involving domestic violence, sexual crimes, or driving while intoxicated would not be dropped.

Though the reports focused only on cases pending before Houston immigration judges, our understanding is that the ICE directive applies nationwide. Numerous criminal aliens are being released into society and are having proceedings terminated simply because ICE has decided that such cases do not fit within the Department's chosen enforcement priorities.

The ICE directive, along with other recently announced detention and removal policies, raises serious questions about your Department's commitment to enforce the immigration laws. It appears that your Department is enforcing the law based on criteria it arbitrarily chose, with complete disregard for the enforcement laws created by Congress. The repercussions of this decision extend beyond removal proceedings, because it discourages officers from even initiating new removal proceedings if they believe the case ultimately will be dismissed based on the new directive.

Even more disturbing is the fact that your Department has chosen to dismiss cases against criminal aliens, including aliens who have committed crimes involving moral turpitude, crimes of violence, assault, theft, fraud, drug offenses, driving under the influence, and illegal entry.

^[1] Aliens convicted of one felony or 3 or more misdemeanors.

^[2] Aliens convicted of a misdemeanor.

To be sure, ICE has cited a lack of resources as one of the reasons for its prioritization of cases and for its selective enforcement. But to date, we have not seen any efforts by ICE, your Department, or the Administration to request an increase in ICE funding sufficient to address staffing shortages, detention capacity, and coordination of enforcement efforts nationwide to achieve a streamlined and robust immigration removal system. As a result, it appears that your Department is doing the very thing that we have raised concerns about in several letters – allowing illegal aliens to evade the law while waiting, without much concern about removal, to one day obtain legal status. Though Congress has been slow to reach a comprehensive immigration solution, your Department is charged with enforcing the law as written and it should not be adopting a lax approach to immigration enforcement or selectively enforcing the laws against only those aliens it considers a priority.

We would like a detailed list of the number of cases that have been dismissed since January 2010 to the present. If the case involved a criminal alien, we also would like you to identify which crimes the aliens were convicted of and in which jurisdiction. In addition, we want you to detail exactly how much funding your Department would require to ensure that enforcement of the law occurs consistently for every illegal alien encountered and apprehended by ICE or U.S. Customs and Border Protection. Please respond by November 15th.

Sincerely,

John Cornyn

Jon Kyl

Chuck Grassley

John G. Hatch

Tom Coburn

J. Thune

Jeff Sessions