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MARIA ARGUETA; WALTER CHAVEZ; ANA GALINDO; W.C. by and through his parents Walter Chavez and Ana Galindo; ARTURO FLORES; BYBYANA ARIAS; JUAN ONTANEDA; VERONICA COVIAS; and YESICA GUZMAN,

Plaintiffs,

-vs-

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”); JOHN MORTON, Assistant Secretary for Immigration and Customs Enforcement; JULIE L. MYERS, Former Assistant Secretary for Immigration and Customs Enforcement; ALONZO R. PENNA, Deputy Assistant Director for Operations, Immigration and Customs Enforcement; JOHN P. TORRES, Former Deputy Assistant Director for Operations, Immigration and Customs Enforcement; SCOTT WEBER, Director, Office of Detention and Removal Operations, Newark Field Office; BARTOLOME RODRIGUEZ, Former Director, Office of Detention and Removal Operations, Newark Field Office; AGENT 1, AGENT 2, AGENT 3, AGENT 4, AGENT 5, AGENT 6, AGENT 7, AGENT 8, AGENT 9, AGENT 10, AGENT 11, AGENT 12, AGENT 13,

**DOCUMENT FILED  
ELECTRONICALLY**

Honorable Peter G. Sheridan, U.S.D.J.  
Honorable Esther Salas, U.S.M.J.

Civil Action No: 2:08-cv-1652

**THIRD AMENDED  
COMPLAINT**

**JURY TRIAL DEMANDED**

AGENT 14, AGENT 15, AGENT 16, AGENT 17,  
AGENT 18, AGENT 19, AGENT 20, AGENT 21,  
AGENT 22, AGENT 23, AGENT 24, AGENT 25,  
AGENT 26, AGENT 27, AGENT 28, AGENT 29,  
AGENT 30, AGENT 31; JOHN DOE ICE AGENTS 1-  
18; JOHN SOE ICE SUPERVISORS 1-15; Penns Grove  
Police Officers Carmen Hernandez, Jason Spera, and  
Joseph DiCarolis (sued in their Individual Capacities),  
Defendants.

Plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C. (by and through his parents Walter Chavez and Ana Galindo), Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman, (collectively “plaintiffs”) by their attorneys, the Seton Hall School of Law Center For Social Justice and Lowenstein Sandler PC, for their Complaint allege as follows:

### **INTRODUCTION**

1. This is a civil rights action raising constitutional claims under the Fourth and Fifth Amendment against federal officials pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and against state officials pursuant to 42 U.S.C. § 1983 and the New Jersey Constitution, for their participation in a practice of unlawful and abusive raids of immigrant homes across the state of New Jersey. The practice flourished as a predictable consequence of the Department of Homeland Security’s arbitrary, exponentially-increased quotas for the arrest of immigrants with old deportation orders, and amidst the escalation of a program the Department (“DHS”) calls “Operation Return to Sender.” Under pressure from these quotas, immigration agents have regularly disregarded the obligation to secure a judicial warrant or probable cause in carrying out unlawful entries and dragnet searches of homes in which the agents only loosely suspect immigrant families may reside.

2. Plaintiffs in this case are all victims of these unconstitutional home raid practices. They include United States citizens and lawful residents. Each plaintiff was present in his or her home in the pre-dawn hours of the morning, when a team of federal agents gained unlawful entry, through deceit or, in some cases, raw force. Agents swept throughout the homes, ordered sleeping people – including, in some cases, children – out of bed, and detained the occupants without judicial warrant or other legal justification.

3. Some of the plaintiffs were subjected to physical or verbal abuse; others were threatened or had firearms pointed at them. At least one plaintiff was forcibly prevented from contacting counsel. At least one of them was subsequently arrested despite having papers – which the arresting agents refused even to look at – reflecting her legal status. Each plaintiff has suffered and continues to suffer from the effects of that abusive conduct.

4. Plaintiffs' experiences are typical of the "Operation Return to Sender" home raid *modus operandi* throughout the state and the nation, which has been comprehensively documented through media reports and first-hand accounts from other victims. The execution of these raids in New Jersey illustrates how "Operation Return to Sender" has extended far beyond its stated goal of apprehending individuals with outstanding deportation orders – persons Immigration and Customs Enforcement ("ICE") calls "fugitives." ICE statistics reveal that as few as one in three individuals arrested in "Operation Return to Sender" in New Jersey is actually a "fugitive" in alleged violation of a deportation order. Instead, the large majority – euphemistically called "collateral arrests" – are individuals merely swept up in the recent dragnets. Agents regularly raid homes where the purported "fugitive" target is not present, and could not reasonably have

been believed to have been present. According to a recent report by DHS's Inspector General, agents rely on data that is outdated and inaccurate in up to 50% of cases.

5. Despite aggressively increasing the arrest quotas and the number of agents participating in "Operation Return to Sender," and thereafter being notified – via press reports, lawsuits, and congressional testimony – of the widespread allegations of unconstitutional and abusive conduct by ICE agents as part of this program, the DHS supervisory officials named in this Complaint have continued to foster an institutional culture of lawlessness. Specifically, they have failed to develop meaningful guidelines or oversight mechanisms to ensure that home arrests are conducted within constitutional limits, to provide the agents involved with adequate training (or for some newer agents, any training) on the lawful execution of fugitive operations, or otherwise ensured accountability for the failure to conduct fugitive operations within constitutional limits. On the contrary, on many occasions, DHS supervisory officials have proudly publicized the increasing numbers of arrests made as a result of the unconstitutional raids that continue to be carried out in the shadows and the dark of night.

6. The Constitution constrains the actions of government officials in every domain and protects citizens and non-citizens equally from unreasonable searches, seizures, and incursions into their homes. In this action, the plaintiffs seek to hold responsible those who conducted, directed, and sanctioned the complained-of conduct, all of which violated clearly established constitutional protections.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over this federal civil rights action pursuant to 28 U.S.C. §§ 1331 & 1343(a)(3). Supplemental jurisdiction over pendant state law claims is proper pursuant to 28 U.S.C. § 1367.

8. Venue lies in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred here, and also under 28 U.S.C. § 1391(e)(3) because defendants include federal officers acting under color of legal authority, at least one of the plaintiffs resides in this district, and no real property is involved in this action.

**PARTIES**

**The Plaintiffs**

9. Plaintiff **MARIA ARGUETA** is of Latino origin, and has held lawful Temporary Protection Status in the United States since 2001. At all times relevant to this action she was a resident of North Bergen, New Jersey.

10. Plaintiff **WALTER CHAVEZ** is of Latino origin and is a lawful permanent resident of the United States. At all times relevant to this action he was a resident of Paterson, New Jersey.

11. Plaintiff **ANA GALINDO** is of Latino origin and is a lawful permanent resident of the United States. At all times relevant to this action she was a resident of Paterson, New Jersey.

12. Plaintiff **W.C.**, is the nine-year old son of plaintiffs Walter Chavez and Ana Galindo, and is a United States citizen. At all times relevant to this action he was a resident of Paterson, New Jersey.

13. Plaintiff **ARTURO FLORES** is of Latino origin and is a United States citizen. At all times relevant to this action he was a resident of Clifton, New Jersey.

14. Plaintiff **BYBYANA ARIAS** is of Latino origin and is a United States citizen. At all times relevant to this action she was a resident of Clifton, New Jersey.

15. Plaintiff **JUAN ONTANEDA** is of Latino origin. At all times relevant to this action he was a resident of Newark, New Jersey.

16. Plaintiff **VERONICA COVIAS** is of Latino origin and is a lawful permanent resident of the United States. At all times relevant to this action she was a resident of Paterson, New Jersey.

17. Plaintiff **YESICA GUZMAN** is of Latino origin and is a lawful permanent resident of the United States. At all times relevant to this action she was a resident of Salem County, New Jersey.

#### **The Federal Defendants**

18. Defendant **IMMIGRATION AND CUSTOMS ENFORCEMENT** (“ICE”) is a bureau of the United States Department of Homeland Security (“DHS”). ICE is charged with investigative and enforcement responsibilities with respect to federal immigration law. ICE is headquartered in Washington, D.C.

19. Defendant **JOHN MORTON** is the Assistant Secretary for Homeland Security for Immigration and Customs Enforcement, located in Washington, D.C. Defendant Morton is sued only for injunctive relief in his official capacity.

20. Defendant **JULIE L. MYERS** is the former Assistant Secretary for Homeland Security for Immigration and Customs Enforcement, located in Washington, D.C. Defendant Myers was, at all times relevant to this action, charged with the

constitutional and lawful implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, and with the administration of ICE. Defendant Myers is sued for damages in her individual capacity. ICE press releases describing arrests in New Jersey under Operation Return to Sender have repeatedly stated that those arrests were made pursuant to the nationwide interior immigration enforcement strategy announced by defendant Myers and Michael Chertoff, Secretary of the Department of Homeland Security.

21. Defendant **ALONZO R. PENA** is the Deputy Assistant Secretary for Operations for ICE, located in Washington D.C. Defendant Pena is sued only for injunctive relief in his official capacity.

22. Defendant **JOHN P. TORRES** is the former Deputy Assistant Secretary for Operations for ICE, and the former Director of the ICE Office of Detention and Removal Operations (“DRO”), in Washington, D.C. DRO is the branch of ICE that coordinates the removal of foreign nationals not entitled to remain in the country. As Director, defendant Torres was, at all times relevant to this action, responsible for overseeing the apprehension, detention and removal of foreign nationals charged with violating federal immigration law. He was, at all times relevant to this action, also responsible for the supervision of law enforcement officers assigned to DRO field offices, including the Newark, New Jersey office. Defendant Torres was, at all times relevant to this action, responsible for the supervision and oversight of Fugitive Operations Teams. Defendant Torres is sued for damages in his individual capacity.

23. Defendant **SCOTT WEBER** is the Director of the DRO Field Office in Newark, New Jersey. Defendant Weber is responsible for managing ICE enforcement

activities in New Jersey, including the implementation of Operation Return to Sender by Fugitive Operations Teams. Defendant Weber is sued for damages in his individual capacity and for injunctive relief in his official capacity.

24. Defendant **BARTOLOME RODRIGUEZ** is the former Acting Field Office Director for the DRO Field Office in Newark, New Jersey. In that role, defendant Rodriguez was responsible for managing ICE enforcement activities in New Jersey, including the implementation of “Operation Return to Sender” by Fugitive Operations Teams, in or around February-May 2007. Defendant Rodriguez remains employed with the Newark DRO Field Office. Defendant Rodriguez is sued for damages in his individual capacity.

25. Defendant **AGENT 1** is an Immigration Enforcement Agent employed by ICE. Upon information and belief, Agent 1 was personally involved in the ICE home raid on the residence of Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006. Agent 1 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

26. Defendant **AGENT 2** is a Deportation Officer employed by ICE. Upon information and belief, Agent 2 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008; and (2) Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008. Agent 2 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

27. Defendant **AGENT 3** is a Deportation Officer employed by ICE. Upon information and belief, Agent 3 was personally involved in the ICE home raid on the



residence of Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006. Agent 3 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

28. Defendant **AGENT 4** is a Deportation Officer employed by ICE. Upon information and belief, Agent 4 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008; and (2) Auturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008. Agent 4 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

29. Defendant **AGENT 5** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 5 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 5 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

30. Defendant **AGENT 6** is a Deportation Officer employed by ICE. Upon information and belief, Agent 6 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 6 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

31. Defendant **AGENT 7** is a Deportation Officer employed by ICE. Upon information and belief Agent 7, was personally involved in the ICE home raid on the residence of Juan Ontaneda in Newark, New Jersey on December 7, 2007. Agent 7 is

sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

32. Defendant **AGENT 8** is a Deportation Officer employed by ICE. Upon information and belief, Agent 8 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008, and (2) Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008. Agent 8 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

33. Defendant **AGENT 9** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 9 was personally involved in the ICE home raid on the residence of Veronica Covias in Paterson, New Jersey on March 28, 2007. Agent 9 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

34. Defendant **AGENT 10** is an Immigration Enforcement Agent employed by ICE. Upon information and belief, Agent 10 was personally involved in the ICE home raid on the residence of Veronica Covias in Paterson, New Jersey on March 28, 2007. Agent 10 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

35. Defendant **AGENT 11** is a Deportation Officer employed by ICE. Upon information and belief, Agent 11 was personally involved in the ICE home raid on the residence of Juan Ontaneda in Newark, New Jersey on December 7, 2007. Agent 11 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

36. Defendant **AGENT 12** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 12 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 12 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

37. Defendant **AGENT 13** is an Immigration Enforcement Agent employed by ICE. Upon information and belief, Agent 13 was personally involved in the ICE home raid on the residence of Juan Ontaneda in Newark, New Jersey on December 7, 2007. Agent 13 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

38. Defendant **AGENT 14** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 14 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008; (2) Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008; (3) Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006, and (4) Veronica Covias in Paterson, New Jersey on March 28, 2007. Agent 14 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

39. Defendant **AGENT 15** is a Deportation Officer employed by ICE. Upon information and belief, Agent 15 was personally involved in the ICE home raid on the residence of Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006. Agent 15 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacities.

40. Defendant **AGENT 16** is a Deportation Officer employed by ICE. Upon information and belief, Agent 16 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008; and (2) Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008. Agent 16 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

41. Defendant **AGENT 17** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 17 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 17 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

42. Defendant **AGENT 18** is a Deportation Officer employed by ICE. Upon information and belief Agent 18, was personally involved in the ICE home raid on the residence of Juan Ontaneda in Newark, New Jersey on December 7, 2007. Agent 18 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

43. Defendant **AGENT 19** is a Deportation Officer employed by ICE. Upon information and belief, Agent 19 was personally involved in the ICE home raid on the residence of Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006. Agent 19 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

44. Defendant **AGENT 20** is a Deportation Officer employed by ICE. Upon information and belief, Agent 20 was personally involved in the ICE home raid on the

residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 20 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

45. Defendant **AGENT 21** is a Deportation Officer employed by ICE. Upon information and belief, Agent 21 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 21 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

46. Defendant **AGENT 22** is a Public Affairs Officer employed by ICE. Upon information and belief, Agent 22 was personally involved in the ICE home raid on the residence of Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008. Agent 22 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

47. Defendant **AGENT 23** is a Deportation Officer employed by ICE. Upon information and belief, Agent 23 was personally involved in the ICE home raid on the residence of Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006. Agent 23 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

48. Defendant **AGENT 24** is a Deportation Office employed by ICE. Upon information and belief, Agent 24 was personally involved in the ICE home raid on the residence of Veronica Covias in Paterson, New Jersey on March 28, 2007. Agent 24 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

49. Defendant **AGENT 25** is a Deportation Officer employed by ICE. Upon information and belief, Agent 25 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008; (2) Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008; and (3) Arturo Flores and Bybyana Arias in Clifton, New Jersey on November 13, 2006. Agent 25 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

50. Defendant **AGENT 26** is a Immigration Enforcement Agent employed by ICE. Upon information and belief, Agent 26 was personally involved in the ICE home raids on the residences of: (1) Maria Argueta in North Bergen, New Jersey on January 29, 2008; and (2) Arturo Chavez, Ana Galindo and W.C. in Paterson New Jersey on April 2, 2008. Agent 26 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

51. Defendant **AGENT 27** is a Deportation Officer employed by ICE. Upon information and belief, Agent 27 was personally involved in the ICE home raid on the residence of Juan Ontaneda in Newark, New Jersey on December 7, 2007. Agent 27 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

52. Defendant **AGENT 28** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 28 was personally involved in the ICE home raid on the residence of Juan Ontaneda in Newark, New Jersey on December 7, 2007. Agent 28 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

53. Defendant **AGENT 29** is a Supervisory Detention and Deportation Officer employed by ICE. Upon information and belief, Agent 29 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 29 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

54. Defendant **AGENT 30** is a Deportation Officer employed by ICE. Upon information and belief, Agent 30 was personally involved in the ICE home raid on the residence of Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. Agent 30 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

55. Defendant **AGENT 31** is a Deportation Officer employed by ICE. Upon information and belief, Agent 31 was personally involved in the ICE home raid on the residence of Veronica Covias in Paterson, New Jersey on March 28, 2007. Agent 31 is sued for damages in his or her individual capacity and for injunctive relief in his or her official capacity.

56. Agents 2, 4, 8, 14, 16, 25, and 26 shall collectively be referred to as “Argueta Raid ICE Agents.”

57. Agents 2, 4, 8, 14, 16, 22, 25, and 26 shall collectively be referred to as “Chavez Raid ICE Agents.”

58. Agents 1, 3, 14, 15, 19, 23, and 25 shall collectively be referred to as “Flores Raid Agents.”

59. Agents 7, 11, 13, 18, 27, and 28 shall collectively be referred to as “Ontaneda Raid ICE Agents.”

60. Agents 9, 10, 14, 24, and 31 shall collectively be referred to as “Covias Raid ICE Agents.”

61. Agents 5, 6, 12, 17, 20, 21, 29, and 30 shall collectively be referred to as “Guzman Raid ICE Agents.”

62. At all times relevant to the incidents complained of in this action, defendants **JOHN SOE ICE SUPERVISORS 1-15** were federal agents employed by ICE. They are responsible for carrying out and supervising the policies and practices of ICE, including the execution of Operation Return to Sender, and are sued for damages in their individual capacities and for injunctive relief in their official capacities. Upon information and belief, each John Soe ICE Supervisor defendant is responsible for the injuries and damages suffered by at least one plaintiff as a result of the acts alleged in this Complaint.

63. Plaintiffs are unaware of the true names of, total numbers of, and positions held by defendants John Soe ICE Supervisors, and therefore sue those defendants by fictitious names. Plaintiffs will amend their Complaint to state the true names of these defendants after those names have been ascertained.

64. In committing the acts alleged in this Complaint, defendants John Soe ICE Supervisors were acting on behalf of ICE. Upon information and belief, defendants Agents 1-31 were acting under the immediate supervision of John Soe ICE Supervisors pursuant to the authorization of defendants Myers, Torres, Weber, and/or Rodriguez.

**The Penns Grove Defendants**

65. Defendant Sergeant Carmen Hernandez (“Sergeant Hernandez”) was, on information and belief, at all times relevant to the incidents complained of in this action,



an officer of the Penns Grove Police Department. He participated in the raid on the home of plaintiff Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. He is sued in his individual capacity.

66. Defendant Patrolman Jason Spera (“Patrolman Spera”) was, on information and belief, at all times relevant to the incidents complained of in this action, an officer of the Penns Grove Police Department. He participated in the raid on the home of plaintiff Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. He is sued in his individual capacity.

67. Defendant Patrolman Joseph DiCarolis (“Patrolman DiCarolis”) was, on information and belief, at all times relevant to the incidents complained of in this action, an officer of the Penns Grove Police Department. He participated in the raid on the home of plaintiff Yesica Guzman in Penns Grove, New Jersey on August 1, 2006. He is sued in his individual capacity.

68. Sergeant Hernandez, Patrolman Spera, and Patrolman DiCarolis shall collectively be referred to as “Penns Grove Officers.”

## **FACTUAL BACKGROUND**

### **ICE Fugitive Operations in New Jersey**

69. Since 2002, the ICE Office of Detention and Removal Operations (“DRO”) has overseen ICE’s National Fugitive Operation Program,<sup>1</sup> established to arrest and remove so-called immigration “fugitives.” ICE defines “fugitives” as individuals with outstanding deportation orders or individuals who failed to report to a DRO officer

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<sup>1</sup> The DRO was then a division of the Immigration and Naturalization Service (“INS”). In 2003, when the INS was abolished and ICE was created in its place, the DRO became a division of ICE.

after receiving notice to do so. ICE implements the Fugitive Operations Program through Fugitive Operations Teams (“FOTs”) tasked with apprehending immigration fugitives.

70. Since 2006, the Fugitive Operations Program has substantially escalated its enforcement practices. At the end of Fiscal Year (“FY”) 2007, there were 75 FOTs nationwide, a five-fold increase over the number of teams in 2005. Congress has authorized funding for 29 additional teams in FY 2008. Since mid-2006, there have been four FOTs in the state of New Jersey (doubled from two FOTs at the beginning of 2005).

71. On January 31, 2006, each FOT in the country was ordered to arrest 1,000 fugitive aliens per year. This quota represented an 800% increase on the previous quota of 125 arrests per year, mandated just two years earlier.

72. On May 26, 2006, ICE commenced its “Operation Return to Sender,” an operation directed at arresting “fugitive” aliens, prioritizing the arrest of individuals possessing criminal records.

73. Following the commencement of Operation Return to Sender and the implementation of the 1,000-arrests quota, the number of individuals arrested by New Jersey FOTs doubled from 1,094 in FY 2006 to 2,079 in FY 2007.

### **Unlawful Home Raids Practices**

#### *Unlawful Entry*

74. A typical home raid is conducted in the pre-dawn hours of the morning. Multiple ICE agents surround a home believed to house one or more immigrant families. The agents pound furiously on the door and/or windows.

75. The agents and their supervisors use a variety of tactics – frequently deceptive and/or coercive – to cause an occupant to open the door. In many raids, the

agents shout “Police!” or, in some cases, enlist a local police officer to deceive occupants about the ICE agents’ identities. ICE agents are not, in fact, police officers; rather, they are administrative officers authorized to enforce the federal immigration laws. Because ICE officers do not usually have the general criminal search and arrest powers of police officers, the assertion that they are “police” misrepresents not only their identity but also the scope of their legal authority. This misrepresentation is especially significant to immigrant populations, who have been encouraged by New Jersey state officials to assist local police without fear of immigration consequences.

76. In other raids, an occupant simply opens the door in response to the pounding, assuming an emergency. Once the door is opened, the agents enter the home, without properly identifying themselves, and without obtaining an occupant’s consent. If the agents do not have a clear path of entry, they frequently forcibly push in the door and the individual who opened it. It has been reported that agents have even broken down doors to gain entry.

77. Some of the ICE agents involved in Operation Return to Sender treat the raids as a perverse sport. For example, in an April 30, 2007 email obtained under a Freedom of Information Act Request, a Connecticut ICE agent boasted to a state police officer, “We have an [operation] scheduled for Wed, 05/02/07 in New Haven . . . [I]f you’re interested we’d love to have you! We have 18 addresses – so it should be a fun time!! Let me know if you guys can play!!” (A copy of the email, obtained through a Connecticut Freedom of Information request, is attached as Exhibit A.)

78. For many ICE agents, deceit and dishonesty are regularized as part of the home raids practice. For example, according to a report from the Freehold, New Jersey

Police Department, an ICE Team Leader told a local police officer that he and five members of his team surrounded a Brazilian family's home at 6:00 a.m., but that the family was not opening the door. The ICE official asked the local police officer to have "a Marked Freehold Boro[ugh] Police vehicle pull up [sic] to the house and have a uniformed officer knock and have the accused family come to the door. Once someone was to come to the door ICE would take over the investigation." (A copy of the Freehold Police Department Operations Report, dated August 8, 2007, is attached as Exhibit B.)

#### *Unlawful Seizures*

79. Once the door is open, multiple agents typically enter and rapidly sweep through the home, displaying or brandishing firearms as if conducting a high-risk drug sweep. ICE agents on occasion point their guns directly at occupants who, far from posing a genuine threat, are partially undressed or sit terrified in their night clothes.

80. Agents order all of the occupants out of bed and to a central location in the home. Frequently these occupants include children, many of whom are United States citizens. Even though the purported "fugitive" target is frequently unknown to the occupants, the agents interrogate the occupants about their own identities and immigration status, without reasonable basis for believing that they are not United States citizens. In some raids, ICE agents are verbally and physically abusive.

81. In front of children and family members, agents handcuff individuals they suspect are unlawfully present in the United States and order them into a van outside. Often the agents do not allow the arrestees to change out of their bedclothes. They do not tell family members where they are taking their loved ones or how to find them. The agents drive around and repeat this sequence at other homes until their van is filled.

82. The media has repeatedly documented severe abuses emerging from the ICE raids practice. *See e.g.*, Nina Bernstein, *Raids Were a Shambles, Nassau Complains to U.S.*, N.Y. Times, Oct. 3, 2007 (ICE agents conducted home raids wearing cowboy hats and brandishing shotguns and automatic weapons at home occupants including United States citizens and lawful residents); Aaron Nicodemus, *Illegal Aliens Arrested in Raid; Feds Nab 15 in Milford*, Sunday Telegram (Massachusetts), Dec. 9, 2007, at B1 (ICE agents broke through front door of home in the early morning with guns drawn, forcing occupants to get on the floor and not move); Elizabeth Llorente, *Suits: Feds Play Dirty; Immigration Officials Say Raids on Illegals are Within the Law*, The Record (Hackensack, N.J.), Jan. 2, 2008 (armed ICE agents show up at homes at 5:00 a.m., bang on doors, kick them in or use ruses to gain entry, then go into people's bedrooms, rip covers off people in their beds and question them).<sup>2</sup>

83. The home raids have a devastating effect on children who witness law enforcement agents sweeping through their home with guns, ordering them and their

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<sup>2</sup> *See also* Sandra Hernandez, *ICE Increases Use of Home Raids*, Daily Journal, Mar. 26, 2008 (ICE agents came to home of immigration attorney, looking for another person; when attorney closed his door and asked them to leave premises because they could not produce a search warrant, the agents threatened to break his door down); Nina Bernstein, *Immigrant Workers Caught in Net Cast for Gangs*, N.Y. Times, Nov. 25, 2007 (Nassau County police commissioner describing the "cowboy mentality" of ICE agents who raided Long Island homes, including armed raids on the wrong homes); Sandra Forester, *Immigration Raids Spark Anger in Sun Valley Area: One Family of Legal Residents Says they were Terrorized. Agents Arrested 21 People*, Idaho Statesman, Sept. 21, 2007; Press release, Office of the Mayor of New Haven, Connecticut, June 6, 2007 (describing "federal agents pushing their way into houses, brusquely ordering men, women and children to common areas, and leading family members and loved ones away in handcuffs"); Shannon Prather, *Immigration Raids, Arrests Trigger Lawsuits*, St. Paul Pioneer Press (Minnesota), Apr. 19, 2007 (ICE agents, wearing bulletproof vests and armed with guns, pushed their way into homes and terrified children).

parents to gather together and suddenly handcuffing and dragging away their parents in the middle of the night. The large majority of these children are United States citizens.<sup>3</sup>

**The Arbitrary, Inaccurate, and Pretextual Nature of “Fugitive” Raids**

84. The alleged purpose of Operation Return to Sender is the arrest of “fugitives,” with a priority on criminal fugitives. Indeed, in defendant Myers’s 2007 budget presentation to the House Appropriations Committee, she stated that additional FOTs were necessary to “increase the efficiency of ICE immigration enforcement efforts to locate, apprehend, and remove primarily criminal aliens.” The majority of individuals arrested in New Jersey under Operation Return to Sender, however, are neither criminals nor fugitives. Of the 2,079 individuals arrested in New Jersey in FY 2007, 87% had no criminal history. *See* ICE Press Release, Newark, Dec. 4, 2007. Moreover, ICE statistics reveal that in New Jersey, as few as one in three individuals arrested pursuant to Operation Return to Sender is actually a “fugitive,” as defined by ICE. *See* ICE Press Releases, Newark, May 1, 2007 (only 75 “fugitives” among 217 arrests from April 9-27, 2007); Apr. 2, 2007 (only 55 “fugitives” among 128 arrests from March 19-30, 2007); Mar. 1, 2007 (only 89 “fugitives” among 220 arrests in January 2007); Nov. 20, 2006 (only 53 “fugitives” among 137 arrests from November 13-20, 2006).

85. The remaining individuals arrested were a mix of undocumented immigrants and, upon information and belief, United States citizens, permanent residents, and visa-holders who have never had any court order, warrant or criminal conviction against them, but who were nevertheless swept up in the “Operation Return to Sender”

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<sup>3</sup> *See* Jeffrey S. Passel, Pew Hispanic Center, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.* (2006), <http://pewhispanic.org/files/reports/61.pdf> (finding that five out of six families in which at least one parent does not possess lawful immigration status, have at least one U.S. citizen child).

dragnet. ICE refers to these individuals – the large majority of those arrested in New Jersey – as “collateral arrests.” This euphemism obfuscates the reality that the search for “fugitives” often serves as a pretext for sweeping up large numbers of immigrants.

86. The accounts of plaintiffs and media reports indicate that in a substantial number of cases, ICE agents conduct home raids without reasonable grounds for believing that the purported target of their search is present in the home being raided. For example, in a series of pre-dawn warrantless raids on February 19, 2008 in Passaic, New Jersey, ICE acknowledged that its agents raided 13 homes in search of only six individuals.<sup>4</sup> ICE agents returned with 12 arrestees.

87. On February 13, 2008, the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law held a hearing on ICE’s detention and deportation of United States citizens in its home raids and other enforcement activities. An ICE representative acknowledged at that hearing that United States citizens have been wrongfully detained and even deported.<sup>5</sup> The chair of the subcommittee remarked after the hearing that the United States had reached an era “where an overzealous government is interrogating, detaining and deporting its own citizens while treating non-citizens even worse.”

88. Compounding the deliberate pretextual use of “fugitive” searches to arrest undocumented immigrants, much of the information in the database that ICE agents

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<sup>4</sup> Meredith Mandell, *Immigration raid raises questions about Passaic's 'safe haven' status*, NJ Herald News, Mar. 12, 2008; *see also* Nina Bernstein, *Immigrant Workers Caught in Net Cast for Gangs*, N.Y. Times, Nov. 25, 2007 (Nassau County police commissioner describing the “cowboy mentality” of ICE agents who raided Long Island homes, including armed raids on the wrong homes).

<sup>5</sup> Eunice Moscoso, *House panel questions U.S. immigration raids*, Austin American Statesman, Feb. 16, 2008. Marisa Taylor, *Feds admit jailing citizens as illegal immigrants*, Houston Chronicle, Feb. 14, 2008.

purportedly rely on to locate fugitives is outdated, inaccurate, and incomplete. In March 2007, the DHS Office of Inspector General publicly criticized ICE for its incomplete and inaccurate background information, understaffing, and incomplete training. The Inspector General's detailed report on the Fugitive Operations Program, attached as Exhibit C, noted that:

(a) the DRO database that FOTs rely on contains inaccurate and incomplete information on fugitive aliens; a veteran analyst of the database estimated that 50% of the data is inaccurate;

(b) data was not reconciled with other federal databases to establish the validity of identity and background information on any particular fugitive;

(c) in 2006, DRO began hiring lower-level, less experienced officers for fugitive operations; and

(d) some fugitive operations agents have not completed the Fugitive Operations Training Program – 2004 guidelines allow the agents to work for up to two years before receiving the necessary training.

89. The raids on plaintiffs' homes exemplify the extraordinary level of inaccuracy.

#### **Raids on Individual Plaintiffs' Homes**

##### *Maria Argueta*

90. Plaintiff Maria Argueta has had valid Temporary Protection Status since 2001, allowing her to remain lawfully in the United States for the duration of that status.



91. On January 29, 2008, Maria was asleep in her home, the ground-floor apartment in a building in North Bergen, New Jersey. There were other tenants living in separate apartments on the basement and second-floor levels.

92. At or around 4:30 a.m., Maria was awakened by very loud banging on the door and windows of her building. The banging was so aggressive Maria thought the people were going to break the windows and the door. Maria was very frightened and did not open the door.

93. Upon information and belief, the basement tenants opened the door to their apartment and were confronted by Argueta Raid ICE Agents. The agents identified themselves as police, which they were not, and claimed they were looking for a criminal.

94. Upon information and belief, the basement tenants telephoned the landlord of the residence, who was Maria's brother, and handed the telephone to one or more Argueta Raid ICE Agents. Upon information and belief, the agents told Maria's brother that they were police officers searching for a male criminal and that they needed to search the ground floor apartment of the residence. Maria's brother then telephoned Maria and told her that police officers who were searching for a male criminal were outside and needed access to her apartment.

95. After this call, Maria opened her front door to the Argueta Raid ICE Agents. The agents wore vests with the word "police" printed on them and visibly displayed holstered firearms. Maria saw one woman among them.

96. Having deceived Maria as to their purpose, these Argueta Raid ICE Agents entered Maria's apartment without voluntary informed consent, probable cause,

or exigent circumstances. Upon information and belief, the agents did not possess a valid judicial warrant that would justify the entry and subsequent search of Maria's home.

97. Once inside Maria's apartment, the agents identified themselves as police and claimed they were looking for a particular man. Maria told the agents she did not know that man. There was no reasonable basis to suspect the man lived in the apartment, since no man had lived in the apartment in the seven years that Maria had lived here.

98. Without voluntary informed consent, probable cause, or exigent circumstances, the Argueta Raid ICE Agents searched Maria's entire apartment, entering all the rooms and looking inside closets and underneath beds. Upon information and belief, the agents did not possess a valid judicial warrant for the search of the home.

99. During the time that the agents were in her home, Maria felt as if she was not free to leave the apartment because the agents followed her throughout the house – even as she went to the bathroom and got changed out of her night clothes – and there were three officers blocking the front door to the apartment during the raid.

100. One or more of the Argueta Raid ICE Agents asked Maria about her immigration status. Maria attempted to explain that she had been granted Temporary Protection Status and was waiting to receive her new TPS card in the mail.

101. Maria provided the agents with documents confirming the TPS grant. The agents threw the documents aside without looking at them. They told her she would not be receiving her TPS card that year.

102. Maria's TPS status was easily verifiable in the publicly-accessible United States Citizenship and Immigration Service database.

103. One or more of the Argueta Raid ICE Agents asked Maria for identification. She presented her Salvadoran passport, which the agents confiscated and have never returned to her. As a result of this seizure, Maria had to later go to the Salvadoran consulate to obtain a new passport, at her own expense and inconvenience.

104. At the conclusion of their search, Argueta Raid ICE Agents arrested Maria, without a warrant or reasonable belief that she was unlawfully present in the United States and in spite of clear and easily-verifiable evidence to the contrary.

105. A female ICE agent taunted Maria, telling her to put on clothes with long sleeves because where she was going there would be a lot of men.

106. Maria told the agents that her brother was going to get her an attorney to obtain her release from custody. One or more of the Argueta Raid ICE Agents refused to allow her speak with an attorney after she stated that her brother would secure one for her, and mockingly told Maria not to bother because even with an attorney's help she would never be released. Maria was handcuffed and led to a waiting car.

107. One or more of the Argueta Raid ICE Agents transported Maria to an ICE facility in Elizabeth, New Jersey, where several ICE agents laughed at and humiliated her by mockingly singing a popular Latino song entitled "Maria has Gone."

108. Later that day, Maria was transferred to a different ICE facility in Newark, where she was placed in a windowless office with several other women, before being transferred to a jail in Jersey City.

109. Maria did not receive any food or water until 7:00 a.m. the next morning, over 24 hours after she was arrested.

110. Maria was finally released at 3:00 p.m. on January 30, almost 36 hours after she was arrested.

111. During the entire period of her detention, nobody explained to Maria why she was being detained, or why she was transferred between facilities. She was released without explanation or apology, without her wrongfully-taken passport, and without her jewelry that ICE agents confiscated from her in detention.

*Walter Chavez, Ana Galindo, and W.C.*

112. Walter Chavez and Ana Galindo have lived in the United States for approximately 28 years and are lawful permanent residents. Their nine-year-old son, W.C., is a United States citizen. Walter and Ana own a home in Paterson, New Jersey, where they lived at all times relevant to this action.

113. On the morning of April 2, 2008, at approximately 7:15 am, Walter was returning to his home to pick up something for work when six or more unmarked vehicles converged on his house. Two defendant Chavez Raid ICE Agents emerged from one of the vehicles and ran up to Walter's vehicle. One of them grabbed Walter by the shirt collar and pulled him out. Without identifying themselves, they demanded his name. Walter told them his name.

114. The agents asked to see Ana Galindo. They then physically pushed Walter with their hands toward the front door of his home. Walter asked them why they wanted his wife. One of the Chavez Raid ICE Agents replied, "We'll tell you when you're inside. Don't make things harder. Just tell me where she is."

115. As the agents pushed Walter up to his front door, one of the Chavez Raid ICE Agents said to Walter, "If you don't open the door, we're going to make things

worse.” The officers made Walter open the door and shoved him into the house. At least seven defendant Chavez Raid ICE Agents ran inside the house. Three of the agents prevented anyone from leaving by blocking the front door. More Chavez Raid ICE Agents remained outside. At no point did the agents identify themselves.

116. Upon information and belief, the agents did not possess a valid judicial warrant that would justify the entry and subsequent search of the home.

117. As he entered his house, Walter called out to his wife who was in the shower, “Ana – the police are looking for you!” Ana ran out of the bathroom and threw a shirt on but did not have time to properly dress. One of the Chavez Raid ICE Agents ran over to Ana and repeatedly yelled at her, “Where are the illegal people?” Another agent repeatedly asked Walter the same question. One of the agents said, “It’s illegal to be hiding illegals. If you don’t tell me where they are, things will get worse. If you don’t tell me where they are, we’ll arrest you.”

118. A female agent asked Ana where her sisters were, what their names were, and what Ana’s last name was. Ana replied that she had two sisters in Guatemala, and gave their names and her own. An agent said, “This is not the person we’re looking for.”

119. Having heard the agents shouting at his parents, W.C. came out of his bedroom and ran to his mother, crying. As he did, several of the Chavez Raid ICE Agents opened their jackets and displayed their guns. Some of the agents wore two guns (one on each hip), along with bulletproof vests and clothing imprinted with the acronym "ICE." Upon seeing the child emerge, at least four agents placed their hands on their guns.

120. One of the agents grabbed his gun and pointed it directly at Ana and W.C.

121. W.C. saw the guns and continued to cry. As Ana held her terrified son and tried to calm him, an agent came over and screamed in her face again, “Where are the illegal people?”

122. In front of W.C., an agent said to Ana, “If you’re hiding illegal people here, we’re going to take your son and your residency away.” One of the ICE agents guarding the front door was repeatedly pounding one of his fists into an open hand while glaring menacingly at Ana and W.C. Ana told her son to go to his room.

123. The agents demanded that Ana produce identification. When she went to the bedroom to get it, she found her son hiding under the pillows. When she came back to the living area, she showed the agents her New Jersey driver’s license, as well as her and Walter’s green cards, and her son’s United States passport.

124. An agent again accused Ana of hiding illegal immigrants; Ana replied that only she, Walter and their son lived in the house.

125. Throughout the raid, the agents remained in the living room and the hallway to the bedrooms. One of the agents looked through Walter and Ana’s family pictures. Several of the agents’ cars had driven up onto Walter’s lawn, which he had spent much time and effort fixing. At no point did the agents produce a warrant or ask for or obtain permission for anything the agents did, including entering the home.

126. Before leaving, one of the agents directly announced, “We’re going to come back. And next time it will be worse.”

127. W.C. was and remains severely traumatized by the raid. He is so afraid the agents will return and may kill him and his parents, that to this day he refuses to sleep alone in his bedroom and insists on sleeping with his mother. Since the raid, W.C. has

been shaking and crying in his sleep at night. Once he woke up in the night and told Ana he was too afraid to go back to sleep.

128. Before the raid, W.C. would often play after school, but for many days following the raid he just came home, ate, and went to bed. To this day, he cries often. He often asks Walter and Ana to turn off all the lights and close the shades to prevent the agents from coming back. W.C. is scared when the lights are on in the house. He used to be excited when the doorbell to his house rang; since the raid, he becomes scared every time he hears it. He has asked his father why the agent that was in the doorway, who was pounding his fist into his hand, was looking at him during the raid. W.C. is afraid the agents will do something violent to him or his family.

129. Walter, Ana, and W.C. all continue to be afraid that the agents will return to the house, just as they said they would.

*Arturo Flores and Bybyana Arias*

130. Plaintiffs Arturo Flores and his stepdaughter Bybyana Arias are both United States citizens.

131. On the morning of November 13, 2006, Arturo, his wife, and his wife's teenage daughter Bybyana were asleep in their home in Clifton, New Jersey.

132. At or around 3:00 a.m., Arturo was awakened by loud banging on his front door and the sound of his doorbell ringing repeatedly.

133. As he approached the door, he saw four law enforcement officers, who he later learned were defendant Flores Raid ICE Agents, through the window. They were holding flashlights and shouting "Police!"

134. When Arturo opened the front door slightly, the agents forced the door open, shoved Arturo out of the way, and unlawfully entered the home in the absence of voluntary informed consent, probable cause, or exigent circumstances.

135. Upon information and belief, the agents did not possess a valid judicial warrant that would justify the entry and subsequent search of the home.

136. The Flores Raid ICE Agents stated that they were looking for a particular individual whom they did not immediately identify.

137. Without seeking permission, and without probable cause or exigent circumstances, the Flores Raid Ice Agents searched all the rooms of Arturo's home.

138. A female ICE agent entered Bybyana's bedroom where she was sleeping. Stating that she was "the police," she shined a flashlight at Bybyana and shouted loudly, ordering Bybyana out of bed. The agents ordered her to the common area, where she was detained in her nightclothes.

139. The agents ordered Arturo to open the door to his bedroom where his wife was still in bed. Without seeking or obtaining permission, the female Flores Raid ICE Agent entered and ordered the wife to the common area, where she was detained.

140. During the time that the agents were in Arturo's home, none of the occupants were free to leave. One or more of the Flores Raid ICE Agents repeatedly shouted "Don't move!" at the occupants in the common room. The agents carried holstered firearms. If an occupant moved, the agents placed their hands on their holstered guns, suggesting they were preparing to draw their weapons.

141. The agents interrogated Arturo without any reasonable basis to believe that he was not a United States citizen.



142. One or more of Flores Raid ICE Agents demanded that Arturo produce identification. He produced a valid driver's license. The agents transmitted over a radio the information found on his license.

143. After they had searched the home, one or more of the Flores Raid ICE Agents arrested, handcuffed, and led away Arturo's wife and brother, in front of Bybyana.

144. One or more of the Flores Raid ICE Agents remained in the home for an additional period of time after the search and arrests had been completed.

145. Bybyana was extremely distressed by the raid. She had difficulty eating and sleeping for at least six months after it occurred, and thought about the raid constantly. Her school grades markedly declined during that period.

*Juan Ontaneda*

146. On the morning of December 7, 2007, plaintiff Juan Ontaneda was living in a multi-family home in Newark, New Jersey. He was renting a room in an apartment with a family consisting of a father, mother, grandfather, and three children.

147. Between 5:30 and 6:00 a.m., Juan was startled by pounding on his front door. The pounding was so loud he feared the door would be knocked down.

148. Believing the person knocking might be another tenant who was locked out, Juan opened the door. He was confronted by six defendant Ontaneda Raid ICE Agents wearing jackets bearing the word "ICE" and displaying holstered firearms.

149. Without identifying themselves, one or more of the Ontaneda Raid ICE Agents showed Juan what appeared to be a computer printout and asked if he knew the

person pictured on the printout, a man the agents referred to as "Elias." Juan denied knowing or recognizing the individual that the agents were looking for.

150. Juan attempted to close the door, but several of the Ontaneda Raid ICE Agents physically held the door open.

151. At this time, the owner of the multi-family dwelling came downstairs from the second floor apartment. After speaking with the agents, the landlord told Juan to get the grandfather.

152. When Juan returned to the entryway of his apartment, he discovered that all the Ontaneda Raid ICE Agents had entered the apartment behind him. Upon information and belief, the ICE Agents entered without a judicial warrant, any occupant's voluntary informed consent, and in the absence of probable cause or exigent circumstances.

153. While detaining the occupants of the house, a number of the Ontaneda Raid ICE Agents interrogated the grandfather about his immigration status.

154. While detaining Juan in the kitchen, the agents demanded identification. Juan produced his valid North Carolina driver's license.

155. None of the Ontaneda Raid ICE Agents asked Juan at that time, or at any other time while they were in the home, about his immigration status.

156. The agents contacted other ICE personnel to inquire whether there was an outstanding deportation order for Juan. Upon information and belief, the agents were informed that Juan did not have an outstanding deportation order against him.

157. Juan heard the agent who had questioned him suggest to other agents that he should not be arrested. However, a second agent, who upon information and belief was senior to the first agent, ordered that Juan be arrested.

158. In the absence of a warrant, probable cause, exigent circumstances, or a reasonable basis for believing that Juan was not a United States citizen or was unlawfully present in the United States, one or more of the defendant Ontaneda Raid ICE Agents arrested Juan.

159. The Ontaneda Raid ICE Agents handcuffed his wrists and ankles and put a belt-cuff around his waist. The agents then escorted Juan to a van waiting outside the home and transported him to the detention facility in Elizabeth, New Jersey.

*Veronica Covias*

160. Veronica Covias is a lawful permanent resident of the United States. In March 2007, she lived with her husband and son in a two-story home in Paterson, New Jersey.

161. At approximately 4:00 a.m. on or about March 26, 2007, the family awoke to loud, repeated pounding on their front door and shouts of "Paterson Police!" Veronica went downstairs and opened the door a crack, thinking that there was an emergency. At the door were several defendant Covias Raid ICE Agents. She asked what they wanted.

162. Defendants Covias Raid ICE Agents stated that they just wanted to talk to Veronica. Veronica asked if they had a warrant. The agents did not answer her question, instead repeating they "just want to talk to her." Before Veronica could respond, a Covias Raid ICE Agent put his foot in the crack of the door, pushed the door open, and

forced his way into the home. Veronica did not give voluntary, informed consent to this entry. Upon information and belief, the agents did not possess a judicial warrant.

163. Four or five Covias Raid ICE Agents entered into the home, displaying batons. They wore uniforms with “ICE” printed on the back.

164. Without seeking or obtaining consent, two Covias Raid ICE Agents searched each room on the first floor of the home. The female agent detained Veronica, and two other agents went upstairs.

165. Veronica asked the agents if she could go upstairs to look after her husband who was sick in bed. An agent told her she had to remain detained on the first floor and could not go to see him. The agent stated that they would take her husband “as he is.” She heard the agents yelling at her son upstairs.

166. Veronica then saw her son coming down the stairs handcuffed at his wrists and ankles. She begged the agents repeatedly to tell her where they were taking her son. They refused to answer. She pleaded for permission to hug her son goodbye, but the agents pushed her aside and took her son outside to an unmarked van. They prevented Veronica from running out of the house after her son by closing the door on her.

167. After being held in solitary confinement for approximately three days in Georgia, Veronica’s son was deported.

*Yesica Guzman*

168. Yesica Guzman lived in Salem County, New Jersey with her husband, three U.S.-citizen children, and several other relatives.

169. At approximately 3:00 a.m. one day in August 2006, Yesica and her husband, asleep in their home, awoke to loud knocking on their door. The individuals outside repeatedly yelled "Open the front door!" Yesica responded "no."

170. Eventually, Yesica's husband walked down the steps to the front door and opened it to see what the callers wanted. Yesica saw one or more of the Guzman Raid ICE Agents and Penns Grove Officers, who were wearing bullet-proof vests and carrying guns.

171. Yesica recognized among the law enforcement officials a female Spanish-speaking local police officer from the Penns Grove Police Department. In addition, upon information and belief, Yesica's husband recognized a black male local police officer from the Penns Grove Police Department.

172. Guzman Raid ICE Agents and Penns Grove Officers told Yesica's husband that they were looking for a particular individual, who was Yesica's brother. Without waiting for a response, the agents pushed the husband up the stairs and shoved him into the kitchen counter inside the home. They also shoved Yesica out of the way. All Guzman Raid ICE Agents and Penns Grove Officers had their guns drawn when they entered the home. All agents kept their guns drawn for the duration of the raid, except for the local police officer that Yesica recognized, who holstered it once she saw Yesica. Neither Yesica nor her husband gave consent to the defendants' entry of their home. Several Guzman Raid ICE Agents or Penns Grove Officers remained outside.

173. Once inside the home, a Guzman Raid ICE Agent handcuffed the husband and again asked where Yesica's brother was. The husband replied that he had been deported two to three years earlier. Upon information and belief, a minimal search of

DHS records would have revealed that the brother had already been deported. It was unreasonable for the agents to believe that the brother would be in the house.

174. A Guzman Raid ICE Agent called for back-up and additional Guzman Raid ICE Agents came into the home. Numerous law enforcement officers remained outside around the perimeter of the home.

175. Upon information and belief, the agents did not possess a valid judicial warrant that would justify the entry and subsequent search of the home. Nevertheless, the agents, lacking probable cause or exigent circumstances, detained Yesica on the couch in an intimidating manner, with one or more agents pointing their guns at her and indicating that she was not free to leave. The agents repeatedly asked whether Yesica or her husband had weapons or drugs. Both Yesica and her husband replied “no” each time. The agents also told Yesica and her husband to identify the other people living in the home.

176. The agents proceeded to search the entire home without voluntary informed consent, probable cause, or exigent circumstances. On information and belief, upon encountering Yesica’s sleeping relative, one agent put a gun to his head and shouted “Wake up!” The agents handcuffed several of Yesica’s relatives and brought them into the common area.

177. Yesica begged the agents not to go into her children’s bedrooms because she did not want them to be frightened. Against her pleas, the agents searched inside both rooms where her U.S.-citizen children were sleeping.

178. When Yesica tried to ask the agents questions, they refused to answer. They repeatedly screamed “Shut up!” at her and other occupants of the house.

179. One or more of the Guzman Raid ICE Agents asked Yesica for identification. She presented her Mexican passport, which the agents confiscated and have never returned to her. As a result of this seizure, Yesica had to later go to the Mexican consulate to obtain a new passport, at her own expense and inconvenience.

180. A Guzman Raid ICE Agent threatened Yesica that if she did not go to “the office” she would be deported to Mexico and that the state would take her children. In addition, the agent said he would make it his “personal mission” to ensure her husband went to jail for 22 years for crossing the border. The agents then arrested her husband, and two other occupants of the house. All three were subsequently deported.

#### **The Pervasiveness of ICE Raids Practices**

181. The nationwide pattern and practice of unlawful raids of the type plaintiffs experienced has been the subject of widespread media reporting as well as multiple lawsuits filed in other federal district courts. *See, e.g., Barrera v. Boughton*, No. 07-cv-1436 (D. Conn. Sept. 26, 2007); *Aguilar v. ICE*, No. 07-cv-8224 (S.D.N.Y. Sep. 20, 2007); *Flores-Morales v. George*, No. 07-cv-0050 (M.D. Tenn. July 5, 2007); *Reyes v. Alcantar*, No. 07-cv-2271 (N.D. Cal. Apr. 26, 2007); *Mancha v. ICE*, No. 06-cv-2650 (N.D. Ga. Nov. 1, 2006).

182. Members of Congress have also directly questioned DHS about the raids practice. In a letter dated June 11, 2007, three members of Congress raised direct concerns about ICE home raids undertaken in New Haven, Connecticut on June 6, 2007, in which ICE agents “pushed their way into homes” without search warrants, and “treated both adults and children inappropriately.” The letter asked why, despite stated DHS

policy, only four of the 31 individuals arrested were actually “fugitives” with outstanding deportation orders.

183. The raids practice has also been criticized by the United Nations Special Rapporteur on the Human Rights of Migrants in his most recent report on the United States. *See* Report of Special Rapporteur Jorge Bustamante A/HRC/7/12/Add. 2 (Mar. 5, 2008) at 16-17 (noting ICE agents’ “frequent disregard of due process” and reporting victims’ stories that agents entered homes without warrants, denied occupants access to lawyers, and coerced them to sign voluntary departure agreements).

184. Reports of ICE raids – and their often concomitant abuses – have been particularly prevalent in the state of New Jersey. Since March 2006 ICE home raids have been reported across the state, including in Metuchen on May 24, 2006;<sup>6</sup> Woodbridge on May 24, 2006;<sup>7</sup> multiple towns between May 26 and June 14, 2006;<sup>8</sup> Edison on May 24, 2006;<sup>9</sup> Penns Grove on August 1, 2006; Clifton on November 13, 2006; Atlantic City on November 13-19, 2006;<sup>10</sup> Bridgeton on January 29, 2007; Vineland on February 1, 2007;<sup>11</sup> Bridgeton on February 1, 2007;<sup>12</sup> Englewood on March 26, 2007;<sup>13</sup> Paterson on

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<sup>6</sup> *See id.*

<sup>7</sup> *See id.*

<sup>8</sup> *See* Jennifer Lee and Julia Mead, *2,100 are Arrested on Immigration Violations*, N.Y. Times, June 15, 2006.

<sup>9</sup> *See* ICE Press Release, *ICE operation arrests 32 fugitives hiding in Edison, New Jersey: Surveillance by ICE offices indicates some fugitives were working together to defy the law*, May 24, 2006, [www.ice.gov/pi/news/newsreleases/articles/060524edison.htm](http://www.ice.gov/pi/news/newsreleases/articles/060524edison.htm); John Dunphy, *They can run, but they can't hide for long: Homeland Security Division Cracks Down On Illegal Immigrants*, The Sentinel, May 31, 2006; Brian Donohue, *Raids leave gaps in a thriving community: Immigration laws target Indonesians*, The Star-Ledger, July 9, 2006.

<sup>10</sup> *See* Derek Harper, *Immigration officials make 137 arrests around N.J.*, Atlantic City Press, Nov. 21, 2006.

<sup>11</sup> *See* Miles Jackson, *Immigration Agents Spook City Residents*, The Daily Journal (Vineland, N.J.), Feb. 2, 2007.



March 26 or 27, 2007; Cliffside Park in April 2007;<sup>14</sup> Newark in April 2007;<sup>15</sup> Morristown on June 6, 2007;<sup>16</sup> Emerson on June 20, 2007;<sup>17</sup> Hillsdale on June 20, 2007;<sup>18</sup> Westwood on June 20, 2007;<sup>19</sup> Penns Grove in August 2007; Union City in August 2007; Buena on August 29, 2007;<sup>20</sup> Fair Lawn in September 2007;<sup>21</sup> Paterson on September 21, 2007; Newark on December 7, 2007; Princeton on December 7, 2007;<sup>22</sup> North Bergen on January 29, 2008; and Passaic on February 19, 2008.<sup>23</sup>

### **Defendants' Supervisory Responsibility**

#### *Defendants Myers and Torres*

185. Defendants Myers and Torres oversaw the implementation of a five-fold increase in the number of Fugitive Operations Teams in the two-year period between 2005 and 2007. They also approved a remarkable 800% increase in the arrest quotas of each team in the corresponding period of time without providing the necessary training to

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<sup>12</sup> See *id.*

<sup>13</sup> See Lucas Sanchez, *ICE Raid in Englewood*, Blog at Blue Jersey.com, Mar. 26, 2007 (<http://www.bluejersey.com/showDiary.do?diaryId=4373>).

<sup>14</sup> Elizabeth Llorente, *Suits: Feds play dirty; Immigration officials say raids on illegals are within the law*, The Record (Hackensack, N.J.), Jan. 2, 2008.

<sup>15</sup> *Id.*

<sup>16</sup> Nancy Rosenstock, *'La Migra' Grabs 7 in New Jersey*, The Militant, June 25, 2007; Daily Record Staff Report, *Morris Gang, Immigration Raid Nets 7*, The Daily Record, June 7, 2007.

<sup>17</sup> See Elizabeth Llorente, *18 Reputed Gang Members Arrested*, The Record (Hackensack, N.J.), June 22, 2007 (accessed on LexisNexis.com, Mar. 11, 2008).

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See James Quaranta, *Six Arrested in Immigration Raids*, The Daily Journal (Vineland, N.J.), August 31, 2007.

<sup>21</sup> See Elizabeth Llorente, *Suits: Feds play dirty; Immigration officials say raids on illegals are within the law*, The Record (Hackensack, N.J.), Jan. 2, 2008.

<sup>22</sup> See Robert L. Ashbaugh, *Princeton Borough, Editorial/Opinion*, The Times of Trenton, Jan. 7, 2008.

<sup>23</sup> See Meredith Mandell, *City Police, federal agents arrest 12 illegals; Critics: Action violates 'Save Haven' measure*, NJ Herald News, Feb. 20, 2008.

prevent ICE agents – faced with these new pressures – from acting abusively and unlawfully. They facilitated the creation of a culture of lawlessness and lack of accountability within an agency they supervise.

186. In recent years, defendants Myers and Torres have been repeatedly placed on notice of the routine unconstitutional home-raid practices by ICE agents throughout the country. Specifically, defendants Myers and Torres have been sued numerous times for their roles in these practices. *See e.g. Aguilar v. ICE*, No. 07-cv-8224 (S.D.N.Y. Sept. 20, 2007) (suing defendants Myers and Torres); *Flores-Morales v. George*, No. 07-cv-0050 (M.D. Tenn. July 5, 2007) (suing defendant Myers); and *Mancha v. ICE*, No. 06-cv-2650 (N.D. Ga. Nov. 1, 2006) (suing defendants Myers and Torres).

187. On June 11, 2007, the National Immigration Forum sent a letter to DHS Secretary, Michael Chertoff, questioning the conduct by ICE agents in New Haven home raids earlier that month. Defendant Myers responded to those allegations in a letter dated July 6, 2007, attached as Exhibit D. She acknowledged that only five of the 29 individuals arrested were fugitives. She similarly acknowledged that agents conducting residential searches and arrests routinely do not have judicially-issued warrants, and are therefore required to obtain knowing, voluntary consent before entering a home. However, according to defendant Myers, such consent was ensured simply by assigning a Spanish-speaking officer to each Fugitive Operations Team.

188. Defendant Torres had direct responsibility for the execution of fugitive operations within Operation Return to Sender. Like defendant Myers, he was made aware of unconstitutional home-raid practices by ICE agents through the media and lawsuits against him dating back to November 2006, and was specifically notified of

unconstitutional home raid practices by officers under his supervision in New Haven, Connecticut. According to a memorandum obtained through the Freedom of Information Act, attached as Exhibit E, New Haven's mayor called defendant Torres in June 2007 after home raids had been executed by ICE agents in New Haven. The mayor told defendant Torres about allegations that defendant Torres's officers "barged into houses without warrants and verbally abused the people and children were manhandled." The Mayor questioned whether defendant Torres's office should continue to allow such home raids to be conducted with these allegations pending.

189. Despite being made aware of the of unconstitutional home-raid practices through lawsuits, congressional inquiries, repeated national media reports, and other sources, defendants Myers and Torres have not conducted any meaningful investigations into the practices, or provided any specific guidelines or training to fugitive operations agents to ensure that home entries and searches are conducted within constitutional limits. Nor have they, upon information and belief, meaningfully disciplined any officer responsible for such unconstitutional conduct.

Moreover, defendants have contributed to such unlawful conduct by continuing to publicize, and laud as "successful," their department's dramatic increase in immigration arrests over the past two years, as reflected in boastful press releases touting ICE's accomplishments. *See e.g.*, ICE Press Releases, Newark, May 1, 2007; Apr. 2, 2007; Mar. 1, 2007; Nov. 20, 2006; Oct. 19, 2006. These press releases all indicate that the high number of arrests were made pursuant to the nationwide interior immigration enforcement strategy announced by defendant Myers and Secretary Chertoff.

*Defendants Rodriguez and Weber*

190. As Directors of the Newark DRO field office, defendants Rodriguez and Weber were each directly responsible for overseeing fugitive operations and the execution of “Operation Return to Sender” in New Jersey. Each of them makes frequent reports and comments on the number of arrests made by ICE agents, and speaks publicly on behalf of ICE about the implementation of “Operation Return to Sender” in New Jersey. Comments to the media by each of them regarding allegations of inappropriate action by their fugitive operations personnel, including unconstitutional home raids, suggest that defendants Rodriguez and Weber at best acquiesced in, and at worst, encouraged such behavior. For example, when defendant Weber was presented with specific allegations regarding a pattern of home raids in New Jersey conducted without search warrants or consent, he responded: “I don’t see it as storming a home... . We see it as trying to locate someone.” Elizabeth Llorente, *Immigration officials say raids on illegals are within the law*, The Record (Hackensack, N.J.), Jan. 2, 2008.

191. Upon information and belief, defendants Rodriguez and Weber each knew that ICE agents were entering and searching homes in New Jersey without search warrants and without obtaining voluntary, informed consent.

192. Upon information and belief, defendants Rodriguez and Weber did not implement any guidelines, protocols, training, oversight, or record-keeping requirements that would ensure that officers under their supervision conducted home entries and searches within constitutional limits.

193. Upon information and belief, defendants Rodriguez and Weber have not conducted any substantial investigations into allegations of unconstitutional home raids

of which they were made aware, or meaningfully disciplined any officer responsible for such unconstitutional conduct. Instead, they have simply continued to publicize ICE's "successful" increase in New Jersey immigration arrests over the past two years, while allowing the unconstitutional means for many of the arrests to continue unchecked.

**FIRST CLAIM:**

***BIVENS CLAIM FOR UNREASONABLE HOME ENTRIES IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION***

(On behalf of all plaintiffs against defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15)

194. Plaintiffs reallege paragraphs 1 through 193, as if fully set forth herein.

195. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures, including unreasonable intrusions into their homes, curtilage and other constitutionally protected private property by government officers.

196. By entering the homes of plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C., Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman without a valid search warrant, without consent, and without other circumstances (such as probable cause and exigency) that would render such intrusions reasonable, one or more of defendants Agents 1-31 violated plaintiffs' Fourth Amendment rights.

197. Upon information and belief, one or more of defendants John Soe ICE Supervisors 1-15, supervisors of Agents 1-31, participated in violating plaintiffs' rights, directed Agents 1-31 to violate those rights, or had knowledge of and acquiesced in the violations.

198. Upon information and belief, defendants Myers, Torres, Weber, and Rodriguez also participated in, directed, or knew of and acquiesced in the violation of plaintiffs' rights; tolerated past or ongoing misbehavior of this kind; or were deliberately indifferent to the risk that ICE officers, lacking clear training and under the pressure of sharply-increased quotas, would violate the Fourth Amendment rights of individuals suspected of being undocumented immigrants to the United States.

199. The actions of defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15 were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiffs.

200. As a result of these intrusions into their homes, plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C., Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

201. The actions of defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15 give rise to a cause of action against them under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

**SECOND CLAIM:**

***BIVENS CLAIM FOR UNREASONABLE HOME SEARCHES IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION***  
(On behalf of all plaintiffs against defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15)

202. Plaintiffs reallege paragraphs 1 through 201, as if fully set forth herein.

203. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures, including unreasonable searches of their homes by government officers.

204. By searching the homes of plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C., Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman without a valid search warrant, without consent, and without other circumstances (such as probable cause and exigency) that would render such intrusions reasonable, one or more defendant Agents 1-31 violated plaintiffs' Fourth Amendment rights.

205. Upon information and belief, one or more of defendants John Soe ICE Supervisors 1-15, supervisors of Agents 1-31, participated in violating plaintiffs' rights, directed Agents 1-31 to violate those rights, or had knowledge of and acquiesced in the violations.

206. Upon information and belief, defendants Myers, Torres, Weber, and Rodriguez also participated in, directed, or knew of and acquiesced in the violation of plaintiffs' rights; tolerated past or ongoing misbehavior of this kind; or were deliberately indifferent to the risk that ICE officers, lacking clear civil rights training and under the pressure of sharply increased quotas, would violate the Fourth Amendment rights of individuals suspected of being undocumented immigrants to the United States.

207. The actions of defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15 were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, plaintiffs' civil rights.

208. As a result of these intrusions into their homes, plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C., Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

209. The actions of defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15 give rise to a cause of action against them under *Bivens, supra*.

**THIRD CLAIM:**

***BIVENS CLAIM FOR UNREASONABLE SEIZURES IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION***

(On behalf of plaintiffs Argueta, Chavez, Galindo, W.C., Flores, Arias, Ontaneda, Covias, and Guzman, against defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15)

210. Plaintiffs reallege paragraphs 1 through 209, as if fully set forth herein.

211. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures.

212. By detaining plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C., Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman without a valid arrest warrant or other circumstances (such as probable cause and exigency) that would render such seizures reasonable, one or more of defendants Agents 1-31 violated the Fourth Amendment rights of these plaintiffs.

213. By taking plaintiff Maria Argueta into custody for almost 36 hours, in spite of her lawful status and without a valid arrest warrant or other circumstances that would render such an arrest reasonable, one or more of defendants Argueta Raid ICE Agents violated the Fourth Amendment rights of plaintiff Argueta.



214. Upon information and belief, one or more of defendants John Soe ICE Supervisors 1-15 participated in violating plaintiffs' rights, directed Agents 1-31 to violate those rights, or had knowledge of and acquiesced in the violations.

215. Upon information and belief, defendants Myers, Torres, Weber, and Rodriguez also participated in, directed, or knew of and acquiesced in the violation of plaintiffs' rights; tolerated past or ongoing misbehavior of this kind; or were deliberately indifferent to the risk that ICE officers, lacking clear civil rights training and under the pressure of sharply increased quotas, would violate the Fourth Amendment rights of individuals suspected of being undocumented immigrants to the United States.

216. The actions of defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15 were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, plaintiffs' civil rights.

217. As a result of these detentions, plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C., Arturo Flores, Bybyana Arias, Juan Ontaneda, Veronica Covias, and Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

218. The actions of defendants Myers, Torres, Weber, Rodriguez, Agents 1-31, and John Soe ICE Supervisors 1-15 give rise to a cause of action against them under *Bivens, supra*.

**FOURTH CLAIM:**

***BIVENS CLAIM FOR EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION***

(On behalf of plaintiffs Chavez, Galindo, W.C., and Guzman against defendants Myers, Torres, Weber, Rodriguez, Chavez Raid ICE Agents, Guzman Raid ICE Agents, and John Soe ICE Supervisors 1-15)

219. Plaintiffs reallege paragraphs 1 through 218, as if fully set forth herein.

220. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from the use of unreasonable or excessive force.

221. By physically seizing plaintiff Walter Chavez and needlessly shoving him up to the door of his house and then into his house, even though he had offered no resistance to the agents, and by pointing a gun directly at Ana Galindo and nine-year old W.C., one or more of defendants Chavez Raid ICE Agents used excessive force against plaintiffs Chavez, Galindo, and W.C., and in doing so, violated their Fourth Amendment rights.

222. By pushing through the front door of plaintiff Yesica Guzman's home with weapons drawn, shoving her aside upon entry, and repeatedly screaming at her, and pointing a gun at her, one or more of defendants Guzman Raid ICE Agents used excessive force against her, and in doing so, violated the Fourth Amendment rights of plaintiff Guzman.

223. Upon information and belief, one or more of defendants John Soe ICE Supervisors 1-15, supervisors of Chavez Raid ICE Agents and Guzman Raid ICE Agents, participated in violating the plaintiffs' rights, directed Chavez Raid ICE Agents and Guzman Raid ICE Agents to violate those rights, or had knowledge of and acquiesced in the violations.

224. Upon information and belief, defendants Myers, Torres, Weber, and Rodriguez also participated in, directed, or knew of and acquiesced in the violation of plaintiffs' rights; tolerated past or ongoing misbehavior of this kind; or were deliberately indifferent to the risk that ICE officers, lacking clear civil rights training and under the

pressure of sharply increasing quotas, would violate the Fourth Amendment rights of individuals suspected of being undocumented immigrants to the United States.

225. The actions of defendants Myers, Torres, Weber, Rodriguez, Chavez Raid ICE Agents, Guzman Raid ICE Agents, and John Soe ICE Supervisors 1-15 were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, plaintiffs' civil rights.

226. As a result of the use of excessive force, plaintiffs Chavez, Galindo, W.C., and Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

227. The actions of defendants Myers, Torres, Weber, Rodriguez, Chavez Raid ICE Agents, Guzman Raid ICE Agents, and John Soe ICE Supervisors 1-15 give rise to a cause of action against them under *Bivens, supra*.

**FIFTH CLAIM:**  
***BIVENS* CLAIM FOR VIOLATIONS OF SUBSTANTIVE DUE PROCESS  
RIGHTS UNDER THE FIFTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION**

(On behalf of plaintiffs Chavez, Galindo, W.C., and Guzman against defendants Myers, Torres, Weber, Rodriguez, Chavez Raid ICE Agents, Guzman Raid ICE Agents, and John Soe ICE Supervisors 1-15)

228. Plaintiffs reallege paragraphs 1 through 227, as if fully set forth herein.

229. Plaintiffs have a constitutionally protected right under the Fifth Amendment to the United States Constitution to be free from abusive government conduct that shocks the conscience.

230. By unnecessarily placing their hands on their guns in a threatening manner and then unnecessarily pointing a gun at nine-year-old plaintiff W.C. and plaintiff Galindo, screaming at plaintiff Galindo in front of her son plaintiff W.C., and in front of

plaintiff W.C. threatening to take him away from his parents plaintiffs Chavez and Galindo, one or more of defendants Chavez Raid ICE Agents violated the Fifth Amendment substantive due process rights of plaintiffs Chavez, Galindo, and W.C., to be free from governmental conduct that shocks the conscience.

231. By drawing their guns during the raid on the home of plaintiff Yesica Guzman, pointing their guns at her, threatening to have her children taken away from her, and telling her that her husband would spend more than 20 years in prison, one or more of defendants Guzman Raid ICE Agents violated Ms. Guzman's Fifth Amendment substantive due process right to be free from governmental conduct that shocks the conscience.

232. Upon information and belief, one or more of defendants John Soe ICE Supervisors 1-15 participated in violating the rights of plaintiffs Walter Chavez, Ana Galindo, W.C., and Yesica Guzman, directed Chavez Raid ICE Agents, and Guzman Raid ICE Agents to violate them, or had knowledge of and acquiesced in the violations.

233. Upon information and belief, defendants Myers, Torres, Weber, and Rodriguez also participated in, directed, or knew of and acquiesced in the violation of the rights of plaintiffs Walter Chavez, Ana Galindo, W.C., and Yesica Guzman; tolerated past or ongoing misbehavior of this kind; or, by fostering disrespect for the rights and dignity of individuals suspected of being undocumented immigrants to the United States, were deliberately indifferent to the risk that ICE officers would engage in the conscience-shocking practices that occurred in this case.

234. The actions of defendants Myers, Torres, Weber, Rodriguez, Chavez Raid ICE Agents, Guzman Raid ICE Agents, and John Soe ICE Supervisors 1-15 were

intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiffs.

235. As a result of defendants' conscience-shocking behavior, plaintiffs Walter Chavez, Ana Galindo, W.C., and Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

236. The actions of defendants Myers, Torres, Weber, Rodriguez, Chavez Raid ICE Agents, Guzman Raid ICE Agents, and John Soe ICE Supervisors 1-15 give rise to a cause of action against them under *Bivens, supra*.

**SIXTH CLAIM:**  
***BIVENS CLAIM FOR VIOLATION OF EQUAL PROTECTION OF THE LAWS***  
***UNDER THE FIFTH AMENDMENT TO THE UNITED STATES***  
***CONSTITUTION***

(On behalf of plaintiff Ontaneda against defendants Ontaneda Raid ICE Agents and John Soe ICE Supervisors 1-15)

237. Plaintiffs reallege paragraphs 1 through 236, as if fully set forth herein.

238. Plaintiffs have a constitutionally protected right under the Fifth Amendment to the United States Constitution to due process of law, which includes equal protection of the laws.

239. Upon request, plaintiff Juan Ontaneda provided to one or more of the Ontaneda Raid ICE Agents a valid driver's license, and defendants had no reason to suspect that Mr. Ontaneda had committed any crime or was not a United States citizen. In spite of this utter lack of individualized suspicion, one or more of Ontaneda Raid ICE Agents arrested Mr. Ontaneda, apparently for no other reason than his race or ethnicity, in violation of Mr. Ontaneda's Fifth Amendment right to equal protection of the laws.

240. Upon information and belief, one or more of defendants John Soe ICE Supervisors 1-15 participated in violating the rights of plaintiff Ontaneda, directed

Ontaneda Raid ICE Agents to violate those rights, or had knowledge of and acquiesced in the violations.

241. The actions of the Ontaneda Raid ICE Agents and John Soe ICE Supervisors 1-15 were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiff Ontaneda.

242. As a result of his arrest on the basis of his race or ethnicity alone, plaintiff Juan Ontaneda suffered harms, including but not limited to loss of liberty, humiliation and emotional distress.

243. The actions of defendants Ontaneda Raid ICE Agents, and John Soe ICE Supervisors 1-15 give rise to a cause of action against them under *Bivens, supra*.

**SEVENTH CLAIM:**

**42 U.S.C. § 1983 CLAIM FOR UNREASONABLE HOME ENTRY IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

244. Plaintiffs reallege paragraphs 1 through 243, as if fully set forth herein.

245. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures, including unreasonable intrusions into their homes by government officers.

246. By entering the home of plaintiff Yesica Guzman without a valid search warrant, without consent, and without other circumstances (such as probable cause and exigency) that would render such intrusion reasonable, one or more of defendant Penns Grove Officers violated the Fourth Amendment rights of plaintiff Yesica Guzman.

247. As a result of this intrusion into her home, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

248. The actions of defendants Penns Grove Officers were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiff Yesica Guzman.

**EIGHTH CLAIM:**

**42 U.S.C. § 1983 CLAIM FOR UNREASONABLE HOME SEARCH IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

249. Plaintiffs reallege paragraphs 1 through 248, as if fully set forth herein.

250. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures, including unreasonable intrusions into their homes by government officers.

251. By searching the home of plaintiff Yesica Guzman without a valid search warrant, without consent, and without other circumstances (such as probable cause and exigency) that would render such an intrusion reasonable, one or more of defendant Penns Grove Officers violated the Fourth Amendment rights of plaintiff Yesica Guzman.

252. As a result of this search of her home, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

253. The actions of defendants Penns Grove Officers were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiff Yesica Guzman.

**NINTH CLAIM:**

**42 U.S.C. § 1983 CLAIM FOR UNREASONABLE SEIZURE IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

254. Plaintiffs reallege paragraphs 1 through 253, as if fully set forth herein.

255. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures.

256. By detaining plaintiff Yesica Guzman without a valid arrest warrant or other circumstances (such as probable cause and exigency) that would render such seizure reasonable, one or more of defendant Penns Grove Officers violated the Fourth Amendment rights of plaintiff Yesica Guzman.

257. As a result of her detention, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

258. The actions of defendants Penns Grove Officers were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiff Yesica Guzman.

**TENTH CLAIM:**

**42 U.S.C. § 1983 CLAIM FOR EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

259. Plaintiffs reallege paragraphs 1 through 258, as if fully set forth herein.

260. Plaintiffs have a constitutionally protected right under the Fourth Amendment to the United States Constitution to be free from the use of unreasonable or excessive force.



261. By pushing through the front door of plaintiff Yesica Guzman's residence with their weapons drawn, shoving her aside upon entry, pointing a gun at her, and repeatedly screaming at her, one or more of defendants Penns Grove Officers used excessive force against her, and in doing so, violated her Fourth Amendment rights.

262. The actions of defendants Penns Grove Officers were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiff Yesica Guzman.

263. As a result of this excessive force, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

**ELEVENTH CLAIM:**  
**42 U.S.C. § 1983 CLAIM FOR VIOLATION OF SUBSTANTIVE DUE PROCESS**  
**RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED**  
**STATES CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

264. Plaintiffs reallege paragraphs 1 through 263, as if fully set forth herein.

265. Plaintiffs have a constitutionally protected right under the Fourteenth Amendment to the United States Constitution to be free from abusive state government conduct that shocks the conscience.

266. By drawing their guns on plaintiff Yesica Guzman, threatening to have her children taken away from her, and telling her that her husband would spend more than 20 years in prison, one or more of defendant Penns Grove Officers violated plaintiff Yesica Guzman's Fourteenth Amendment substantive due process right to be free from state government abuse that shocks the conscience.

267. As a result of defendants' conscience-shocking behavior, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

268. The actions of defendant Penns Grove Officers were intentional, malicious, reckless, and reflect a callous disregard for, or indifference to, the civil rights of plaintiff Yesica Guzman.

**TWELTH CLAIM:**  
**CLAIM FOR UNREASONABLE HOME ENTRY IN VIOLATION OF ARTICLE I, PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

269. Plaintiffs reallege paragraphs 1 through 268, as if fully set forth herein.

270. Plaintiffs have a constitutionally protected right under Article I, paragraph 7 of the New Jersey Constitution to be free from unreasonable searches and seizures, including unreasonable intrusions into their homes by government officers.

271. By entering the home of plaintiff Yesica Guzman without a valid search warrant, without consent, and without other circumstances (such as probable cause and exigency) that would render such an intrusion reasonable, one or more of defendants Penns Grove Officers violated the rights of plaintiff Yesica Guzman under New Jersey Const., Art. I, ¶ 7.

272. As a result of this intrusion into her home, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

**THIRTEENTH CLAIM:**  
**CLAIM FOR UNREASONABLE HOME SEARCH IN VIOLATION OF**  
**ARTICLE I, PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**  
(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

273. Plaintiffs reallege paragraphs 1 through 272, as if fully set forth herein.

274. Plaintiffs have a constitutionally protected right under Article I, paragraph 7 of the New Jersey Constitution to be free from unreasonable searches, including unreasonable searches of their homes by government officers.

275. By searching the home of plaintiff Yesica Guzman without a valid search warrant, without consent, and without other circumstances (such as probable cause and exigency) that would render such an intrusion reasonable, one or more of defendants Penns Grove Officers violated the rights of plaintiff Yesica Guzman under New Jersey Const., Art. I, ¶ 7.

276. As a result of this search of her home, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

**FOURTEENTH CLAIM:**  
**CLAIM FOR UNREASONABLE SEIZURES IN VIOLATION OF ARTICLE I,**  
**PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**  
(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

277. Plaintiffs reallege paragraphs 1 through 276, as if fully set forth herein.

278. Plaintiffs have a constitutionally protected right under Article I, paragraph 7 of the New Jersey Constitution to be free from unreasonable seizures.

279. By detaining plaintiff Yesica Guzman without a valid arrest warrant or other circumstances (such as probable cause and exigency) that would render such a

seizure reasonable, one or more of the Penns Grove Officers violated rights of plaintiff Yesica Guzman under New Jersey Const., Art. I, ¶ 7.

280. As a result of this detention, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

**FIFTEENTH CLAIM:**  
**CLAIM FOR USE OF EXCESSIVE FORCE IN VIOLATION OF ARTICLE I,  
PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

281. Plaintiffs reallege paragraphs 1 through 280, as if fully set forth herein.

282. Plaintiffs have a constitutionally protected right under Article I, paragraph 7 of the New Jersey Constitution to be free from the use of excessive force by government officers.

283. By pushing through the front door of plaintiff Yesica Guzman's residence with their weapons drawn, shoving her aside upon entry, pointing a gun at her, and repeatedly screaming at her, one or more of defendants Penns Grove Officers used excessive force against her, and in doing so, violated the rights of plaintiff Yesica Guzman under New Jersey Const., Art. I, ¶ 7.

284. As a result of the use of excessive force, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation and emotional distress.

**SIXTEENTH CLAIM:**  
**CLAIM FOR VIOLATION OF FUNDAMENTAL FAIRNESS AND DUE  
PROCESS OF LAW PROVIDED BY ARTICLE I, PARAGRAPH 1 OF THE NEW  
JERSEY CONSTITUTION**

(On behalf of plaintiff Guzman against defendants Penns Grove Officers)

285. Plaintiffs reallege paragraphs 1 through 284, as if fully set forth herein.

286. Article I, Paragraph 1 of the New Jersey Constitution provides that "[a]ll persons are by nature free and independent, and have certain natural and unalienable

rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

287. The actions of one or more of the Penns Grove Officers in unlawfully entering and searching plaintiff Yesica Guzman’s home, and seizing her, violated her right to be free from unjust, fundamentally unfair, and arbitrary government action.

288. By drawing their guns during the raid of plaintiff Yesica Guzman’s home, pointing a gun at her, threatening to have her children taken away from her, and telling her that her husband would spend more than 20 years in prison, one or more of the Penns Grove Officers further violated plaintiff Yesica Guzman’s N.J. Const., Art. I, ¶ 1 substantive due process right to be free from government abuse.

289. As a result of the conduct of the Penns Grove Officers, plaintiff Yesica Guzman suffered harms, including but not limited to loss of liberty, humiliation, and emotional distress.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request judgment against defendants as follows:

- (a) Compensatory and consequential damages in an amount to be determined at trial;
- (b) Punitive damages on all claims allowed by law, in an amount to be determined at trial;
- (c) Permanent injunctive relief barring all further intimidation of plaintiffs Walter Chavez, Ana Galindo, and W.C., and any and all entry into the home of plaintiffs Walter Chavez, Ana Galindo, and W.C., absent a warrant issued by a judicial officer or voluntary consent by plaintiff Chavez or plaintiff Galindo;
- (d) Attorney’s fees and costs associated with this action;

- (e) Any further relief as this Court deems just and proper and any other relief as allowed by law.

Plaintiffs demand a trial by jury.

Dated: April 16, 2010

Respectfully submitted,

By: /s/ Baher Azmy

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**EXHIBIT A**

Oct. 30. 2007 10:46AM

No. 6312 P. 1

Tel: (860) 808-5450  
Fax: (860) 808-5591

Office of the Attorney General  
**State of Connecticut**  
TELEFAX COMMUNICATION

Date: 10-30-07

To: *Simon Moshenberg*

Telefax #: (203) 432-1426

Number of Pages: 4  
(including this)

From: Henri Alexandre

Telephone: (860) 808-5450

Telefax: (860) 808-5591

Information  
faxed by: Beverly O'Brien (808-5465)

COMMENTS: *per our telephone conversation.*

NOTICE: This telecopy transmission and any accompanying documents may contain confidential or privileged information. They are intended only for use by the individual or entity named on this transmission sheet. If you are not the intended recipient, you are not authorized to disclose, copy, distribute or use in any manner the contents of this information. If you have received this transmission in error, please notify us by telephone immediately so that we can arrange retrieval of the faxed documents.



Oct. 30. 2007 10:46AM

No. 6312 P. 2

09/05/07 14:41 FAX 203 773 5373

US ATTORNEY'S OFFICE NH

012

09/05/2007 10:45 FAX 860 885 8254

004/038

Page 1 of 1

MVTF3

From: MVTF3 [mvtf3@po.state.ct.us]  
Sent: Monday, April 30, 2007 12:17 PM  
To: [REDACTED]  
Subject: RE: OP 05/02/2007

Tracking: Recipient Read  
[REDACTED] Read: 4/30/2007 4:54 PM

[REDACTED]  
Sounds great!

Let me know what you can do. I'll run it by the bosses, should be no problem, but I will get back to you before Wednesday to let you know for sure.


Be safe,  
Carminc

From: [REDACTED]  
Sent: Monday, April 30, 2007 11:41 AM  
To: Carminc Verno (E-mail)  
Subject: OP 05/02/2007

Hey Carminc....

We have an OP scheduled for Wed, 05/02/07 in New Haven @ [REDACTED] I know you guys usually work nights, but if you're interested we'd love to have you! We have 18 addresses--so it should be a fun time!!

Let me know if you guys can play!!

[REDACTED]  
Protected by Spam Blocker Utility   
[Click here to protect your inbox from spam.](#)

8/9/2007

Oct. 30. 2007 10:46AM

No. 6312 P. 3

09/05/07 14:42 FAX 203 773 5373

US ATTORNEY'S OFFICE NII

014

09/05/2007 10:45 FAX 860 685 8354

006/038

Page 1 of 1

MVTF3

From: [REDACTED]  
Sent: Tuesday, May 01, 2007 3:39 PM  
To: MVTF3  
Subject: RE: Wednesday

I will keep you posted on the new date...it should be within the next couple of weeks--HOPEFULLY next week!!!


Thanks!!

-----Original Message-----

From: MVTF3 [mailto:mvtf3@po.state.ct.us]  
Sent: Tuesday, May 01, 2007 11:44 AM  
To: [REDACTED]  
Subject: Wednesday

We are good to go for Wednesday at [REDACTED] st need a meet location. There should be between 3 and 5 of us.  
Let me know

Be Safe,  
Carmine

Protected by Spam Blocker Utility   
[Click here to protect your inbox from spam.](#)

8/1/2007

Oct. 30. 2007 10:46AM

09/05/2007 10:43 FAX 203 773 5373

US ATTORNEY'S OFFICE NII

No. 6312 P. 4

010

008/038

09/05/2007 10:45 FAX 860 885 8354

Page 1 of 1

MVTF3

From: MVTF3 [mvtf3@po.state.ct.us]

Sent: Tuesday, May 29, 2007 3:32 PM

To: [REDACTED]

Subject: RE: 06/06

Tracking: Recipient

Read

[REDACTED] Read: 5/29/2007 3:55 PM

[REDACTED]

No Problem. Fax is 203-696-2597. We will be ready for [REDACTED] of June 6<sup>th</sup>.

Be safe,  
Carmine

From: [REDACTED]

Sent: Tuesday, May 29, 2007 10:40 AM

To: Carmine Verno (E-mail)


Subject: 06/06

HEY THERE...NO, I DIDN'T FORGET...

WHAT YOUR FAX NUMBER AND I WILL FAX YOU A COPY OF THE OP PLAN.

THE DATES ON THE OP PLAN ARE THE OLD ONE'S. I DON'T KNOW WHY HO DIDN'T CHANGE IT WHEN THEY CANCELLED IT THE FIRST TIME, THEN RESCHEDULED.... LET ME KNOW IF THAT'S AN ISSUE..

THANKS...BE SAFE... [REDACTED]

Protected by Spam Blocker Utility   
[Click here to protect your Inbox from Spam.](#)

8/9/2007

**EXHIBIT B**

01/07/2008 08:12 7325778388

FREEHOLD BORO POLICE

PAGE 03/58

**POLICE DEPARTMENT  
MONMOUTH COUNTY UNIFORM CRIME REPORT**

The Freehold Borough Police Department Operations Report

1. Nature of Incident Assist Other Agency	2. Date 08-08-07	3. Time 0826	4. Classification	5. Complaint Number 07-6723
6. Circle appropriate classification: VICTIM <u>COMPLAINANT</u> ACCUSED Leo Kolshorn (Homeland Security, ICE)				
7. Address of above named individual 970 Broad St. Newark NJ			8. Phone 973-417-9417	
9. Location of incident <b>REDACTED</b>				
10. Reported by: Same as Box #6			RADIO	PHONE
			VIEW XXX	OTHER
11. Address Same as Box #7			12. Phone Same as Box #8	
Optional information - vehicle info, suspect info, names of persons, other witnesses/scene or topic.				

13. Action Taken  
On the above date and time the undersigned officer responded to \_\_\_\_\_ to meet with Homeland Security Officer (ICE), Leo Kolshorn. Upon arrival Leo advised the undersigned that he was attempting to serve an Administrative Deportation warrant on a family of four from Brazilians who reside at \_\_\_\_\_ Leo further advised that including himself he has six members of his team on scene and watching the residence at this time. The family member are currently in the home and failed to answer the door at 0600 hours when ICE attempted to serve the warrant. Leo asked the undersigned officer if a Marked Freehold Boro Police vehicle pull up to the house and have a uniformed officer knock and have the accused family come to the door. Once someone was to come to the door ICE would take over the investigation.

Lt. Wodell and Chief Roth were both notified of the investigation and responded to the scene. Lt. Wodell and the undersigned responded to the door of \_\_\_\_\_ and knocked several times without any response, however a subject was scene in the upstairs window. Without a response and or cooperation from the accused family both agencies left the scene with incident.

ICE Team Leader= Leo Kolshorn Cell # 973-417-9417  
ICE Member= Scott Dempsey Cell # 973-332-9047

No further police action.

R. Scott Dempsey  
Deportation Officer  
Elizabeth, NJ  
Elizabeth Detention Facility

U.S. Department of Homeland Security  
Immigration & Customs Enforcement  
625 Evans Street  
Elizabeth, NJ 07201  
973 622 1044 tel 973 622 4079 fax  
robert.dempsey@dhs.gov



**Homeland  
Security**

17. Badge #86	18. Hours .50	19. Date 08-08-07	20. Reviewed S.A. O.I.C.	21. Status circle one Complete
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## **EXHIBIT C**

# DEPARTMENT OF HOMELAND SECURITY

## Office of Inspector General

### An Assessment of United States Immigration and Customs Enforcement's Fugitive Operations Teams



**OIG-07-34**

**March 2007**

*Office of Inspector General*

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

March 5, 2007

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibility to promote economy, effectiveness, and efficiency within the department.

This report addresses the effectiveness of United States Immigration and Customs Enforcement's Fugitive Operations Teams. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, statistical analyses, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner  
Inspector General





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**Abbreviations**

CBP	United States Customs and Border Protection
DHS	Department of Homeland Security
ICE	United States Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
OIG	Office of Inspector General
PL	Public Law
USC	United States Code

# OIG

*Department of Homeland Security  
Office of Inspector General*

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## **Executive Summary**

To bring integrity to the immigration process, in February 2002, the legacy Immigration and Naturalization Service established the National Fugitive Operations Program under the auspices of the Office of Detention and Removal Operations. When the Department of Homeland Security was formed in March 2003, the office became a part of United States Immigration and Customs Enforcement.

The purpose of the National Fugitive Operations Program is to identify, locate, apprehend, and remove fugitive aliens from the United States. Fugitive aliens are individuals who have unexecuted final orders of removal from the Executive Office for Immigration Review. The orders require the aliens to be removed from this country. The ultimate goal of the program is to eliminate the backlog of fugitive aliens. As of August 2006, the Office of Detention and Removal Operations estimated there were 623,292 fugitive aliens in the United States. Since 2003, the office allocated more than \$204 million to deploy 52 Fugitive Operations Teams. As of October 2006, 50 teams are operational and apprehending fugitive aliens in various cities nationwide. Following are the results of our review:

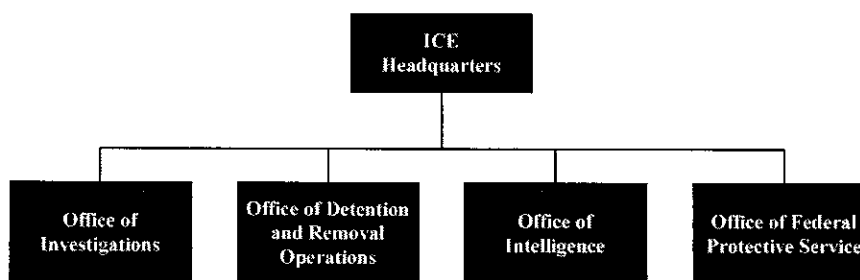
- Fugitive alien apprehensions reported by the Office of Detention and Removal Operations did not accurately reflect the teams' activities;
- The fugitive alien backlog increased despite the teams' efforts;
- The teams' effectiveness was hampered by insufficient detention capacity, limitations of an immigration database, and inadequate working space;
- The removal rate of fugitive aliens apprehended by the teams could not be determined;
- The teams performed duties unrelated to fugitive operations, contrary to Office of Detention and Removal Operations policy;
- Despite hiring obstacles, progress has been made in staffing the teams;
- The teams have effective partnerships with federal, state, and local agencies; and
- The teams have basic law enforcement training.

We are making seven recommendations to the Assistant Secretary for United States Immigration and Customs Enforcement to address our concerns. The Office of Detention and Removal Operations concurs with all seven recommendations and has taken steps to address them.

## Background

United States Immigration and Customs Enforcement (ICE) is the largest investigative branch within the Department of Homeland Security (DHS). ICE's mission is to protect America and uphold public safety by targeting the people, money, and materials that support terrorist and criminal activities. Sections 236 and 287 of the Immigration and Nationality Act provide authority to ICE officers to arrest, detain, and remove certain aliens from the United States.<sup>1</sup> ICE has more than 15,000 employees working in offices nationally and around the world, and its fiscal year (FY) 2006 budget was \$3.1 billion. ICE is comprised of four divisions:

**Figure 1: ICE Organization Chart**



The Office of Detention and Removal Operations is responsible for promoting public safety and national security by making certain, through the enforcement of national immigration laws, that all removable aliens depart the United States. This task is accomplished through the apprehension, detention, and removal of illegal aliens. This office manages illegal aliens in its custody, known as the “detained docket,” and tracks illegal aliens who are not in custody, known as the “non-detained docket.” As of June 2006, there were 4,170 full-time staff members working in 23 field offices throughout the country. For FY 2006, the Office of Detention and Removal Operations’ budget was \$1.0 billion.

### Fugitive Aliens

Fugitive aliens are non-United States citizens not currently in the custody or control of ICE who have failed to depart the United States pursuant to a final order of removal, deportation or exclusion, or have failed to report to a DRO officer after receiving notice to do so.<sup>2</sup> The most common reasons a fugitive alien’s whereabouts are unknown include:

<sup>1</sup> 8 USC §§ 1226 and 1357.

<sup>2</sup> In this report, the terms “fugitive alien” and “absconder” are used interchangeably.

- The alien did not appear for deportation as ordered by the Executive Office for Immigration Review immigration judge's final order of removal;
- The fugitive left the United States by his or her own choice without the knowledge of the Office of Detention and Removal Operations; or
- The Office of Detention and Removal Operations is unaware that the fugitive changed his or her immigration status or has died.

As of March 2006, there were an estimated 11.5 to 12 million illegal aliens living in the United States.<sup>3</sup> As of August 2006, the Office of Detention and Removal Operations estimated there was a backlog of 623,292 fugitive aliens. Therefore, fugitive aliens constitute about 5.4 percent of the estimated illegal alien population.

#### Early Efforts to Apprehend Fugitives

The Office of Detention and Removal Operations deportation officers have always apprehended fugitive aliens on an ad hoc basis, but teams were not exclusively devoted to this task. In an attempt to establish teams dedicated to this mission, in June 1995, the Commissioner of the legacy Immigration and Naturalization Service (INS) and the Attorney General signed *The National Detention, Transportation and Removal Plan*, an effort to stop the increase of fugitive aliens in this country. The plan called for the creation of "abscondee removal teams," and the 1996 Appropriation Bill provided funding for these new positions. According to one Office of Detention and Removal Operations document, although the positions were earmarked for the teams, the appropriation bill did not mandate that the positions be used for the teams. Consequently, the positions were absorbed into day-to-day INS detention and deportation operations.

In August 1998, INS instituted another effort to apprehend fugitive aliens. The INS Executive Associate Commissioner for Field Operations signed the *Fugitive Apprehension Operations, Detention & Deportation Operations Unit Planning Initiative*. This initiative called for the creation of Fugitive Operations Teams and specific training necessary to apprehend fugitives. According to an Office of Detention and Removal Operations document, the training was initially provided, but no teams were ever established.

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<sup>3</sup> Pew Hispanic Center, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.*, March 7, 2006, page i.

### Absconder Apprehension Initiative

The terrorist attacks of September 2001 brought new attention to the fugitive alien backlog. The Deputy Attorney General's Absconder Apprehension Initiative made fugitive apprehension a priority for legacy INS, the Federal Bureau of Investigation, and the United States Marshals Service.<sup>4</sup> At that time, INS determined there were approximately 314,000 fugitive aliens in the United States. The objective of the initiative was to "locate, apprehend, interview, and deport" those fugitive aliens. In support of the USA PATRIOT Act, ICE authorized 40 positions to be used exclusively for dedicated teams to apprehend fugitives.<sup>5</sup> Subsequently, the Office of Detention and Removal Operations' headquarters deployed eight five-person teams in seven cities.

An additional objective of the Absconder Apprehension Initiative was the use of the National Crime Information Center to enhance federal authorities' ability to locate fugitives. This center is a nationwide law enforcement consortium and computerized index of criminal justice information. The Absconder Apprehension Initiative called for the information on 300,000 fugitive aliens to be placed into the National Crime Information Center database. Through its Law Enforcement Support Center, part of ICE's Office of Investigations, ICE administers and controls information on immigration violators in the database. The Law Enforcement Support Center provides immigration identity and status information to federal, state, and local law enforcement agencies on criminal aliens.

### National Fugitive Operations Program

To enforce unexecuted final orders of removal and bring integrity to the immigration process, in February 2002, legacy INS established the National Fugitive Operations Program under the auspices of the Office of Detention and Removal Operations. When DHS was created in March 2003, ICE absorbed the National Fugitive Operations Program. According to an ICE fact sheet:

The primary mission of [the National Fugitive Operations Program] is to identify, locate, apprehend, process, and remove fugitive aliens from the United States with the highest priority placed on those fugitives who have been convicted of crimes. Further, [the National Fugitive Operations Program's] goal is to eliminate the backlog of fugitives and ensure that the

---

<sup>4</sup> Department of Justice Memorandum, "Guidance for Absconder Apprehension Initiative," January 25, 2002.

<sup>5</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, PL-107-56.

number of aliens deported equals the number of final orders of removal issued by the immigration courts in any given year.

In its Strategic Plan, *Endgame*, dated June 2003, the Office of Detention and Removal Operations indicated that the National Fugitive Operations Program's goal was to eliminate the backlog of fugitive aliens by the end of 2012 and acknowledged that the initial allocation of 40 positions to fugitive operations would not be enough to reach that goal.

The [National Fugitive Operations Program] will target this backlog by facilitating the apprehension and subsequent removal of those fugitives. The goal over the next ten years [2003 – 2012] will be to eliminate this backlog and to ensure that our efforts in terms of apprehension and removal of fugitive cases equal the number of new cases falling into this category. While woefully inadequate to achieve the goal, the creation of 40 positions dedicated to the [National Fugitive Operations Program] is a promising start.

However, in its Detention and Deportation Officer's Field Manual, dated August 2003, the Office of Detention and Removal Operations stated a more aggressive goal for the program: "The intended goal of this manual is the elimination of backlog fugitive ... cases by the conclusion of fiscal year 2009."

Whether by 2009 or 2012, apprehending and removing fugitive aliens and ensuring that final orders of removal are executed are clearly priorities for the Office of Detention and Removal Operations.

#### Funding for Fugitive Operations

Since FY 2003, Congress has provided the Office of Detention and Removal Operations funding to support fugitive operations. According to our analysis of ICE financial reports, since FY 2003, this office has allocated more than \$204 million for the apprehension, detention, and removal of fugitive aliens.



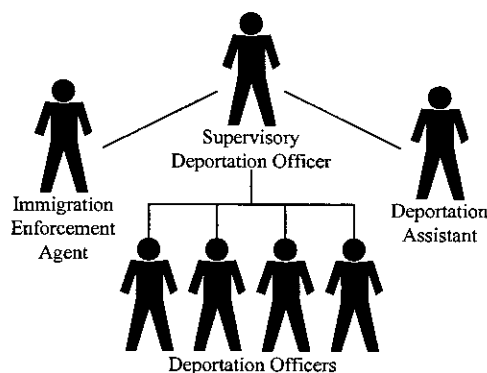
**Table 1: Funds Allocated to Fugitive Operations**

<b>Fiscal Year</b>	<b>Total Funds Allocated</b>
FY 2003	\$9,333,519
FY 2004	\$12,683,962
FY 2005	\$72,186,192
FY 2006	\$110,638,837
<b>Total</b>	<b>\$204,842,510</b>

Source: ICE Federal Financial Management System reports

### Fugitive Operations Team Structure

Under the National Fugitive Operations Program, each team consists of seven members, as depicted in the figure below. The four deportation officers, who report to the supervisory deportation officer, are responsible for identifying, locating, and apprehending fugitive aliens.<sup>6</sup> The immigration enforcement agent assists in apprehending fugitives and transporting them from the place of arrest to an Office of Detention and Removal Operations detention facility or processing center. The deportation assistant is a clerical employee who performs administrative tasks.

**Figure 2: Fugitive Operations Team**

Typically, a team has seven members. However, there are instances in which this does not apply. For example, when one city has two teams, only one supervisory deportation officer is assigned to supervise both teams. Additionally, one field office assigned two immigration enforcement agents, instead of one, to a team.

<sup>6</sup> Supervisory deportation officers and supervisory detention and deportation officers have the same responsibilities and both are GS-13 supervisory officers. In this report, we use both titles to refer to Fugitive Operations Teams' supervisors.

Originally, only experienced GS-12 or “journeyman level” deportation officers were hired for the teams. However, the Office of Detention and Removal Operations recently decided to hire Fugitive Operations Teams’ deportation officers at the GS-11 level as well. A United States Customs and Border Protection (CBP) human resources manager speculated that hiring at the GS-11 level was due to the depletion of the available GS-12 level applicant pool.

## **Results of Review**

### **Fugitive Apprehension Reports Should Accurately Reflect the Teams’ Activities**

To measure the Fugitive Operations Teams’ performance, the Office of Detention and Removal Operations used weekly field office apprehension reports provided to headquarters. However, these reports did not accurately reflect the teams’ productivity. The Office of Detention and Removal Operations’ statistical reports for the teams included apprehensions they made, as well as deportation officers within field offices who are not team members, and other federal, state, and local law enforcement agencies. The reports also included case closures, in which the Fugitive Operations Team verified that a fugitive alien died, voluntarily left the country, or changed their immigration status by, for example, becoming a United States citizen or legal permanent resident. The reported apprehensions involved varying levels of Fugitive Operations Teams’ effort, from taking custody of and processing aliens already arrested by other law enforcement agencies to receiving leads, searching databases, talking to informants, and making apprehensions.

While it is not a requirement that the Fugitive Operations Teams and non-Fugitive Operations Teams apprehensions be recorded separately, the current reporting system does not provide a means by which managers can assess teams’ performance. There is also no requirement that the level of the teams’ involvement be a determining factor when receiving credit for apprehensions made by other sources, such as National Crime Information Center matches and arrests by other law enforcement agencies.

The fugitive apprehensions, as reported by the Office of Detention and Removal Operations, do not represent the productivity of the Fugitive Operations Teams but those of all field offices. In order to assess the true performance of the teams, it is essential that their activities be documented separately from other activities in the field offices. For this reason, the apprehension numbers used in this section of our report are presented as field office apprehensions rather than those of the teams.

---

Fugitive Operations Teams' Goals and Reported Apprehensions in Fiscal Years 2003 – 2006

Varying apprehension priorities have been established since the formation of Fugitive Operations Teams in FY 2003. Statistical information compiled by the Office of Detention and Removal Operations shows all apprehensions made in each field office from FY 2003 to FY 2006, making it virtually impossible to determine the actual number of apprehensions made by the teams. Consequently, the productivity of Fugitive Operations Teams is uncertain as well as whether the teams met their annual apprehension goals.

In FY 2003, eight teams were created and distributed to field offices within the Office of Detention and Removal Operations, then a part of legacy INS. A headquarters manager said statistics for the first teams were compiled as of March 2003. He said there was no funding specifically for Fugitive Operations Teams in FY 2002, but fugitive apprehensions had been a duty for deportation officers before the inception of the National Fugitive Operations Program.

The goal of each team in FY 2003 was to apprehend 125 fugitive aliens, with priority given to backlog fugitive alien cases and aliens released on orders of supervision, a form of relief from detention that is similar to a parole. The Office of Detention and Removal Operations sets conditions of release on orders of supervision. Five of the seven field offices apprehended more than 125 fugitive aliens. Two field offices did not attain the goal.

In June 2004, the fugitive apprehension goal was changed and required that at least 75% of each team's apprehensions be criminal aliens.<sup>7</sup> This requirement remained in effect until January 2006. Field office reports indicated that the fugitive apprehension goal was not met during this period of time.

In late January 2006, the fugitive apprehension goal was changed again. This goal required the apprehension of 1,000 fugitive aliens per team each year. The apprehensions were prioritized as follows: (1) fugitives posing a threat to the nation; (2) fugitives posing a threat to the community; (3) fugitives with a violent criminal history; (4) criminal fugitives; and (5) non-criminal fugitives.<sup>8</sup> We were unable to determine whether this goal was achieved since it changed four months into the fiscal year.

---

<sup>7</sup> Office of Detention and Removal Operations Memorandum, "Case Load Priority with Fugitive Operations," January 22, 2004. A "criminal fugitive" is a fugitive alien who has a criminal conviction identified in their Deportable Alien Control System record.

<sup>8</sup> Office of Detention and Removal Operations Memorandum, "Fugitive Operations Case Priority and Annual Goals," January 31, 2006.

The office's then-acting director cited two reasons why the goal changed to 1,000 apprehensions. First, the creation of the Fugitive Operations Support Center would give teams more time to focus on apprehensions by vetting leads and performing database checks on fugitive aliens.<sup>9</sup> Purportedly, this would reduce the burden on Fugitive Operations Teams in performing these tasks. Secondly, because teams would no longer be required to apprehend 75% criminal aliens, the teams would be able to apprehend more fugitives overall. He said the previous 75% goal predisposed the teams to focus on capturing criminal fugitives aliens, which was more time-consuming and neglected the arrests of non-criminal fugitives aliens. A second manager said apprehending criminal fugitives required more time due to tasks such as following up on leads and surveillance activities.

The table below shows the fiscal years in which Fugitive Operations Teams were authorized and the apprehensions reported by the field offices assigned those teams. These figures include all apprehensions made within field offices, whether by team members or not. The Office of Detention and Removal Operations official responsible for compiling statistical reports said this reporting method did not allow him to distinguish fugitive aliens apprehended by teams from those apprehended by others. Therefore, the table is not an accurate portrayal of the Fugitive Operations Teams' productivity, but it is our best effort to reconcile the figures given the manner in which the office reported fugitive apprehensions. Furthermore, because it reported apprehensions made by team and non-team members, the statistics presented below overestimate the teams' productivity.

**Table 2: Fugitive Apprehensions Reported by Field Offices with Authorized Teams**

Fiscal Year <sup>10</sup>	Authorized Teams	Fugitive (Criminals)	Fugitive (Non-Criminals)	Total Fugitive Apprehensions
2003	8	474	749	1,223
2004	18	4,378	3,956	8,334
2005	44	4,651	4,304	8,955
2006	52	4,158	7,706	11,864
<b>Total</b>	<b>52</b>	<b>13,661</b>	<b>16,712</b>	<b>30,376</b>

Source: Office of Detention and Removal Operations fugitive apprehensions reports

<sup>9</sup> The Fugitive Operations Support Center is described in greater detail in Appendix B.

<sup>10</sup> The statistics for FY 2003 only reflect apprehensions reported during the second half of FY 2003, March 2003 through September 2003, and the statistics for FY 2006 only reflect apprehensions reported during the first three quarters of FY 2006, October 2005 through June 2006.

### Additional Statistics Included in Fugitive Apprehension Reports

The Office of Detention and Removal Operations reported fugitive alien apprehensions from its field offices and satellite offices that do not have dedicated Fugitive Operations Teams. The apprehensions made by deportation officers in those offices are combined with apprehensions made by teams and other officers assigned to field offices where teams are deployed. For example, a supervisor explained that a satellite office under his field office's supervision has two officers assigned to the non-detained docket who also participated in fugitive operations. Fugitive arrests made by those deportation officers are included in the field office weekly apprehension report even though these officers are not assigned to the team.

In addition, reported fugitive apprehension statistics included arrests of fugitive aliens by other law enforcement agencies using information extracted from the National Crime Information Center. For example, a local police officer might encounter a suspected illegal alien and check the person's identity with the Law Enforcement Support Center. When the person is identified as a fugitive alien in National Crime Information Center, the officer contacts the Office of Detention and Removal Operations. A manager explained that if local or state authorities intend to prosecute the fugitive alien on local charges, the affected authority will take custody of the individual, and the Fugitive Operations Team members place a detainer on the fugitive alien. When no charges are filed, team members arrange to pick up the fugitive alien for processing.

A detainer is an agreement that state or local prison or jail officials will notify the Office of Detention and Removal Operations that illegal aliens are about to be released. Officers from the Office of Detention and Removal Operations' can then take the aliens into custody. Detainers placed on fugitive aliens were reported as apprehensions, even though the alien was not in the office's custody. However, as another officer noted and an Office of Detention and Removal Operations headquarters manager confirmed, headquarters told Fugitive Operations Teams to cease counting detainers as apprehensions. One officer said that state and local authorities sometimes fail to honor detainers and release the fugitive without notifying the office.

Case closures are another means by which field offices are given credit for apprehensions. A case closure represents a fugitive alien who is determined by the Office of Detention and Removal Operations to have (1) changed immigration status, for example, the fugitive became a naturalized United States citizen or a legal permanent resident; (2) died; or (3) left the country voluntarily. Once a deportation officer verifies that the fugitive alien meets one of the above conditions, the case may be closed. A majority of managers

and supervisors said they advised the teams to include case closures as apprehensions based on the amount of time deportation officers spend following leads and identifying aliens as fugitives.

Accurate Reporting Needed to Assess Progress of Fugitive Operations Teams

The Fugitive Case Management System, a database that became operational in June 2006, has replaced apprehension reports. This replacement provides the Office of Detention and Removal Operations with a computerized system to manage fugitive alien leads and track fugitive arrests or case closures. The database allows apprehension information to be entered by field office personnel and sent directly to headquarters for preparation of statistical apprehension reports. Since the database became operational after the conclusion of our fieldwork, we were unable to assess its effectiveness or accuracy.

Due to the various ways the office characterizes and reports apprehensions, it was difficult to determine with certainty whether the agency met the target goals from FY 2003 to FY 2005. Also, we were unable to predict whether the FY 2006 target goal of 1,000 apprehensions per team might be achieved since the goal changed four months into the fiscal year. Each Fugitive Operations Team must now arrest 1,000 fugitives a year, yet it cannot be determined whether the teams have ever met any performance threshold based on the past reporting of apprehensions per field office.

Performance measures should be valid representations of the progress toward achieving program goals and objectives. Without accurate tracking of program performance, the office's managers cannot make sound judgments about the program. Also, program managers cannot effectively estimate the benefit of additional Fugitive Operations Teams. Since the reporting process was a cumulative accounting of all apprehensions made within the field office, it was not representative of apprehensions made by the teams. Consequently, the Office of Detention and Removal Operations' fugitive operations apprehension reports did not properly reflect team performance.

**Recommendation**

We recommend that the Assistant Secretary for United States Immigration and Customs Enforcement:

**Recommendation 1:** Establish a Fugitive Operations Team reporting system that enables Office of Detention and Removal Operations managers to classify all categories of apprehensions.

## Fugitive Alien Backlog Is Increasing Despite the Teams' Efforts

The Office of Detention and Removal Operations' officers and managers cited several factors that limited the effectiveness of Fugitive Operations Teams in decreasing the fugitive alien backlog. These factors include the inaccuracy and functionality of the Office of Detention and Removal Operations' immigration database, unavailability of adequate bed space to detain fugitive alien apprehensions, and inadequate working space for additional staff hired to serve on the teams.

The office established the National Fugitive Operations Program to aid in identifying, locating, apprehending, processing, and removing fugitive aliens by deploying teams nationwide. According to the Detention and Deportation Officer's Field Manual, the Fugitive Operations Team's "immediate mission is the elimination of fugitive cases in their assigned office." However, despite the efforts of the teams, the backlog of fugitive alien cases has increased each fiscal year since the program was established in February 2002. The fugitive alien population is growing at a rate that exceeds the teams' ability to apprehend. The factors mentioned earlier contributed to the inability of Fugitive Operations Team apprehensions to keep pace with the increase in the backlog of fugitive aliens, not to mention reduce it.

**Table 3: Estimated Fugitive Alien Backlog**

Date	Total Number of Fugitives	Change From Previous Year	Percent Change
September 2001	331,734		
September 2002	376,003	44,269	13.3 %
September 2003	418,753	42,750	11.4 %
September 2004	465,353	46,600	11.1 %
September 2005	536,644	71,291	15.3 %
August 2006	623,292	86,648	16.1 %

Sources: DHS OIG, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*, OIG-06-04, November 2005, page 90 and the Office of Detention and Removal Operations.

The backlog of fugitive alien cases has increased, on average, 51,228 each year over the four-year period ending September 2005. Also, the increase for the period from October 2005 to August 2006 was 86,648 fugitive alien cases. As of August 2006, the Office of Detention and Removal Operations estimated there were 623,292 fugitive aliens.

**Table 4: Fugitive Alien Apprehensions Reported by All Field Offices**

<b>Time Period</b>	<b>Fugitive (Criminal)</b>	<b>Fugitive (Non-Crim.)</b>	<b>Total Fugitive Apprehensions</b>
March 2003 – September 2003	1,302	2,088	3,390
October 2003 – February 2004	1,631	2,176	3,807
March 2004 – September 2004	3,917	3,261	7,178
October 2004 – February 2005	2,152	2,833	4,985
March 2005 – September 2005	2,550	3,669	6,219
October 2005 – February 2006	2,104	2,557	4,661
March 2006 – June 2006	2,054	5,149	7,203
<b>Total</b>	<b>15,710</b>	<b>21,733</b>	<b>37,443</b>

Source: Office of Detention and Removal Operations fugitive apprehension reports.

According to our analysis presented in Table 2, the field offices with authorized Fugitive Operations Teams reported apprehending 30,376 fugitives since FY 2003. In our review of all apprehensions reported from March 2003 through June 2006 by all field offices, the Office of Detention and Removal Operations apprehended 37,443 fugitives. With a backlog of 623,292 fugitives that is growing at a rate of more than 50,000 fugitives per year, the National Fugitive Operations Program's progress in addressing the backlog has been limited. It is highly improbable that it will be eliminated in the near future.

Inadequate detention bed space, the overall capabilities of the Deportable Alien Control System and insufficient or nonexistent workspace are factors that limit the effectiveness of the Fugitive Operations Teams. Other factors that limit the teams' effectiveness are members performing non-fugitive operations duties and insufficient staffing, both discussed in more detail later in this report.

#### Bed Space Constraints

Some of the Office of Detention and Removal Operations' officers noted that the lack of adequate detention space limits the effectiveness of the Fugitive Operations Teams. A field office director reported ceasing fugitive operations for six weeks because of insufficient bed space and another manager reported slowing team operations for the same reason. Other managers indicated that as more officers are hired to serve on the teams, managing the increased fugitive apprehensions with their current bed space capacity would become more difficult.



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Aliens in the Office of Detention and Removal Operations' custody are held in three types of detention facilities. These include Service Processing Centers, which are government-owned and operated, Contract Detention Facilities, which are contractor-owned, and local or county jails. A headquarters official estimated that about half of the office's detained population is in local or county jails. Additionally, the office has bed space allocated by the Federal Bureau of Prisons, which can only be used for aliens who have been convicted of crimes.

A supervisory deportation officer from a field office, which was authorized 400 beds per day, said his office's three teams stopped apprehending fugitive aliens for approximately six weeks because no facilities were available to house the aliens. Additionally, the Office of Detention and Removal Operations' field offices often share bed space with other field offices. According to a field office director in a neighboring city, which was authorized 707 bed spaces per day, he had to slow down fugitive operations because all the office's beds in the region were full. The director told us he did not think the team would achieve its goal because of a lack of adequate bed space. By June 2006, the three teams in the nearby city had apprehended approximately 800 fugitives. The field office director foresaw apprehending 1,500 to 2,000 fugitives by the end of the year, depending on bed space availability.

Another supervisor indicated that a lack of adequate detention space is the team's biggest limitation. The field office director said that even if a team could apprehend 1,000 fugitives, they would have no place to put them. For FY 2006, this field office was funded for 246 bed spaces to hold not only Fugitive Operations Team's fugitive alien apprehensions, but also aliens apprehended by the other office's officers, the ICE Office of Investigations, and CBP Inspections at airports. The field office director stated that he is attempting to convince the office's headquarters managers to increase funding for this field office to 270 or 280 bed spaces. He reported that his detained population for that day was about 280.

#### Deportable Alien Control System Limitations

The Office of Detention and Removal Operations manages cases in the Deportable Alien Control System, a database that is the office's system of records. Legacy INS implemented this database, which provides ICE with data concerning the detention and deportation of aliens in accordance with immigration and nationality laws. The database also serves as a docket and control system by providing the Office of Detention and Removal Operations management with information concerning the status or disposition of deportable aliens.

The database contains four types of information: (1) “biographical records,” including name, alias(es), nationality, date of birth, etc.; (2) “detention records,” including whether the alien is in the Office of Detention and Removal Operations’ custody and where; (3) “case records,” which include deportation or removal case information; and (4) “jail records,” which include information on aliens serving sentences. According to an analyst, there were approximately 4 million records in the database and 1.3 million open cases, of which almost half were fugitive aliens.

Fugitive Operations Team officers said that the database limits the capability of the teams. Specifically, they said the information in the Deportable Alien Control System was inaccurate or incomplete. One supervisor stated that the database has “been neglected for the past 25 years.” An analyst, who has worked the Deportable Alien Control System help desk for ten years, estimated that approximately 50% of the data in the database is accurate, and there is more incomplete than inaccurate information. Having a large number of aliens to manage and few staff members to handle them made maintaining information difficult. For example, New York City had 200,000 aliens on its non-detained docket and at one point only 10 deportation officers to manage both detained and non-detained cases in the Deportable Alien Control System. Because of the ratio of cases to deportation officers, timely updating of the database was nearly impossible.

Recognizing the problems associated with the database’s data integrity, the Office of Detention and Removal Operations issued a directive mandating that all personnel “completely enter all data fields in [Deportable Alien Control System]” and ensure the information is accurate and accessible to both the field and headquarters.<sup>11</sup> In addition, some field offices were directed to update the fugitive data in their area of responsibility to reflect actual cases of fugitives that are removable and to update past due call-up dates, which is a case call-up function in the database that allows officers to review cases periodically.

Some officers and managers mentioned a proposed replacement for the Deportable Alien Control System, called the ENFORCE Removals Module, which is an automated law enforcement information system. According to the Office of Detention and Removal Operations, the purpose of the program is to deploy a service-wide, information-based system that uses automation to reduce the amount of time agents spend on manual administrative work. However, as of August 2006, the replacement has not been implemented.

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<sup>11</sup> Office of Detention and Removal Operations Memorandum, “Reiteration of Data Entry Policy for the Deportable Alien Control System,” January 12, 2006.

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### Insufficient or Nonexistent Work Space

Many members said they are working in cramped and overly crowded work areas. It is not clear whether the availability of adequate working space was taken into account as new positions were generated for the deployment of the teams. Additionally, as of July 2006, a Rock Island team that was authorized in FY 2004 has not been established because there is no available facility from which team members can work. An officer explained that the team was designated, but the building to house them has not been completed. A supervisor noted that officers were selected for the Rock Island team, but they have since taken other jobs because the team was never formed.

In FY 2005, the Office of Detention and Removal Operations established a team that would be housed at a later date in a satellite office 60 miles from the team's field office. This team began operations in October 2005 and was staffed with four deportation officers and one supervisory deportation officer. Because no office space was available in the satellite office at the time, the team operated out of the field office from October 2005 to March 2006. The team performed their duties in the field office, such as database checks and other tasks associated with locating fugitives, while apprehending fugitives in the area of the satellite office. During this time, the officers were on "per diem" as the location of their office was not their official duty station, although they were apprehending fugitives in the area of the official duty location.

In March 2006, the team was given limited office space in their satellite office. Two deportation officers and one immigration enforcement agent assigned to the team work in a small room that was previously a detention cell and was later converted to an interview room. One officer measured the room and said that it was 12 feet by 15 feet, or 180 square feet. Another deportation officer sits at a table that holds the team's fax machine. The supervisory deportation officer has an office that was previously an interview room, and the deportation assistant sits at the desk of the satellite office receptionist.

Other teams have working conditions that are less than ideal. Because the Office of Detention and Removal Operations' building in one Midwest city was already overcrowded when the Fugitive Operations Team was established in FY 2003, team members worked in office space loaned to them from CBP in a terminal at the local airport. In another example, five members of a Northeast team work in a "chopped up office" that was originally designed for two people.

Without sufficient office space, accurate and up-to-date databases, and detention space commensurate with apprehensions made by Fugitive

Operations Teams, the teams' effectiveness is limited, making it difficult to work at maximum capacity.

#### **Recommendation**

We recommend that the Assistant Secretary for United States Immigration and Customs Enforcement:

**Recommendation 2:** Conduct an assessment of the working space presently available to all Fugitive Operations Team members and develop a detailed plan to ensure that current and future officers are provided an adequate working environment that meets applicable federal standards.

### **Removal Rate of Teams' Fugitive Alien Apprehensions Cannot Be Determined**

We were unable to determine the removal rate of fugitive aliens apprehended by Fugitive Operations Teams. If fugitives captured by teams are not removed, the ultimate objective of final orders of removal has not been achieved, and the efforts of the teams are undermined. As the Office of Detention and Removal Operations noted in its Strategic Plan, *Endgame*:

Moving toward a 100% rate of removal for all removable aliens is critical to allow the ICE to provide the level of immigration enforcement necessary to keep America secure. Without this final step in the process, apprehensions made by other DHS programs cannot truly contribute to national security.

Also, according to an ICE fact sheet, the "[National Fugitive Operations Program's] goal is to eliminate the backlog of fugitive aliens and ensure that the number of aliens deported equals the number of final orders of removal issued by the immigration courts in any given year."

We could not determine the percentage of team-apprehended fugitive aliens removed from the United States by the Office of Detention and Removal Operations. In its National Fugitive Operations Program weekly statistical report, the office recorded, in separate columns, the total number of apprehended fugitive and non-fugitive aliens. According to the Detention and Deportation Officer's Field Manual, these non-fugitive alien apprehensions, also referred to as "collateral apprehensions" or "incidental arrests," are the "apprehensions of persons other than fugitive aliens," which have not been issued final orders of removal. Fugitive Operations Team members are charged with taking these individuals into custody and placing them into

removal proceedings. However, the numbers of apprehended fugitives and non-fugitive aliens were combined to account for the total number of apprehensions.

The report also contained a column showing the total number of aliens removed from the country. However, the report does not specify whether the removed aliens were fugitive or non-fugitive aliens or whether a Fugitive Operations Team or non-Fugitive Operations Team member made the apprehensions. Accordingly, we were unable to determine the percentage of fugitive alien apprehensions removed.

As of June 2006, according to reports from the Office of Detention and Removal Operations, 49,473 illegal aliens were apprehended, of which 37,443 were fugitives. Also according to data extracted from the Deportable Alien Control System as of July 2006, the office reported removing 32,206 of those illegal aliens, or 65% of the total apprehended. Since the office does not distinguish between fugitives and non-fugitives in its removal figures, we could not determine the percentage of fugitive aliens removed from the country. More specifically, it is unknown how many of the fugitive aliens apprehended by the teams were removed. When fugitive aliens have not been removed, they are likely released into the United States on their own recognizance or an order of supervision.

The United States Supreme Court has determined that aliens could not be held indefinitely if there was no likelihood they would be removed from the country in the foreseeable future.<sup>12</sup> In these situations, aliens who cannot be removed are released from custody. The release of fugitive aliens undercuts the productivity of Fugitive Operations Teams and counteracts the deterrence posed by effective apprehension.

### **Recommendation**

We recommend that the Assistant Secretary for United States Immigration and Customs Enforcement:

**Recommendation 3:** Provide the resources needed by the Office of Detention and Removal Operations to detain, process, and remove all fugitive aliens apprehended by the Fugitive Operations Teams.

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<sup>12</sup> *Zadvydas v Davis*, 533 U.S. 678 (2001); *Clark v Martinez*, 543 U.S. 371 (2005). (The Office of Detention and Removal Operations may detain an alien for a presumptively reasonable six-month period. If after six months it is determined that the alien's removal is not significantly likely in the reasonable foreseeable future, then the alien must be released, unless the alien meets stringent criteria for continued detention.)

## **Team Members Performed Non-Fugitive Operations Duties**

Although Fugitive Operations Teams are prohibited from performing duties not associated with fugitive operations, almost all team members reported performing collateral duties while assigned as team members. Collateral duties include firearms instructor, juvenile coordinator, and jail inspector.

According to an Office of Detention and Removal Operations document, “non-fugitive operations duties” include, but are not limited to, docket management, bond management, Institutional Removal Program operations, travel document issues, domestic and foreign alien escorts, and jail inspection. “Fugitive operations duties” are identified as case preparation, field investigation, surveillance, apprehension operations, criminal prosecutions, court time, and task force participation.

Team members also reported that, while serving as a member of the team, they were involved in escorting aliens returning to their country of origin or from local jails to an Office of Detention and Removal Operations facility, taking bonds, escorting special interest aliens to court appearances, and managing the detained and non-detained dockets.

While team members are performing non-fugitive operations duties, they are unable to identify, locate, or apprehend fugitives. However, many officers we interviewed indicated that in January 2006, management began to enforce its policy restricting team members from performing non-fugitive operations duties. The exception to this policy was assigning them to serve as firearms instructors for mandatory quarterly firearms qualifications. Certified firearms instructors oversee the qualifications and assist remedial officers who have difficulty meeting the qualification standards.

The Office of Detention and Removal Operations’ policy prohibits team members from performing non-fugitive operations duties. According to the Detention and Deportation Officer’s Field Manual, Fugitive Operations Team members:

- Shall only be assigned to fugitive cases with an emphasis on backlog cases.
- Shall not be assigned to any duties that will deter them from conducting fugitive operations, including but not limited to, case management of the general detained or non-detained dockets, escorts and collateral duties normally accomplished by general assignment deportation officers.

Also, according to an ICE fact sheet, “The designated [Fugitive Operations Teams], strategically deployed around the country, work *solely* on those cases identified as fugitives and attempt to locate and apprehend those persons who will ultimately be removed from the United States.” (Emphasis added.)

Additionally, a previous Office of Detention and Removal Operation’s director sent a memorandum to all field office directors in December 2003 reiterating that team members are only to conduct fugitive operations duties.<sup>13</sup> The memorandum cited examples of prohibited tasks, such as escorts, taking bonds, court details, and consular liaison.

For example, one team member was a juvenile coordinator for the field office and, as such, had to attend to the special needs of juveniles in the Office of Detention and Removal Operations’ custody. Although he could not estimate the time he devoted to juvenile coordinator duties, he recalled escorting at least seven juveniles since being assigned to the team in October 2005. The director for this field office indicated there had not been a juvenile coordinator training course offered in some time. Therefore, he could not assign this duty to another officer in the field office. Without available training, non-Fugitive Operations Team members cannot be certified to perform juvenile coordinator duties to supplant the officers assigned to the teams.

Another team member reported that the team provided transportation for special interest aliens suspected of terrorist activity. This involves picking up illegal aliens in local jails and transporting them to the Office of Detention and Removal Operations’ detention facilities or to criminal court appearances. This officer indicated that the team normally spent approximately two days per week transporting aliens. The director for this office said he assigned Fugitive Operations Teams to jail transport activities because of their training and proficiency in handling rifles and assault-type weapons.

Several team members were also certified firearms instructors. Most reported overseeing the quarterly firearms qualifications for all officers in their field office. One officer reported spending about five weeks during the year performing this collateral duty. Another supervisory officer estimated that a firearms instructor spends two hours per day for four or five days each quarter on firearms instruction. That estimate equates to 40 hours per year. Even after management began enforcing its policy restricting Fugitive Operations Teams from performing non-fugitive operations duties, officers continued to perform firearms instructor duties.

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<sup>13</sup> Office of Detention and Removal Operations Memorandum, “Utilization of Fugitive Operations Team Members,” December 3, 2003.

Also, many Fugitive Operations Team officers explained that they were required to continue performing the duties for which they were assigned before joining the teams. These assignments primarily involved managing non-detained docket cases until another officer was hired to backfill the vacancy created when the deportation officer was reassigned to the team.

### **Recommendations**

We recommend that the Assistant Secretary for the United States Immigration and Customs Enforcement:

**Recommendation 4:** Assign Fugitive Operations Team members in a manner consistent with its Detention and Deportation Officer's Manual or amend the manual to reflect current assignment practices.

**Recommendation 5:** Train and certify deportation officers who are not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators.

## **Progress Has Been Made in Staffing the Teams**

Despite operating under hiring restrictions that hindered staffing for more than two years, ICE has made progress in establishing additional teams. In October 2006, the Office of Detention and Removal Operations announced there were 50 Fugitive Operations Teams nationwide.<sup>14</sup> This is a significant achievement considering the 16 teams apprehending fugitive aliens in June 2005.<sup>15</sup> According to the office's acting director at the time, the Office of Detention and Removal Operations planned to have all 52 authorized teams in place by the end of FY 2006.

Although progress has been made to establish Fugitive Operations Teams, all teams are not fully staffed. Only 225, or 76%, of the 297 positions authorized for 44 teams through FY 2005 have been filled.

In May 2006, the Office of Detention and Removal Operations provided a staffing list that outlined 352 authorized field positions for 52 Fugitive Operations Teams. Our analysis of filled positions does not include an additional 55 personnel authorized for eight teams in FY 2006. We were

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<sup>14</sup> ICE news release, "ICE Adds Seven New Fugitive Operations Teams to its Nationwide Arsenal: 496 Fugitives Arrested by San Antonio Team," August 10, 2006.

<sup>15</sup> ICE news release, "187 Arrested in Major ICE Criminal Alien Fugitive Operation: ICE and New England Law Enforcement Partners Arrest Criminals with Convictions for Violent Crimes," June 16, 2005.



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provided an updated staffing list in August 2006, which did not provide sufficient information to be analyzed and, therefore, was not included.

#### Obstacles to Hiring Team Members on a Timely Basis

The most significant obstacle to resolving the staffing shortfall was the ICE hiring restrictions imposed from March 2004 to July 2006. During this period, ICE was subject to three phases of hiring restrictions: (1) an initial hiring freeze through September 2004; (2) a period of severely restrictive hiring of crucial positions pending approval from a waiver board that was established to review all requests and justifications for hiring lasting through May 2005; and (3) 14 months of minor hiring restrictions, during which waivers were only required before a date could be set for a selected individual to enter on duty and actions involving permanent change of stations requiring moving funds. The waiver board and all hiring restrictions were finally dissolved in July 2006.

A large volume of applicants seeking positions within the Office of Detention and Removal Operations also affected hiring. When hiring restrictions were lifted, many general vacancies, including Fugitive Operations Team positions, had to be filled. A human resources manager stated there was a minimum of 120 vacant positions announced at that time that resulted in the office receiving thousands of applications. The manager also said the applicant pool for Fugitive Operations Team positions had been very large, with the office receiving nearly 500 applications from deportation officers, immigration enforcement agents, CBP inspectors, and Border Patrol agents for one vacancy. Processing substantial numbers of applications contributed to hiring delays for team positions.

The Office of Detention and Removal Operations' dependence on a human resources service center managed by CBP in Laguna Niguel, California, which itself is understaffed, is another factor that affects filling positions. The service center is responsible for non-entry level hiring of the Office of Detention and Removal Operations' employees and provides support to the office for staffing, personnel actions, payroll, promotions, and benefits.

In FY 2005, the service center announced 379 vacancies, reviewed 26,764 applications, issued 1,196 selection lists, and processed 455 selections.<sup>16</sup> The service center's staffing unit is authorized 15 staff members. As of July 2006, it had nine staffing specialists and four human resources assistants. Five of the specialists service the Office of Detention and Removal Operations' programs full time. In addition, the office recently agreed to provide the staffing unit with four contractors, who will assist them in performing human

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<sup>16</sup> The Laguna Niguel Service Center provided statistics in a report dated October 18, 2005.

resource assistant work. The shortage of manpower to process large volumes of applications was a contributing factor to delays in hiring team members.

Another factor inhibiting the timely staffing of Fugitive Operations Teams was DHS' Secure Border Initiative, which was announced in November 2005. As a result of the initiative, new detention facilities were to be opened in various locations, which also required supervisory deportation officers, deportation officers, supervisory immigration enforcement agents, immigration enforcement agents, and support staff. A CBP human resources manager noted the initiative created a "volume and urgency" to hire for that program alone, adding to the already heavy workload of the staffing unit.

The security clearance process has also been an impediment to hiring. Under legacy INS, verifying whether applicants had security clearances involved only checking current employees' social security numbers. After this cursory check, the individual would be cleared since no background investigation was needed. However, under DHS, the security clearance verification process changed. When the individual was an ICE employee, the process described above was followed. When, however, the applicant came from CBP or another entity, a background investigation had to be conducted even when the applicant already had a valid security clearance. The security clearance required submission of the necessary paperwork, conduct of the background investigation, and adjudication of the results of the investigation before the security clearance could be granted.

In January 2006, the requirements changed again, allowing for quicker security checks for both ICE and CBP employees. Now, they only have to fill out forms when a five or ten-year reinvestigation is necessary. This policy change expedited the hiring process.

#### Progress in Hiring Made But Teams Not Fully Staffed

Despite the obstacles to hiring, progress has been made as demonstrated by the increase of teams from 16 to 45 since June 2005.<sup>17</sup> As of May 2006, 76% of the positions authorized for 44 teams through FY 2005 were filled, while only four were fully staffed. At the time of our fieldwork, twenty teams had five or six members on board, and the remaining teams had four or less members. The Rock Island team remained vacant.

Eight Fugitive Operations Teams were authorized for FY 2006, five of which were deployed to locations that did not have teams in prior years. Of the 35 authorized personnel for these five teams, only five members, or 14%, were

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<sup>17</sup> ICE news release, "ICE Adds Seven New Fugitive Operations Teams to its Nationwide Arsenal: 496 Fugitives Arrested by San Antonio Team," August 10, 2006.

on board. We did not include the three remaining teams authorized for FY 2006 because they were deployed to locations that previously had Fugitive Operations Teams.

Headquarters and other locations that support Fugitive Operations Teams are also not fully staffed. In addition to the field staff, the National Fugitive Operations Program has additional positions to support the teams that are assigned to the Office of Detention and Removal Operations' headquarters, the Federal Law Enforcement Training Center in Glynco, Georgia, and the Fugitive Operations Support Center in Burlington, Vermont. In February 2006, only 20 of the 40 authorized support staff, or 50%, were on-board. The staffing list provided on May 26, 2006 did not include figures for Fugitive Operations Teams' support staff. Therefore, our analysis does not include the authorized staff for the Fugitive Case Management Unit because these numbers were not provided in the February 2006 staffing list. In addition, these figures do not include authorized positions that have not been assigned.

The hiring restrictions imposed from March 2004 to July 2006 and the delays associated with the CBP service center inhibited the timely hiring of the teams. Lifting the waiver requirements, conducting faster security checks, and employing additional personnel to the human resources unit will expedite the hiring process. Many teams have been established nationwide, but numerous vacancies remain. As a consequence, the teams' effectiveness is reduced.

### **Partnerships with Federal, State, and Local Agencies are Effective**

The teams are successfully liaising and coordinating with other entities to locate and apprehend fugitive aliens through partnerships in obtaining information on fugitive aliens and enlisting other entities' participation in Fugitive Operations Team-led apprehensions.

#### Networking Important to Obtain Fugitive Leads

With 623,292 fugitive aliens to locate and apprehend, all teams obtain information on fugitives and generate leads as to their locations by enlisting the aid of federal, state, and local partners, including the following:

- Department of Labor
- Social Security Administration
- United States Marshals Service
- Federal Bureau of Prisons
- State departments of corrections, parole, and probation
- Local law enforcement and jails

The Detention and Deportation Officer's Field Manual directs the Fugitive Operations Teams to establish relationships with external agencies to share information on fugitive aliens that may lead to successful apprehensions.<sup>18</sup> The teams' reliance on these agencies for intelligence gathering provides added resources that might not have been available otherwise.

Although such contacts are useful to maintain the networking capacity between the agencies, access to the agencies' databases can be more effective than coordinating information requests. Having the ability to search a number of databases allows access to a larger pool of information.

#### Information Sharing and Data Reconciliation Important in Providing Valid Fugitive Leads

The Fugitive Operations Teams have successfully partnered with individual federal, state, and local departments and agencies on an ad hoc basis to acquire information about fugitive aliens. At the national level, data collection can be expanded through the use of information sharing agreements with various federal agencies. The Office of Detention and Removal Operations has negotiated three agreements to access data from the databases of other federal agencies and obtain information on the identification and location of potential fugitive aliens.

In pursuit of information sharing practices encouraged in the USA PATRIOT Act and the Immigration and Nationality Act, which directs any government agency to provide information as to the identity and location of aliens in the United States "to the Service upon request made by the Attorney General to the head of any such department or agency,"<sup>19</sup> ICE signed three memoranda of understanding with the Departments of State, Labor, and Housing and Urban Development.<sup>20</sup> Under those agreements, ICE provides data on fugitive aliens from the Deportable Alien Control System to those agencies. The agencies then reconcile the data provided with information in their respective databases and any matches found are shared with ICE. A fourth agreement with the United States Marshals Service gives the Marshals direct access to the Deportable Alien Control System to obtain selected aliens' status, history, and other information. This agreement does not give ICE access to the Marshals' databases.

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<sup>18</sup> Office of Detention and Removal Operations, Detention and Deportation Officer's Field Manual, Chapter 19, Section 4, "Case Assignment, Preparation and Management," and Chapter 19, Section 19, "ICE Most Wanted Poster."

<sup>19</sup> PL 82-414, Section 290(b). Codified at 8 USC, Section 1360(b).

<sup>20</sup> Memorandum of Understanding between ICE's Office of Detention and Removal Operations and the Department of State, Bureau of Consular Affairs, November 2003; the Department of Labor OIG, April 2004; and the Department of Housing and Urban Development OIG, November 2004. Interconnection Security Agreement between ICE's Office of Detention and Removal Operations and the United States Marshals Service, August 5, 2004.

According to a headquarters manager, the Office of Detention and Removal Operations has been in the process of negotiating two additional memoranda for the past year with the Social Security Administration and the Chicago Police Department. However, those agreements had not been finalized as of July 2006.

After the data are exchanged between the Office of Detention and Removal Operations and its federal partners, the data must be reconciled. A headquarters manager explained that although the data exchange might have identified matches between the databases, further data resolution must occur before leads are sent to the field. This ensures that the fugitive's identity and background information are valid.

The exchange and reconciliation of data at the headquarters level would provide access to larger amounts of data that the individual teams might not have access to at the local level. The reconciliation of fugitive alien data and the preparation of viable leads for the teams originating at headquarters would permit the teams to focus on apprehensions and spend less time performing searches in various databases. Although information-sharing agreements exist, they have not been fully utilized because the exchange of data and its reconciliation have not been occurring on a regular basis.

Currently, deportation officers search for fugitives in various federal, state, and local databases. A formal information-sharing agreement or approved access to external databases would expand the scope of searches compared to the officers' individual queries.

#### Fugitive Operations Conducted with Federal, State, and Local Law Enforcement Agencies

Coordination exists between the Fugitive Operations Teams and federal, state, and local law enforcement agencies in conducting multi-jurisdictional fugitive operations. Specifically, the teams contact law enforcement officers to inform them of their anticipated activities in the area prior to conducting an operation. This coordination allows teams to tailor their operations to avoid conflicts with any ongoing investigations concerning the targeted fugitive or the jurisdiction in which the operation would take place.

In addition, many teams have solicited the assistance of local law enforcement officers to participate in fugitive alien apprehensions. In such instances, the local police typically only provide support through their uniformed presence and do not participate in apprehensions or the interview process.

According to a local law enforcement officer who participated in Fugitive Operations Team-led operations, most people are afraid of the officers in plainclothes and a uniformed police officer often eases their concerns. Therefore, Fugitive Operations Teams frequently seek uniformed officers' presence during apprehensions when possible. In one fugitive apprehension we observed, the team called the local police department and requested uniformed assistance. Upon the two uniformed police officers' arrival, the team provided them with information on the targets, such as their identity, photographs, and criminal history. At the fugitive's residence, we observed the team and police officers secure the exterior and interior of the house.

Although the police officers were present, the Fugitive Operations Team was responsible for watching the target and others in the residence to ensure they did not present a threat. Team members conducted the interview and obtained the fugitive's passport, which identified the fugitive's country of origin. Once the apprehension was made, the team took custody of the fugitive and the police officers departed the scene.

The process is largely the same in major operations planned by the Fugitive Operations Teams. Since June 2005, the teams have conducted major operations throughout the nation, including:

- Operation Return to Sender, a nationwide initiative,
- Operation City Lights in Las Vegas,
- Operation Phoenix in Florida,
- Operation Deep Freeze in Chicago, and
- Operation FLASH in New England.

These major operations were coordinated efforts to identify, locate, and apprehend a large number of fugitive aliens in a short period of time. Combinations of Fugitive Operations Teams from various areas, investigators from ICE's Office of Investigations, the United States Marshals Service, various state departments of corrections and motor vehicles, and other federal, state, and local departments and law enforcement agencies participated. For example, according to a county sheriff whose deputies participated in Operation FLASH, the Fugitive Operations Team contacted his office and requested deputies to assist in an operation. He explained that the participating deputies received direction from the Office of Detention and Removal Operations' field commander.

In addition, the teams participate in operations and task forces led by other agencies, such as ICE's Office of Investigations' Operation Predator and the United States Marshals Service's Operation Falcon. The Fugitive Operations Teams strengthen and reinforce their networks with other agencies by offering their resources and manpower to these initiatives.

To enhance their effectiveness further, one field office has sought the aid of three local law enforcement agencies by formalizing cooperative agreements to establish a joint fugitive task force. The agreements specify that additional law enforcement officers will be provided at the expense of the partnering agencies to assist the team in locating, apprehending, and locally transporting fugitive aliens. According to one non-Fugitive Operations Team task force member, his responsibilities are the same as the Fugitive Operations Team members but the teams are more knowledgeable of the administrative aspects of immigration procedures.

These agreements were negotiated under legacy INS. The Office of Detention and Removal Operations' field office is currently drafting cooperative agreements with the same agencies outlining identical roles and responsibilities under ICE authority. As of August 2006, the agreements had not been finalized.

Although the degree of coordination with federal, state, and local law enforcement agencies differs among Fugitive Operations Teams, the teams are networking effectively with the wider law enforcement community. This coordination of activities has proven beneficial in increasing the teams' effectiveness.

#### Certain Cities Prohibit Local Law Enforcement Authorities from Assisting with Immigration Enforcement

A few Fugitive Operations Team members explained that some cities have policies prohibiting local law enforcement agencies from assisting teams to locate fugitive aliens. Specifically, a few major cities have policies that prohibit local law enforcement officers from questioning immigrants, contacting federal authorities, or providing the identity and location of illegal immigrants in the communities.

The Denver Police Department, for example, has a policy stating that officers should not initiate any action to determine a person's immigration status. Furthermore, officers will generally "not detain, arrest, or take enforcement action" against an individual on suspicion of being illegal.<sup>21</sup> One Office of Detention and Removal Operations officer said San Francisco is considered a "sanctuary city" and local police departments are prohibited from assisting team members. Specifically, a San Francisco ordinance limits the

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<sup>21</sup> This policy is not applicable when the individual is arrested for other charges. Denver Police Department, Denver Police Department Operations Manual, "Arrests," 104.52(3), Revised July 2005.

circumstances under which city and county officers assist in enforcing federal immigration law or gathering or disseminating information on residents' immigration status.<sup>22</sup>

According to the Office of Detention and Removal Operations officer, the San Francisco Fugitive Operations Teams coordinate with only a few non-federal agencies in the region. Although the teams reach out to other agencies, there are cities with policies that limit the teams from effectively partnering with local law enforcement agencies.

The Fugitive Operations Teams need the resources and manpower that local law enforcement agencies possess. Partnerships with local officers, who are more connected to the communities they serve, are a major tool team members can use to locate and apprehend fugitive aliens.

### **Recommendations**

We recommend that the Assistant Secretary for the United States Immigration and Customs Enforcement:

**Recommendation 6:** Negotiate information sharing agreements with federal, state, or local agencies that can provide access to information pertaining to fugitive aliens and provide the resources needed by the Office of Detention and Removal Operations to reconcile data from those agencies.

## **Team Members Have Basic Law Enforcement Training**

The Fugitive Operations Training Program offered at the Federal Law Enforcement Training Center provides team members basic tools to locate and apprehend fugitive aliens and introduces participants to standard procedures involving fugitive operations. Since many teams have been recently staffed, not all team members have attended the training program, which they are required to attend within two years of their assignment to the team.<sup>23</sup>

According to the Detention and Deportation Officer's Field Manual, though, before a field office director can authorize an officer's participation in fugitive operations, the officer must have completed some basic law enforcement training.<sup>24</sup> Although not all team members have attended the Fugitive

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<sup>22</sup> City of San Francisco, San Francisco Administrative Code, Ordinance Code Chapter 12H, 1989.

<sup>23</sup> Office of Detention and Removal Operations, Detention and Deportation Officer's Field Manual, Chapter 19, Section 16, "Fugitive Operations Training Requirements," December 10, 2004.

<sup>24</sup> Office of Detention and Removal Operations, Detention and Deportation Officer's Field Manual, Chapter 19, Section 1, "Introduction to Fugitive Operations Policy and Procedure Manual and Historical Perspective," August 21, 2003, page 5.



Operations Training Program, at a minimum, they all have completed some basic law enforcement training.

#### Fugitive Operations Training Program

The three-week Fugitive Operations Training Program offers basic training in fugitive operations to all officers performing fugitive operations. This includes fugitive case file preparation and review, database queries useful for locating fugitives, networking options, use of confidential informants, surveillance, and planning and conducting apprehension operations.<sup>25</sup>

There have been 21 courses and 469 Office of Detention and Removal Operations personnel have attended the course from FY 2004 to FY 2006. The Federal Law Enforcement Training Center provided the training program's student rosters as of May 1, 2006. The FY 2003 rosters were not included. Other Office of Detention and Removal Operations officers not serving on the Fugitive Operations Teams attended the training program as well.

Many team supervisors noted that most of their deportation officers have completed the requisite training to conduct fugitive operations but not all team members have attended the Fugitive Operations Training Program. The supervisors said those members would be scheduled to attend. Some team members completed the training more than once and others attended the course before joining the team.

In addition, while teams are encouraged to seek refresher training at the local level, there is no national refresher course for the Fugitive Operations Teams. Although the Fugitive Operations Training Program course may be updated to reflect changes in immigration law or procedures, the new or updated information would be presented only to those attending subsequent course sessions.

#### Experience in Law Enforcement and Fugitive Operations

With the exception of the deportation assistants, all team members must have successfully completed the Immigration Officer Basic Training Course or the United States Border Patrol Academy prior to being assigned to a Fugitive Operations Team.<sup>26</sup> Vacancy announcements for officer positions indicate applicants must have completed either of these entry-level courses or other equivalent ICE training programs. These training courses offer instruction on

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<sup>25</sup> DHS, ICE, *Fugitive Operations Training Course: Participant Workbook*, July 8, 2003.

<sup>26</sup> Office of Detention and Removal Operations, Detention and Deportation Officer's Field Manual, Chapter 19, Section 1, "Introduction to Fugitive Operations Policy and Procedure Manual and Historical Perspective," August 21, 2003, page 5.

laws pertaining to immigration and nationality, criminal statutes and statutory authorities, agency operations and procedures, defensive tactics, use of firearms, and drivers training.<sup>27</sup>

Fugitive operations require team members to review and update the Deportable Alien Control System and documentation in alien files to determine whether an alien is illegal, subject to removal, and whether actions, such as a petition to change their immigration status or an appeal with the immigration courts, are pending.<sup>28</sup> The Fugitive Operations Teams are to verify whether a fugitive has filed a petition for a change in immigration status or has an appeal pending before the Executive Office for Immigration Review's Board of Immigration Appeals or the federal courts because this will affect the ability to remove the fugitive.

Such determinations call for a comprehensive understanding of immigration laws and regulations, as well as knowledge of the immigration court process involving the Executive Office for Immigration Review. Once this determination is made, the fugitive must be located and apprehended without endangering the officers. Training assists in equipping team members to successfully perform their jobs. Therefore, it is crucial that all Fugitive Operations Team members complete their training requirements. Further, team members should receive periodic refresher instruction whenever there are legislative changes or information technology upgrades.

### **Recommendation**

We recommend that the Assistant Secretary for the United States Immigration and Customs Enforcement:

**Recommendation 7:** Assess the training requirements and needs of the Fugitive Operations Teams and consider establishing a fugitive operations refresher course.

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<sup>27</sup> DHS, *Federal Law Enforcement Training Center Catalog of Training Programs, 2005-2006*, March 2005, page 96 and CBP Border Patrol Academy courses at [http://www.cbp.gov/xp/cgov/careers/customs\\_careers/border\\_careers/bp\\_academy/bp\\_acad\\_courses.xml](http://www.cbp.gov/xp/cgov/careers/customs_careers/border_careers/bp_academy/bp_acad_courses.xml).

<sup>28</sup> Office of Detention and Removal Operations, *Detention and Deportation Officer's Field Manual*, Chapter 19, Section 4, "Case Assignment, Preparation and Management," page 3.

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## Management Comments and OIG Analysis

ICE provided specific responses on each of the seven recommendations and technical comments on particular statements and facts contained within the draft report. ICE requested that the technical comments be published with the final report if not adopted in their entirety. In addressing ICE's technical comments, we evaluated each comment on its merit and modified our report where appropriate. ICE requested language changes throughout the report, such as "apprehensions" to "arrests" and "apprehension reports" to "enforcement activity reports." We did not make the technical changes because use of those terms occurred after the completion of our fieldwork. However, the technical comments were included in their entirety in Appendix E of this report. We revised Recommendation 4 and ICE provided an amended response to that recommendation, which is also included in Appendix E. ICE concurred with all seven recommendations. One recommendation is closed and six remain open.

**Recommendation 1:** Establish a Fugitive Operations Team reporting system that enables Office of Detention and Removal Operations managers to classify all categories of apprehensions.

**ICE Response:** ICE concurred with this recommendation. ICE developed the Fugitive Case Management System in April 2005 but the system was not certified and accredited for use by the ICE Office of the Chief Information Officer until March 3, 2006. From June 27-28, 2006, ICE supervisors met in St. Louis, Missouri, for Fugitive Case Management System training. The system was made available to all field offices on August 28, 2006 to report fugitive operations activities, generate various management reports, and measure team performance.

As officers enter activities into the Fugitive Case Management System, they differentiate between various actions by choosing the appropriate classification for each case from a "drop-down" menu. Additionally, the system is capable of identifying the officer who performed the action, thereby differentiating between Fugitive Operations Team and non-Fugitive Operations Team personnel. Using data entered into the Fugitive Case Management System, the Office of Deportation and Removal Operations can now track field activity by actual arrests, case closures, category changes, and placement of detainees. This function was not previously available.

**OIG Analysis:** We consider the recommendation resolved and closed. ICE's actions meet the requirements of this recommendation. We reviewed reports from the Fugitive Case Management System and were satisfied that the system appropriately classified each category of apprehensions.

In addition to ICE's response to this recommendation, the Office of Deportation and Removal Operations submitted technical comments under separate cover, requesting that all comments be included in the draft report. The comments pertaining to this recommendation were a reiteration of the formation and capability of the Fugitive Case Management System, which was described in detail in ICE's response and incorporated into our report. To avoid repetition, we did not include these comments because comparable language had been used in ICE's response to the draft report.

**Recommendation 1 – Resolved – Closed**

**Recommendation 2:** Conduct an assessment of the working space presently available to all Fugitive Operations Team members and develop a detailed plan to ensure that current and future officers are provided an adequate working environment that meets applicable federal standards.

**ICE Response:** ICE concurred with this recommendation and is taking steps toward its implementation. In its response, ICE said that a Space Allocation Survey is incorporated into the systematic process for identifying the needs of additional workspace and then assessing the available resources to accommodate such requests. In addition to the Space Allocation Survey, in October 2006, ICE asked affected field offices to identify their facility needs for the deployment of new Fugitive Operations Teams for FY 2007.

ICE said that space acquisition must be coordinated with the General Services Administration and CBP. In the second quarter of FY 2007, the Office of Detention and Removal Operations will propose and develop a coordinated space acquisition plan with all entities involved in the process.

**OIG Analysis:** ICE is taking steps to implement this recommendation, therefore it is resolved. However, the recommendation will remain open until ICE provides us with copies of the space acquisition plan and the Space Allocation Survey. We will determine at that time whether they have complied with the recommendation.

**Recommendation 2 – Resolved – Open**

**Recommendation 3:** Provide the resources needed by the Office of Detention and Removal Operations to detain, process, and remove all fugitive aliens apprehended by the Fugitive Operations Teams.

**ICE Response:** ICE concurred in part with this recommendation. In its response, ICE reported that not all the issues contained in the recommendation

were within the purview of the Office of Detention and Removal Operations. ICE described steps it had taken to improve its ability to detain, process, and remove aliens and reported that Congress had earmarked additional funds to address detention bed space. ICE said the Office of Detention and Removal Operations had satisfied the recommendation within the areas directly under its control.

With the creation of the Detention Operations Coordination Center, ICE now coordinates the movement and placement of detained aliens in order to effectively allocate detention space. Various Office of Detention and Removal Operations units are engaged in activities to develop a comprehensive infrastructure that would improve coordinated removal efforts and management of detention space. According to ICE, this coordination will occur through expeditious information sharing between the Detention Operations Coordination Center, the Justice Prisoner and Alien Transportation System, and the Office of Detention and Removal Operations' Air Transportation Unit.

In addition, the Office of Detention and Removal Operations is identifying air hubs throughout the United States, with supporting detention space and ground transportation contracts, to maximize efficiencies. Justice Prisoner and Alien Transportation System flights would serve these hubs through regularly established air schedules.

ICE reported that through capacity planning and bed space management, the average number of detained aliens has increased from 20,683 on October 1, 2005, to 27,390 on September 30, 2006. ICE added that, since November 2005, 6,300 bed spaces have been added in support of the Secure Border Initiative.

ICE reported that many factors outside the Office of Detention and Removal Operations' control impede its ability to execute removal operations. For example, foreign embassies and consulates could refuse or delay the issuance of travel documents for their nationals. ICE also said that the Executive Office for Immigration Review and the federal courts could directly impact the removal process through grants of relief, motions to reopen, issuances of stays, and other legal decisions. Additionally, the United States Supreme Court has ordered that after 180 days, an alien in ICE custody who possesses a final order of removal and is not subject to mandatory custody must be released if it appears that removal is not reasonably foreseeable.

**OIG Analysis:** ICE's response described steps taken to implement this recommendation, including efforts to improve efficiencies in the detention and removal system and increase its detention capacity. ICE described factors outside its control that impeded its ability to execute removal operations and

## **EXHIBIT C**

explained that it must comply with the decisions of the United States Supreme Court. ICE's response addresses difficulties associated with all aliens subject to removal. However, ICE has not quantified the extent to which these factors have impeded the removal of fugitive aliens apprehended by Fugitive Operations Teams.

Moreover, while ICE is correct that the Executive Office for Immigration Review and federal courts can directly affect the removal process through grants of relief, motions to reopen, issuances of stays, and other legal decisions, once these decisions are made the alien is no longer a fugitive alien. Assuming this change in status is appropriately made in the Deportable Alien Control System, this would result in a fugitive alien case closure in the Fugitive Case Management System. As such, the alien would not constitute a fugitive alien apprehended by a Fugitive Operations Team member that the Office of Detention and Removal Operations did not remove.

This recommendation is resolved since ICE is taking steps to implement it within the areas directly under its control. In order to understand the extent of the effect of factors outside ICE's control, we request that ICE provide the number of fugitive aliens apprehended by the teams who were released from custody during FYs 2003-2006 due to (1) consulates or embassies delaying the issuance of, or refusing to issue, travel documents; and (2) decisions made by the Executive Office for Immigration Review or the federal courts, such as grants of relief, motions to reopen, or issuances of stays. Additionally, we request that ICE identify the total number of fugitive aliens apprehended by Fugitive Operations Teams during FYs 2003-2006, and, of that number, the total number removed by the Office of Detention and Removal Operations. We will evaluate this information to determine whether ICE has complied with this recommendation within the areas directly under its control.

### **Recommendation 3 – Resolved – Open**

**Recommendation 4:** Assign Fugitive Operations Team members in a manner consistent with its Detention and Deportation Officer's Manual or amend the manual to reflect current assignment practices.

**ICE Response:** ICE concurred with this recommendation. ICE reported that although Fugitive Operations Teams are primarily called upon to perform administrative arrests of fugitive aliens, they are also required to assist in the overall implementation of ICE compliance measures.

In its response, ICE said that the Office of Detention and Removal Operations policy that restricts team members from performing non-fugitive operations duties was not intended to exclude all other collateral assignments. Also, the

policy was not intended to prohibit the ability of field office directors to redirect resources to accommodate an evolving national agenda or to meet existing circumstances. ICE said it would evaluate these policies within 90 days to determine if revisions are necessary.

**OIG Analysis:** This recommendation is resolved and open. ICE's policy prohibits Fugitive Operations Team members from performing any duties that will deter them from conducting fugitive operations, including collateral duties. A previous Office of Detention and Removal Operations' director sent a memorandum to all field office directors in December 2003 reiterating that Fugitive Operations Team members were only to conduct fugitive operations duties.<sup>29</sup>

This recommendation will remain resolved and open until ICE implements the recommendation, persuades us that this recommendation is not beneficial or not readily achievable, or proposes an acceptable alternative solution.

#### **Recommendation 4 – Resolved – Open**

**Recommendation 5:** Train and certify deportation officers who are not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators.

**ICE Response:** ICE concurred in part with this recommendation. In its response, ICE reported that it regularly trains and certifies deportation officers not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators.

However, ICE said that any overarching plan that limits the field office directors' ability or discretion to assign duties would also limit their flexibility to allocate resources for existing circumstances, such as responding to ICE and DHS national priorities.

ICE explained that it believes the current level of training and certification for deportation officers not assigned to Fugitive Operations Teams is adequate to meet the collateral needs of the teams and support the broader mission of the agency.

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<sup>29</sup> Office of Detention and Removal Operations Memorandum, "Utilization of Fugitive Operations Team Members," December 3, 2003.



**OIG Analysis:** ICE reported that it regularly trains and certifies deportation officers not assigned to a Fugitive Operations Team to perform collateral duties. However, ICE's discussion of an overarching plan that limits the field office directors' ability or discretion to assign duties to their staff seems to address Recommendation 4.

Because ICE said it regularly trains and certifies deportation officers not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators, this recommendation is resolved.

ICE reported that the current level of training and certification of non-team members was adequate to meet the collateral needs of the teams and support the broader mission of the agency. However, ICE did not provide supportive information concerning its current level of trained and certified non-team members.

This recommendation will remain open until ICE identifies the number of officers not assigned to a Fugitive Operation Team who have been trained and certified to perform specific collateral duties in each field office with a Fugitive Operations Team. We will evaluate this information and determine whether the level of training and certification complies with the recommendation.

#### **Recommendation 5 – Resolved – Open**

**Recommendation 6:** Negotiate information sharing agreements with federal, state, or local agencies that can provide access to information pertaining to fugitive aliens and provide the resources needed by the Office of Detention and Removal Operations to reconcile data from those agencies.

**ICE Response:** ICE concurred with this recommendation and said that it continually pursues and maintains information-sharing agreements with numerous federal, state, and local agencies. Specifically, ICE said it has approximately 330 agreements that support specific ICE needs.

In addition, ICE is pursuing contractor assistance for the Fugitive Operations Support Center. The center, which became fully operational in July 2006, will assist the Office of Detention and Removal Operations process data received through negotiated information-sharing agreements in several ways. It will review and update absconder cases in the Deportable Alien Control System, develop leads for and provide assistance to the Fugitive Operations Teams, and develop major operations that the teams will conduct. In its response,

ICE said that since it has been in operation the center has resolved 2,488 absconder cases in the Deportable Alien Control System.

**OIG Analysis:** We recognize that ICE has negotiated a number of agreements with various federal, state, and local agencies that are designed to support and advance specific mission needs. We encourage them to continue this effort. Furthermore, ICE established the Fugitive Operations Support Center, which will provide assistance in processing data from outside agencies and sources. The center will also reconcile the data received and send viable leads to support fugitive operations in the field.

Because of these initiatives, this recommendation is resolved. During our review, we learned of four negotiated agreements that provide the Office of Detention and Removal Operations access to fugitive alien information. Although ICE has other agreements in place, it did not specify in its comments how many of those agreements pertain to fugitive aliens. This recommendation will remain open until ICE identifies those relevant agreements that provide information specifically on fugitive aliens.

**Recommendation 6 - Resolved - Open**

**Recommendation 7:** Assess the training requirements and needs of Fugitive Operations Teams and consider establishing a fugitive operations refresher course.

**ICE Response:** ICE concurred with this recommendation and initiated a review of the existing fugitive operations curriculum in August 2006 to determine whether current training manuals and subject matter are relevant. In addition, ICE intends to develop a supplemental or refresher course during FY 2007 and foresees the development of a refresher course proposal in 90 days.

**OIG Analysis:** ICE's plan to develop a refresher course proposal during FY 2007 is responsive to this recommendation. However, the recommendation will remain open until ICE provides an update on the status of the refresher course proposal.

**Recommendation 7 – Resolved – Open**

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## Removal Proceedings Process

The Executive Office for Immigration Review, an agency of the Department of Justice, oversees three components that adjudicate matters involving immigration law at both the trial and appellate level. The Executive Office for Immigration Review immigration judges hold evidentiary removal hearings to determine whether certain aliens are removable from the United States.

When a Department of Homeland Security (DHS) enforcement official determines that a person is in the United States illegally and the alleged illegal alien denies that allegation, the official serves the alleged illegal alien with a Notice to Appear. The Notice to Appear is a “charging document” that initiates formal removal proceedings and can be served either in person or through the mail. Once this document has been issued, DHS is not permitted to remove the alleged illegal alien from the United States. Generally, a Notice to Appear includes the date, time, and place of the removal hearing, although sometimes it will indicate that a future document will provide the date, time, and place of the hearing. DHS also files these notices with the Executive Office for Immigration Review. At the hearings, attorneys from United States Immigration and Customs Enforcement’s Office of Principal Legal Advisor present evidence that the alleged illegal alien, or “respondent,” is removable.

The immigration judge makes two determinations:

1. Whether the alleged illegal alien is removable. For example, when an immigration judge determines that the respondent is a United States citizen, he or she would not be removable.
2. When the respondent is deemed to be removable, then the immigration judge determines whether the alien is entitled to any relief from removal. The most common forms of relief are adjustment of status to that of a lawful permanent resident, asylum, and cancellation of removal.

The immigration judge makes the decision during a recorded proceeding. When the judge finds against the respondent, he or she is issued a final order of removal. When the respondent fails to appear at the hearing, the DHS attorney presents evidence to the immigration judge that the respondent is removable. Based on the evidence, the immigration judge issues an *in absentia* order. The result of the *in absentia* hearing is mailed to the respondent. When an immigration judge’s decision is against the respondent, the respondent can appeal to the Board of Immigration Appeals. Likewise, when the immigration judge’s decision is in favor of the respondent, the government may appeal to the Board of Immigration Appeals. The Board’s

Appendix A  
Removal Proceedings Process

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decisions are subject to review by the federal courts. Aliens who have been issued a final order of removal are required to leave the country.

## Fugitive Operations Support Units

Two support units, the Fugitive Case Management Unit in Laguna Niguel, California, and the Fugitive Operations Support Center in Burlington, Vermont, assist United States Immigration and Customs Enforcement's (ICE) Fugitive Operations Teams.

### Fugitive Case Management Unit

In March 2004, ICE's Office of Detention and Removal Operations established the Fugitive Case Management Unit to coordinate all fugitive case leads for the National Fugitive Operations Program. The unit receives information from various sources, primarily from the United States Citizenship and Immigration Services, other agencies such as the Departments of State and Labor, and the Department of Homeland Security's Transportation Security Administration. The Fugitive Case Management Unit also receives leads generated by the Office of Detention and Removal Operations' headquarters.

The unit's staff consolidates the information and each week provides a list of fugitive alien leads to appropriate field offices. Also, the Fugitive Case Management Unit might send "hot leads" on fugitive aliens to field offices. Either the Office of Detention and Removal Operations' headquarters or the Transportation Security Administration makes the determination as to what constitutes "hot leads," which appear to be credible information that would lead to immediate apprehensions and require the Fugitive Operations Team's immediate attention. A response must be received within seven days by the unit on the action taken to pursue these type leads. Data in the Fugitive Case Management Unit system are regularly compared to Deportable Alien Control System data to determine if fugitives have criminal convictions. Leads on fugitive aliens with criminal convictions require the Fugitive Operations Team to respond to the Fugitive Case Management Unit with the results of the inquiry within 30 days, and non-criminal leads require a response in 180 days.

### Fugitive Operations Support Center

In October 2005, the Office of Detention and Removal Operations established the Fugitive Operations Support Center to support the teams' efforts and "enhance the efficiency and effectiveness of the [National Fugitive Operations Program]." <sup>30</sup> The center's operational plan, which was approved in June 2006, proposes three goals for the center: (1) improving the integrity of data in

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<sup>30</sup> Office of Detention and Removal Operations, *Fugitive Operations Support Center Operational Plan*, June 2006.

Appendix B  
Fugitive Operations Support Units

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the Deportable Alien Control System; (2) developing leads on fugitives for the field; and (3) supporting national ICE and the Office of Detention and Removal Operations' initiatives, including Operation Community Shield and Operation Predator. Community Shield is designed to disrupt, dismantle, and prosecute violent gang organizations by employing the authorities and investigative tools available to ICE. Operation Predator identifies child predators and removes them from the United States, subject to deportation.

As of September 2006, the chief of the Fugitive Operations Support Center said that the staffing plan for the center has not yet been approved. Currently, the center has a staff of ten, including one supervisor, five officers, and four support personnel. Four additional staff members have been authorized but have not come on board as of September 2006.

## **Purpose, Scope, and Methodology**

The purpose of our review was to determine: (1) the adequacy of the performance measures used to assess the effectiveness of Fugitive Operations Teams in completing their mission; (2) the teams' progress in reducing the backlog of fugitive alien cases; (3) the adequacy of teams staffing levels resulting from additional funding and the Office of Detention and Removal Operations' recruitment efforts; and (4) what factors affect the teams' operations, such as coordination activities with internal and external entities and the Office of Detention and Removal Operations' training policies.

We performed fieldwork from February 2006 through June 2006. We interviewed numerous Office of Detention and Removal Operations' managers and analysts at headquarters in Washington, DC. We traveled to Baltimore, Chicago, Detroit, and Los Angeles; interviewed field office directors and Fugitive Operations Team members in those cities; and accompanied officers on fugitive apprehensions. We conducted telephone interviews of field office directors and team supervisors in Atlanta; Boston; Buffalo; Cherry Hill, New Jersey; Denver; Fairfax, Virginia; Houston; Miami; Newark; New York City; Richmond, Virginia; Salt Lake City; San Francisco; and Seattle.

We visited the Fugitive Case Management Unit and United States Customs and Border Protection service center in Laguna Niguel, California, and interviewed staff from both offices. Additionally, we conducted a telephone interview with the chief of the Fugitive Operations Support Center in Burlington, Vermont. We interviewed, by telephone, a detective from the Boston Police Department and two sheriffs from Plymouth City, Massachusetts, Sheriff's Departments. Also, we obtained information on the Fugitive Operations Training Program conducted at the Federal Law Enforcement Training Center in Glynco, Georgia.

During our fieldwork, we reviewed Fugitive Operations Teams' documents, such as alien files, target folders, fugitive operations worksheets, weekly fugitive apprehension reports, performance work plans, and fugitive operations plans. We also reviewed fugitive operations documents, the Office of Detention and Removal Operations' financial management reports, and information on team staffing levels from headquarters. Additionally, we collected and analyzed data from the Deportable Alien Control System and the Fugitive Case Management System and documentation from the Fugitive Case Management Unit, the Fugitive Operations Support Center, and the Federal Law Enforcement Training Center.

Appendix C  
Purpose, Scope, and Methodology

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This review was scheduled as part of our annual work plan. Our work was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.



## Recommendations

We recommended that the Assistant Secretary for United States Immigration and Customs Enforcement:

**Recommendation 1:** Establish a Fugitive Operations Team reporting system that enables Office of Detention and Removal Operations managers to classify all categories of apprehensions.

**Recommendation 2:** Conduct an assessment of the working space presently available to all Fugitive Operations Team members and develop a detailed plan to ensure that current and future officers are provided an adequate working environment that meets applicable federal standards.

**Recommendation 3:** Provide the resources needed by the Office of Detention and Removal Operations to detain, process, and remove all fugitive aliens apprehended by the Fugitive Operations Teams.

**Recommendation 4:** Assign Fugitive Operations Team members in a manner consistent with its Detention and Deportation Officer's Manual or amend the manual to reflect current assignment practices.

**Recommendation 5:** Train and certify deportation officers who are not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators.

**Recommendation 6:** Negotiate information sharing agreements with federal, state, or local agencies that can provide access to information pertaining to fugitive aliens and provide the resources needed by the Office of Detention and Removal Operations to reconcile data from those agencies.

**Recommendation 7:** Assess the training requirements and needs of the Fugitive Operations Teams and consider establishing a fugitive operations refresher course.

Appendix E  
Management Response to Draft Report

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## Management Response to Draft Report

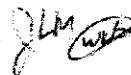
Office of the Assistant Secretary  
U.S. Department of Homeland Security  
425 I Street, NW  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

DEC 22 2006

MEMORANDUM FOR: Richard L. Skinner  
Inspector General  
Department of Homeland Security

FROM: Julie L. Myers   
Assistant Secretary

SUBJECT: Response to OIG Draft Report: An Assessment of  
United States Immigration and Customs Enforcement's  
Fugitive Operations Teams

The following response is provided to the subject report

### **Recommendation 1:**

Establish a Fugitive Operations Team reporting system that enables Office of Detention and Removal Operations managers to classify all categories of apprehensions.

### **Response:**

ICE concurs with this recommendation. U.S. Immigration and Customs Enforcement (ICE) Detention and Removal Operations (DRO) has satisfied this recommendation and requests that it be considered closed. ICE/DRO initiated the planning and development of the Fugitive Case Management System (FCMS) in April 2005. On March 3, 2006, the ICE Office of the Chief Information Officer (OCIO) certified and accredited the system for use. From June 27 through June 28, 2006, supervisors met in St. Louis, Missouri for FCMS training. The system was ultimately made available to all field offices on August 28, 2006 for Fugitive Operations Team (FOT) activity reporting.

ICE/DRO utilizes FCMS to track statistics in support of its overall mission. FCMS is also used to create reports and measure FOT weekly activity. Data entered by the field into FCMS populates statistical reports regarding fugitive team activity generated by Headquarters DRO (HQDRO).

FCMS extracts data from the Deportable Alien Control System (DACCS) to reconcile FCMS data and increase the quality of information used to populate reports.

When officers enter activity into FCMS, they differentiate between various "Actions" by choosing the appropriate action for each case from a "drop-down" menu. Furthermore, the system is capable of identifying the officer who conducted the action, thereby differentiating between FOT and non-FOT personnel. Using data entered into FCMS, HQDRO now can track field activity by actual arrests, case closures, category changes, and detainees placed. This function was not previously available.

[www.ice.gov](http://www.ice.gov)

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The following are definitions used by the field to determine which "Actions" to select when entering data into FCMS:

Apprehension: FOT personnel took an individual into custody as a result of an arrest.

Located/Detainer (I-247 Lodged): FOT personnel located and placed a detainer on an individual detained by another agency, including the Federal Bureau of Prisons, and state, county, or local law enforcement agencies or Departments of Corrections.

Case Category Changed: The individual's category has changed from a fugitive status to another category in DACS. This section may relate to a change in legal proceedings; for instance, if an immigration judge granted a motion to reopen.

Case Closure: FOT personnel determine that the alien is no longer a fugitive and that the DACS case has been closed for one of these reasons (i.e., self-removal, death, or receipt of an immigration benefit).

The continuation and development of FCMS is essential to accurate reporting. Using FCMS as the reporting tool for all fugitive team enforcement activity will allow HQDRO to clearly distinguish and prospectively report the different types of activity the field conducts, such as actual arrests (fugitive as well as non-fugitive), the number of case closures, category changes, and detainees placed.

#### **Recommendation 2:**

Conduct an assessment of the working space presently available to all Fugitive Operations Team members and develop a detailed plan to ensure that current and future officers are provided an adequate working environment that meets applicable federal standards.

#### **Response:**

ICE concurs with this recommendation. This recommendation has been satisfied in part. A Space Allocation Survey (SAS) is incorporated into the systematic process for identifying the need for additional workspace and then assessing available resources to accommodate such requests. The space acquisition must be coordinated with several entities, including ICE Facilities, the General Services Administration (GSA) and U.S. Customs and Border Protection (CBP) Facilities. DRO continues to work with these entities to acquire the space necessary to fulfill the ICE mission.

In October 2006, in an effort to facilitate the deployment of new fiscal year (FY) 2007 FOTs, the affected field offices were asked to determine their facility needs. This request was made in addition to the regular SAS, and specifically asked whether the new sites or pre-existing sites needed additional storage space, additional parking space, gyms, and holding facilities.

By conducting this additional survey, ICE assessed the current FOT workspace and assisted the efficient allocation of future resources to the most appropriate venues. Field offices are now in various stages of the procurement process. The survey produced the following results:

- Facility issues have been settled and no action is required for the deployment of five of the additional 23 fugitive teams for FY 2007.

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- Three teams require temporary space while their new field/suboffices are being constructed/relocated. The new facilities will have adequate space to accommodate the fugitive teams.
- For seven of the teams, DRO is aggressively pursuing the acquisition of space and is currently working with ICE Facilities and GSA.
- Five teams have identified existing space at ICE facilities that can accommodate the teams' requirements. Two of the five teams only require additional parking spaces. The National Fugitive Operations Program (NFOP) believes that the parking issues will be settled in the second quarter of this fiscal year.
- Three field offices are working to identify areas within their existing space to be utilized as accommodations for their new team.

GSA and ICE/CBP Facilities were provided the results of the supplemental survey in order to ensure that space acquisition is completed in a timely manner. Within the second quarter of FY 2007, DRO will propose and develop a coordinated space acquisition plan with all entities involved in the process.

**Recommendation 3:**

Provide the resources needed by the Office of Detention and Removal Operations to detain, process, and remove all fugitive aliens apprehended by the Fugitive Operations Teams.

**Response:**

ICE concurs in part with this recommendation, as not all of the issues contained therein are within ICE/DRO's purview. ICE/DRO has satisfied this recommendation within the areas directly under its control, and therefore requests that it be closed. It should be noted that at the time of the OIG assessment and audit of the NFOP, the ICE Detention Operations Coordination Center (DOCC) was not yet fully operational. However, since the assessment, Congress allotted additional funds to DRO, which were earmarked specifically to address detention bed space.

The DOCC coordinates the movement and placement of detained aliens throughout the United States in order to effectively allocate detention space and accommodate the numerous enforcement actions that ICE conducts on a daily basis. The DOCC acts as a clearinghouse by providing information in a timely manner to the field and headquarters so that space, which remains at a premium and can directly and adversely impact field operations, is managed effectively.

Various units within ICE/DRO are currently engaged in an ongoing effort to develop a cohesive, comprehensive infrastructure that would improve coordinated removal efforts and the management of detention space through immediate information sharing between the DOCC, Justice Prisoner and Alien Transportation System (JPATS), and Air Transportation Unit (ATU). This effort is developing an integrated detention and air and ground transportation program to maintain the equilibrium between apprehension and detention throughout the ICE/DRO field offices, in order to sustain the "catch and remove" policy. This requires that field offices articulate their detention space and transportation needs based on coordination with non-Department of Homeland Security (DHS) partners and with those within DHS such as the ICE Office of Investigations, ICE/DRO Criminal Alien Program, ICE/DRO FOTs, the 287(g)

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program, and CBP. These detention space and transportation requirements are then articulated to the DOCC, which coordinates with ATU and JPATS. The DOCC identifies available bed space and coordinates the air and ground transportation resources to effect the movement of detainees.

ICE/DRO is also identifying "air hubs" at strategic locations in the United States, with supporting detention space and ground transportation contracts, to maximize transportation efficiencies while maintaining the detention equilibrium of its field offices. JPATS flights would serve these hubs through regularly established air schedules. ICE/DRO also authorized the acquisition of two additional aircraft, which will increase the JPATS fleet to six medium-sized aircraft dedicated to facilitating ICE movements and one smaller aircraft to be based in Puerto Rico. Modified flight schedules, "air hubs", and supporting detention and ground transportation will expedite transportation for field offices and increase operational flexibility.

It should be noted that the immigration process is affected by many factors beyond the control of ICE/DRO. Foreign embassies and consulates can delay or refuse the issuance of travel documents for their nationals, while the Executive Office for Immigration Review and federal courts can directly impact the removal process through grants of relief, motions to reopen, issuance of stays, and other legal decisions.

Furthermore, ICE/DRO must adhere to standing legal requirements for detention. The Supreme Court of the United States has ordered that after 180 days, an alien in ICE custody who possesses a final order of removal and is not subject to mandatory custody must be released if it appears that removal is not reasonably foreseeable. Under the Immigration and Nationality Act (INA), § 241, DHS has 90 days to remove a detained alien after a final order of removal is issued. After 90 days, the alien receives a custody review. ICE/DRO releases certain aliens when there is not sufficient evidence to believe they pose a risk of flight or danger to the community, or that their removal is imminent. For certain classes of aliens, INA § 241 allows for continued detention even after the removal period. However, all aliens are subject to the Supreme Court's decisions in Zadvydas v. Davis and Clark v. Martinez, which interpret authority to detain beyond 90 days as reasonably necessary to effect that alien's removal from the United States. The Supreme Court held that six months is a reasonable period of time. Under the regulations promulgated post-Zadvydas, an alien must be released after 180 days if there is no significant likelihood of removal in the reasonably foreseeable future. Exceptions occur when the alien fails to cooperate, is granted a stay of removal, or is designated as a special circumstances case under the regulations of § CFR 241.14. This six-month analysis is based largely on whether ICE can obtain a travel document for the alien. Many countries unreasonably delay issuing travel documents to their nationals or refuse to issue travel documents altogether. In FY 2005, 1,007 aliens were released under Zadvydas, and in FY 2006, 431 aliens were released.

These external conditions impede the ability of ICE to execute removal operations.

**Recommendation 4:**

Use Fugitive Operations Team members solely for apprehending fugitive aliens with unexecuted final orders of removal or closing fugitive alien cases.

**Response:**

ICE does not concur with this recommendation. The identification and arrest of fugitive aliens is an obligatory enforcement action on the part of all ICE enforcement divisions and components including the FOTs. The FOTs, although primarily called upon to administratively arrest

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fugitive aliens, are also required to assist in ensuring the overall effective implementation of ICE compliance measures. ICE must ensure that the primary mission of protecting the borders and preventing future terrorist attacks is accomplished; therefore, ICE must effectively utilize and allocate all of its resources. The OIG report references Chapter 19 Section 4.1 of the Detention and Deportation Officer's Field Manual (DDFM) (*sic*), which indicates that a permanent Fugitive Operations Team's (FOT) mission is the elimination of fugitive cases in their assigned office and as such would abide by the following guidelines:

- 1) Shall only be assigned to fugitive cases with an emphasis on backlog cases.
- 2) Shall not be assigned to any duties that will deter them from conducting fugitive operations, including but not limited to, case management of the general detained or non-detained dockets, escorts, and collateral duties normally accomplished by general assignment deportation officers.

The intent of these strictures was to ensure that the funded positions for fugitive operations would be utilized as such and the primary focus for the fugitive units should be to aggressively pursue the reduction of the extant fugitive alien population. ICE/DRO established a unit to identify, locate, arrest, and remove fugitive aliens as well as reduce the fugitive case backlog. ICE/DRO did not intend for the guidelines to exclude all other collateral assignments or prohibit the Field Office Directors' ability to allocate needed resources in order to accommodate an evolving national agenda or to meet existing circumstances.

ICE has also established measurable fiscal-year goals for the FOTs located throughout the field offices. One thousand administrative arrests are expected from each field office based on the number of teams located within the area of operational responsibility (AOR). Furthermore, the implementation and use of FCMS, in addition to the production and dissemination of weekly and monthly reports from Headquarters to the field offices, will assist in the effective management of FOTs. Such a system facilitates frequent feedback between operations in the field and Headquarters, which in turn allows Field Office Directors to receive data that will assist them in assessing their progress toward specific fiscal year goals. If the data indicates that goals are not currently being met, the information will serve as an effective management tool to determine the causes for the performance or lack thereof.

ICE/DRO will develop a plan of action to assess these DDFM guidelines within 90 days and determine if revisions to the manual are necessary. If ICE/DRO revises the manual, all alterations will be implemented by the close of the second quarter of FY 2007.

**Recommendation 5:**

Train and certify deportation officers who are not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators.

**Response:**

ICE concurs in part. ICE regularly trains and certifies deportation officers not assigned to a Fugitive Operations Team to perform collateral duties, as needed in each field office, including firearms instructors, jail inspectors, and juvenile coordinators. Yet, in order effectively implement ICE compliance measures and accomplish ICE's overall mission of protecting the borders and preventing future terrorist attacks, ICE/DRO must have the flexibility to utilize and

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allocate all of its resources, including personnel not assigned to FOTs, to meet constantly evolving conditions and national mandates.

Any overarching plans that limit the Field Office Directors' ability or discretion to assign duties would also limit their flexibility to allocate resources for existing circumstances, such as responding to ICE and DHS national priorities.

Furthermore, collective bargaining issues will require union negotiations if there is an attempt to limit or categorize an officer to a specific job responsibility that could adversely impact their career growth. ICE requires a multi-disciplined, dynamic workforce that can provide comprehensive support to ICE's multi-faceted mission. Permitting officers to participate in a variety of assignments allows them to enhance their careers by gaining valuable field experience in several enforcement and non-enforcement venues.

ICE believes the current level of training and certification for deportation officers not assigned to FOTs is adequate to meet the collateral needs of the FOTs and support the broader mission of the agency.

**Recommendation 6:**

Negotiate information-sharing agreements with federal, state, or local agencies that can provide access to information pertaining to fugitive aliens and provide the resources needed by the Office of Detention and Removal Operations to reconcile the data from those agencies.

**Response:**

ICE concurs with this recommendation and has satisfied its requirements. ICE respectfully requests that this recommendation be closed. ICE/DRO has continually pursued and maintained information-sharing agreements with numerous federal, state, and local agencies.

ICE Program Offices enter into a variety of information-sharing agreements with outside agencies to include federal, state and local law enforcement agencies. All information-sharing agreements are developed under and abide by the appropriate DHS and ICE governing legal authorities and Information Technology security standards and may be subject to Privacy Impact Assessments. All agreements are subject to Third Party Agency rules and are coordinated between the respective Program Office, Office of Principal Legal Advisor (OPLA) and, OCIO, and are executed by the appropriate information owner or Designated Accredited Authority. All ICE information-sharing initiatives such as Enterprise Agreements, which includes Memoranda of Understanding and Interconnection Security Agreements, are designed to support and advance a specific mission need.

Currently, ICE/DRO has approximately 330 Enterprise Agreements in place with a variety of federal agencies, such as the United States Marshals Service and the Federal Bureau of Prisons, as well as state and local municipalities, such as the New York State Police and the Riverside County Sheriff's Office. Although ICE aggressively pursues information sharing with outside agencies in order to provide ICE personnel the most accurate information possible, it does not have the legal authority to legislate and require that every federal, state, and local agency must provide information to ICE or enter into Memoranda of Understanding. Enterprise Agreements are freely entered into between ICE and the respective agencies and there is no legal mechanism to enforce compliance.

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Moreover, through the prior establishment of the Fugitive Operations Support Center (FOSC), ICE provides resources to assist DRO in processing data from outside agencies and sources. The FOSC reconciles data from both external government and private sources. After collation, vetting, and compilation, actionable information is disseminated to support fugitive operations in the field.

Furthermore, ICE has enhanced the DRO infrastructure through the development and maintenance of the FOSC, which assists in reconciling and vetting data received from those agencies with whom ICE has information-sharing agreements. DRO developed the FOSC in 2005 in an effort to enhance the efficiency and effectiveness of the NFOP. By close of calendar year 2005, a Director for the FOSC was selected. In March 2006, the FOSC hired some staff and provided some support to individual field exercises. In June 2006, the FOSC began limited operations and by July of the same year the FOSC became fully operational.

The FOSC, through the use of technology and partnerships with law enforcement agencies, will serve as a force multiplier for the NFOP. The FOSC is located in Burlington, Vermont, and reports to the Compliance Enforcement Division in Washington, D.C. The FOSC reviews and updates absconder cases in DACS, develops leads for and provides assistance to FOTs, develops National Fugitive Field Operations, and manages the absconder numbers. The FOSC is currently seeking contractor assistance to conduct analysis, screening, background checks, and related support activities for the vetting of fugitive/absconder aliens. During October 2006, the FOSC resolved 2,488 absconder cases in DACS due to an appropriate case category change, and/or by locating the absconder while incarcerated and placing a detainer on the absconder. During the same month, the FOSC compared all of the absconder case data to the data located within the Central Index System and is currently conducting an analysis to determine the appropriate case categories.

The FOSC remains committed to pursuing information-sharing resources to aid in their function with the FOTs as the ultimate beneficiaries.

**Recommendation 7:**

Assess the training requirements and needs of the Fugitive Operations Teams and consider establishing a fugitive operations refresher course.

**Response:**

ICE concurs and has partially satisfied the recommendation. In August 2006, the HQ Fugitive Operations Unit consulted with the DRO training division at the Federal Law Enforcement Training Center (FLETC) to review the existing fugitive operations curriculum and to determine the relevance of current training manuals and subject matter.

Based on these discussions, ICE revised the current lesson plans and incorporated a larger selection of contemporaneous material, such as the identification of methamphetamine laboratories.

This endeavor provides fugitive operations officers in the field with real world scenarios so that daily operational tactics may be better assessed. Because the curriculum has not been finalized, ICE has decided to postpone the currently scheduled basic Fugitive Operations course. It is anticipated that courses will recommence during the second quarter of FY 2007. Measures have been taken to ensure that this delay does not adversely impact the rigorous training schedule.



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Furthermore, it is estimated that every officer previously scheduled to attend the basic Fugitive Operations course will be accommodated, and the Fugitive Operations Unit will not be remiss by failing to provide an enhanced training module.

Currently, there is an insufficient number of permanent instructors for the Fugitive Operations training program at FLETC, however, it is anticipated that this will be remedied within the FY 2007. Upon the Human Capital Training Unit receiving additional staff, ICE anticipates the creation of a supplemental/refreshers course which will be developed for implementation during FY 2007. A refresher course proposal will be developed and forthcoming in 90 days.

Should you or your staff have any questions, please contact Clinett Short at (202) 616-7629.

cc: Steven Pecinosvsky, DHS Audit Liaison  
Clinett Short, ICE OIG Audit Portfolio Manager

Appendix E  
Management Response to Draft Report


Office of the Assistant Secretary  
U.S. Department of Homeland Security  
425 I Street NW  
Washington, DC 20536



U.S. Immigration  
and Customs  
Enforcement

February 13, 2007

Memorandum for: Richard L. Skinner  
Inspector General  
Department of Homeland Security

From: Julie L. Myers   
Assistant Secretary

Subject: Modification to Response to OIG Draft Report: An Assessment  
of United States Immigration and Customs Enforcement's  
Fugitive Operations Teams.

ICE submits the following modified response to the recommendations of the subject report, per the OIG's e-mail memorandum of February 13, 2007.

In its e-mail memorandum, OIG proposed the following change:

**(OLD) Recommendation 4:** Use Fugitive Operations Team members solely for apprehending fugitive aliens with unexecuted final orders of removal or closing fugitive alien cases.

**(PROPOSED NEW) Recommendation 4:** Assign Fugitive Operations Team members in a manner consistent with its Detention and Deportation Officer's Manual or amend the manual to reflect current assignment practices

ICE submits the following for the proposed new recommendation:

- 1) Change the start of the ICE response to "ICE concurs with this recommendation."
- 2) Strike the following sentence from the end of Paragraph 2- "ICE/DRO did not intend for the guidelines to exclude all other collateral assignments or prohibit the Field Office Directors' ability to allocate needed resources in order to accommodate an evolving national agenda or meet existing circumstances."

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An Assessment of Immigration and Customs Enforcement's Fugitive Operations Teams

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**3) Insert the following sentence in its place- "ICE/DRO intended for the guidelines to enhance Field Office Director ability to allocate resources as needed, including through collateral assignments as necessary, to accommodate evolving national enforcement efforts or meet existing circumstances."**

**If you have any questions concerning this response, please contact Clint Short, the ICE OIG audit portfolio manager, at (202) 616-7629.**

Appendix E  
Management Response to Draft Report

Office of Detention and Removal Operations

U.S. Department of Homeland Security  
425 I Street, NW  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

DEC - 1 2006

MEMORANDUM FOR:

Traci Lembke  
Acting Director  
Office of Professional Responsibility

FROM:

John P. Torres  
Director

SUBJECT:

Comments on the Office of Inspector General's  
Draft Report Entitled "*An Assessment of United  
States Immigration and Customs Enforcement's  
Fugitive Operations Teams*"

Attached are technical comments prepared by the Office of Detention and Removal Operations (DRO) related to the Office of Inspector General's draft Report entitled, "An Assessment of the United States Immigration and Customs Enforcement's Fugitive Operations Teams." Following a careful review of the report, DRO has concluded that the draft Report fails to acknowledge many of the positive steps already independently taken by DRO to address issues identified therein. The attached technical comments explain these positive steps and identify other apparent misperceptions in the draft Report. DRO would request that these technical comments be published with the Report when it is finalized, if not adopted in their entirety.

Attachment

**Office of Detention and Removal Operations Review of the Report**

The U.S. Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations (DRO) has reviewed the Inspector General's draft Report. The following discussion represents a page-by-page analysis of that document, including areas where DRO believes that the report either lacks adequate updated information or has incorrectly described the program.

**General Recommendations for Draft Report Clarification**

ICE refers to the act of taking an alien into ICE custody as an arrest, and no longer uses the term "apprehension(s)." Throughout the draft report, where OIG has used the term "apprehension" to refer to the act of taking a subject into ICE custody please replace the word "apprehension" with the word "arrest."

ICE refers to "fugitive aliens" rather than the much broader term of "fugitives." A "fugitive" is any absconder from justice, and is a much broader category than "fugitive alien."

In March 2006, DRO changed the name of the *Detention and Deportation Officer's Field Manual (DDFM)* to the *Detention and Removal Operations Policy and Procedure Manual (DROPPM)*. References to the DDFM should be changed to DROPPM throughout the report.

**Executive Summary**

Page 1, second paragraph: We suggest deleting the following sentences: "*A fugitive alien is an individual who has been issued an unexecuted final order of removal from the Executive Office for Immigration Review. The order requires the alien to be removed from this country.*"

It seems incorrect to describe "issuance" of an unexecuted final order, as the Executive Office for Immigration Review could not issue an "executed" final order. Issuance and execution of a removal order are distinct events. Once an "issued" order becomes administrative final, DRO may lawfully "execute" the order.

Page 1, second paragraph reads, "*Since 2003, the office allocated more than \$204 million to deploy 52 Fugitive Operations Teams and, as of August 2006, 45 teams are apprehending fugitives in various cities nationwide.*"

The sentence should read as follows: "Since 2003, the office allocated more than \$204 million to deploy 52 Fugitive Operations Teams and, as of **October 2006**, **50 teams are arresting** fugitives in various cities nationwide."

### **Background**

Pages 2, third paragraph: The following sentence should be deleted: *“Fugitive aliens are non-United States citizens who have been placed into formal removal proceedings, have been issued a final order of removal by an immigration judge from the Executive Office for Immigration Review (EOIR), and whose whereabouts are unknown.”*

The sentence above should be replaced with the following: “Fugitive aliens are non-United States citizens not currently in the custody or control of ICE who have failed to depart the United States pursuant to a final order of removal, deportation or exclusion or have failed to report to a DRO officer after receiving notice to do so.”

Page 3, second paragraph: *“an effort to stop the increase of fugitives in this country”* would be more accurately phrased as “an effort to stop the increase of fugitive aliens in this country.”

### **Results of Review**

#### ***Fugitive Apprehension Reports Should Accurately Reflect the Teams' Activities***

Page 7, first paragraph: The weekly field office “apprehension reports” were renamed weekly field office “enforcement activity” reports in September 2006 to more accurately reflect the statistics measured by the reports.

Please change all references to “apprehension reports” in this Draft Report to “enforcement activity reports”.

For example, the sentence in the draft Report which reads, *“To measure the FOTs' performance, DRO uses weekly field office apprehension reports provided to DRO headquarters.”* should now read as follows: “To measure the FOTs' performance, DRO uses weekly field office enforcement activity reports provided to DRO headquarters.”

Page 7, first paragraph, sentence states: *“The reports also included case closures, in which the FOT verified that a fugitive alien died, voluntarily left the country, or changed their immigration status by, for example, becoming a United States citizen or legal permanent resident.”*

Fugitive aliens do not “voluntarily leave the country” (i.e., a phrase which evokes such legal concepts as “voluntary departure” and “voluntary return”); instead, they self-execute their outstanding orders of removal.

Page 7, first paragraph, sentence states: *“The reported apprehensions involved varying levels of FOT effort from taking custody of and processing aliens already arrested by*

*other law enforcement agencies to receiving leads, searching databases, talking to informants, and making apprehensions."*

As stated in the comment above, please change the language to read as follows:  
"The reported **enforcement activities** involved varying levels of FOT effort...."

Page 7, second paragraph: Please add the following information to the draft report:

In August 2006, DRO implemented the Fugitive Case Management System (FCMS) at all its field offices nationwide to track FOT statistics. The use of FCMS has improved DRO FOT metrics, allowing enhanced tracking of FOTs' progress toward annual arrest target goals. Notably, FCMS has the ability to record the name of the officer responsible for conducting the enforcement activity. Recording the name of the officer associated with the enforcement action allows DRO to audit all activities and determine whether a FOT officer was responsible for the activity, thereby providing a means by which managers can assess FOT performance.

The ultimate goal of DRO and the FOTs is to reduce the fugitive alien population in the U.S. Although the primary responsibility of reducing the fugitive alien population in the United States resides with the FOTs, all DRO officers are responsible for the arrest and closure of fugitive alien cases that they encounter during the course of their duties. FCMS enforcement activity reports track the total number of fugitive aliens deducted from the fugitive alien population, regardless of whether the enforcement activity was conducted by FOTs or other DRO officers.

Page 8, fourth paragraph: Please add a footnote indicating that Acting Director Torres was appointed to the position of Director of DRO in October 2006.

Page 8, fourth paragraph: Please update footnote 18. The FOOSC became operational in July 2006.

Page 9, Table 2: Title for Table 2 should be changed from "*Fugitive Apprehension Reported by Field Offices with Authorized Teams*" to "**Fugitive Enforcement Activity Reported by Field Offices with Authorized Teams**"

Change column name "*Total Fugitive Apprehensions*" to "**Total Fugitive Enforcement Activities**". This change would also apply to Page 13, Table 4.

Change "*Source: DRO fugitive apprehensions report*" to **Source: DRO fugitive enforcement activity report.**"

Page 10, first and second paragraphs: Change all references to "*apprehension*" or "*apprehensions*" to "**enforcement activity**" and "**enforcement activities,**" respectively.

Page 11, first paragraph: change reference to "*apprehension*" to "**enforcement activity**".

***Fugitive Alien Backlog Is Increasing Despite the Teams' Efforts***

Page 13 – Bed Space Constraints - Please add the following paragraphs:

ICE implemented a number of significant mission enhancing efficiencies, such as shortened removal cycle times; increased use of the Justice Prisoner and Alien Transportation System (JPATS) and other air assets; and rapid activation of detention facilities. These efficiencies have created additional detention capacity at various locations around the country and provided Immigration and Customs Enforcement (ICE) and other Federal, State and local law enforcement agencies opportunities to dramatically increase the apprehension and removal of illegal aliens.

In July 2006, ICE established the Detention Operations Coordination Center (DOCC). The DOCC was established to ensure that all ICE field offices have adequate detention space for routine apprehensions, coordinating special operations that require large numbers of detention beds, and bed space management on a national scale, thus ensuring no alien amenable to removal proceedings will be released from Detention and Removal Operations (DRO) custody due to a lack of detention space.

Through capacity planning and bed space management, the average number of aliens detained in FY06 has increased from 20,683 on October 1, 2005 to 27,390 on September 30, 2006. This results in a total increase of 6,707 detained aliens per day. In particular, since November 2005, a total of 6,300 beds have been added to support the President's Secure Border Initiative. Initially, 2,300 SBI beds were provided along the SW Border. For fiscal year 2007, Congress earmarked an enhancement of 6,700 beds to ICE/DRO. As part of Operation Jumpstart, the first 4,000 of the FY07 enhancement beds were provided during the fourth quarter of fiscal year 2006.

Page 15, second paragraph: Please note that although DACS does not have zip code search capabilities; the FOSC utilizes DACS data in conjunction with information from outside vendors to provide a central source of zip code information to FOTs, thereby eliminating the need for *ad hoc* databases within each field office.

***Removal Rate of Teams' Fugitive Alien Apprehensions Cannot Be Determined***

Pages 17-18: This entire section should be removed; DRO does in fact track the removal rate of fugitive aliens.

Our FCMS-generated enforcement activity reports are reconciled with DACS data to determine the total number of fugitive aliens removed as a result of FOT enforcement activities. From March 2003 to September 30, 2006, NFOP enforcement activities have resulted in the removal of more than 30,470 fugitive aliens from the United States.

***Effective Partnerships with Federal, State, and Local Agencies Exist***

Pages 25-26: Please note that the Fugitive Operation Support Center (FOSC) is in the process of advertising a support contract solicitation to identify a vendor with existing



Appendix E  
Management Response to Draft Report

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data-sharing agreements in place with federal, state, and local law enforcement agencies. The FOSC will utilize the contractor's law enforcement data, and the contractor will be responsible for maintaining its data sharing agreements with these agencies. When completed, the contract will allow the FOSC to make use of a single data system, which is continually updated and consistently formatted, to collect other law enforcement agency information relevant to fugitive alien enforcement activity.

In addition, the FOSC has begun an extensive electronic review of fugitive cases, which will last for several months. The FOSC will close appropriate cases and provide comprehensive leads to the Field Offices on many others, facilitating efforts to meet the per-team goal of 1,000 arrests.

***Appendix A: Removal Proceedings Process***

Page 33: The report references a form of immigration relief called "change of immigration status." This term is not entirely clear. Perhaps the writer intended to indicate "adjustment of status to that of a lawful permanent resident" (such as under sections 209 or 245 of the Immigration and Nationality Act).

Appendix F  
Major Contributors to this Report

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### **Major Contributors to this Report**

Jacqueline Simms, Senior Inspector, Department of Homeland Security,  
Office of Inspections

Kristine Odiña, Inspector, Department of Homeland Security, Office of  
Inspections

Michael Zeitler, Inspector, Department of Homeland Security, Office of  
Inspections

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**EXHIBIT D**

Office of the Assistant Secretary

U.S. Department of Homeland Security  
425 I Street, NW  
Washington, DC 20536



U.S. Immigration  
and Customs  
Enforcement

JUL - 6 2007

Ms. Christina DeConcini  
Director of Policy  
National Immigration Forum  
50 F Street, NW, Suite 300  
Washington, DC 20001

Dear Ms. DeConcini:

Thank you for your June 11, 2007, letter to Michael Chertoff, Secretary of Homeland Security, regarding a U.S. Immigration and Customs Enforcement (ICE) immigration enforcement operation performed in New Haven, Connecticut, on June 6, 2007. In your letter you express concerns about the timing and execution of the operation. I would like to take this opportunity to explain our enforcement efforts more fully and to address your concerns.

First, I want to assure you that the Department of Homeland Security (DHS), as well as officials at ICE, take reported allegations of misconduct seriously and will fully investigate all allegations. We appreciate those who bring such information to our attention.

In addition to committing significant resources to preventing aliens from illegally entering the United States, DHS has also committed resources to arresting immigration law violators within the Nation's interior. Fugitive Operations Teams (FOTs) are a crucial part of ICE's interior immigration enforcement mission. A critical element of FOTs' strategy is to identify, locate, arrest, and remove criminal aliens, fugitives, and other immigration law violators from the United States. FOTs use leads and other intelligence-based information to find, arrest, and place into removal proceedings aliens who have been ordered to leave the country by an immigration judge (or ordered removed through an alternate immigration process) but have failed to comply, resulting in their being considered fugitive aliens. An ICE fugitive is defined as "*an alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to a Detention and Removal Office after receiving notice to do so.*"

On May 26, 2006, ICE began "Operation Return to Sender," a nationwide interior enforcement initiative that applies an organized and methodical approach to the identification, location, and arrest of ICE fugitive aliens. Conducted as part of ICE's National Fugitive Operations Program (NFOP), "Operation Return to Sender" combines NFOP resources with those of other federal, state, and local law enforcement entities to eliminate the backlog of ICE fugitive cases.

The size of many of the Field Office's Area of Operational Responsibility (AOR) is quite large, often comprising multiple states. FOTs act on specific intelligence-based data gathered through law enforcement channels. Once intelligence is gathered on several fugitives located within the same general vicinity, a FOT will develop an operational plan for the swift and safe arrest of the fugitive aliens in the most fiscally efficient way. The New Haven enforcement initiative's plan was submitted on April 20, 2007, and approved on May 4, 2007 by Headquarters Detention and Removal Operations (DRO). As of June 11, 2007, 29 illegal aliens were arrested as a result of

Ms. Christina DeConcini

Page 2

this enforcement initiative. Five of the 29 aliens arrested were fugitives with outstanding orders of removal. The remaining 24 illegal aliens were arrested at targeted locations of the operation.

I want to assure you there is no relationship between the operation's execution date and the City of New Haven's immigration policy.

I want to emphasize that FOTs do not conduct "raids," or take an *ad hoc* approach to enforcing immigration law; rather, they focus their efforts on specific fugitive aliens at specific locations. According to policy, FOTs prioritize their efforts using the following criteria: (1) Fugitives who are a threat to national security; (2) Fugitives who pose a threat to the community; (3) Fugitives who were convicted of violent crimes; (4) Fugitives who have criminal records; and lastly (5) Non-criminal fugitives.

Upon an order of removal by an immigration judge, within the Department of Justice, DRO issues an I-205, *Warrant of Deportation/Removal*. If the alien fails to appear for removal, then the alien is deemed an ICE fugitive. Warrants of removal are administrative in nature; therefore officers are required to obtain consent before they are permitted to enter private residences or non-public areas of a business. Also, warrants of removal do not grant the same authority to enter dwellings as a judicially approved search or arrest warrant. During the course of normal targeted operations, while attempting to arrest ICE fugitives, FOTs often encounter other individuals at the targeted location. A warrant is not necessary when arresting someone in the country illegally. Pursuant to Section 287(a)(1) of the Immigration and Nationality Act, an officer has the authority to question any person as to their right to enter, reenter, pass through, or reside in the United States. Immigration and Nationality Act § 287(a)(1); 8 U.S.C. § 1357(a)(1). If a person is deemed to be an alien, in the United States illegally, and is found to be amenable to removal, they may be arrested, without warrant, and processed accordingly for removal. ICE cannot turn a blind eye to illegal aliens once encountered.

The execution of the operation protected the rights of those concerned. At no time did any ICE FOTs enter a dwelling without consent. To ensure consent was obtained knowingly and voluntarily from a dwelling's occupant, each team had a Spanish-speaking officer assigned to it. After consent was obtained, the occupant was asked how many other people were in the house. If other persons were present, those individuals were asked to come into a common area. Officers searched the immediate area for potential weapons for officer safety. This is a common practice throughout law enforcement.

Questioning as to identity or request for identification does not constitute a Fourth Amendment seizure. An individual being interviewed voluntarily agrees to remain during questioning. To detain an individual for further questioning, however, the immigration officer must have reasonable suspicion that the individual has committed a crime, is an alien who is unlawfully present, is an alien with status who is either inadmissible or removable from the United States, or is a non-immigrant who is required to provide truthful information to DHS upon demand. See 8 C.F.R. § 214.1(f). In addition, 8 U.S.C. § 1304(e) requires aliens 18 years of age and older to carry proof of alien registration at all times. Failure to carry such proof is a misdemeanor punishable by up to 30 days imprisonment and a fine of \$100.

Please be assured that the care of those with medical needs and children is one of ICE's highest priorities. During questioning, ICE officers ascertained whether there were any humanitarian concerns at the scene of arrest by asking those arrested if they had any medical conditions or child care issues. ICE agents did not take any children into custody and ensured no child was left unattended without a parent/caregiver. In one instance, ICE officers stayed with an 11-year-old child who had been left home alone by her parents and awaited the father's arrival from work.

Ms. Christina DeConcini

Page 3

In order to ascertain the whereabouts of those arrested, at the scene of arrest family members were provided the address and telephone number of the local ICE office. Family members were also instructed that it may take a few hours before they would know definitively in which facility those arrested would be housed as they would have to be processed and transported to those facilities.

Per DRO policy, those arrested without outstanding Warrants of Removal were provided a list of free legal services. Once processed, individuals were provided the opportunity to make phone calls. In addition, local ICE offices routinely provide information to attorneys as to their client's whereabouts.

Susan Cullen, Director of Policy, ICE, has arranged for a conference call on July 19, 2007, at 3:00 p.m. with her, you, Michele Waslin from the National Council of La Raza, and two representatives from DRO to further address any concerns you may have.

I appreciate your interest in this matter. If I may be of further assistance, please contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Julie L. Myers".

Julie L. Myers  
Assistant Secretary



**EXHIBIT E**

Conference call with Mayor of New Haven, CT, John DeStefano

June 8, 2007, 5:00 P.M. Director Torres' Office

Present on Conference Call:

For Mayor De Stefano's Office:

- Mayor De Stefano: Francisco Ortiz, New Haven Chief Of Police

For DRO

- Director John P. Torres: Tim Robbins, COS: Jace Calderas, OXR

Executive Summary

- Mayor De Stefano wanted to know: What precipitated the action? How many operations "such as these" were pending nationwide? The Mayor asked how many outstanding warrants were in Hartford and Bridgeport. The Mayor asked the question "Did this operation have anything to do with our I.D. program?" The Mayor went on to say that the I.D. program was prominently displayed on the front page of the local paper on Monday and Tuesday and ironically, the "raid" happened on Wednesday. He questioned rhetorically, "And they say it did not play into the decision."
- Mayor De Stefano began to discuss what he called "conflicting info" in regards to the Operation. He stated that he believed that the "raids" began at 0530 but P.D. dispatch did not get a call until 0720 and the call was very vague and short. New Haven Police Chief, Francisco Ortiz then went through a series of events and people who should have been contacted and claimed that he was not contacted until 7 PM and did not speak to [redacted] until 30 hours later. *b6, b7c*
- The Mayor stated that when his office spoke to Senator Lieberman's office they were told by ICE that the locals only had to be notified for Worksite Enforcement.
- The Mayor then said that his office has heard allegations that "Officers barged into houses with out warrants and verbally abused the people and children were manhandled". At this point the Mayor asked Mr. Torres if it was "wise" to continue with serving warrants in light of the pending allegations. The Mayor surmised that it would be highly unlikely that he would be able to I.D. Officers.
- The Mayor is requesting that ICE/DRO not proceed with the enforcement action and has stated that he will work with Senator Lieberman and Rep. DeLauro to ensure advance notice is given in the future and that the PD can sit with DHS to discuss Intel and any other issues that may pose a threat or a risk of personal safety.
- The Mayor has requested that all the alien numbers and names be released.

Get Backs from ICE:

- 1) [redacted]
  - 2) [redacted]
  - 3) [redacted]
- [redacted]

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*Attorneys for Plaintiffs*

MARIA ARGUETA; WALTER CHAVEZ; ANA GALINDO; W.C. by and through his parents Walter Chavez and Ana Galindo; ARTURO FLORES; BYBYANA ARIAS; JUAN ONTANEDA; VERONICA COVIAS; and YESICA GUZMAN,

Plaintiffs,

-vs-

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”); JOHN MORTON, Assistant Secretary for Immigration and Customs Enforcement; JULIE L. MYERS, Former Assistant Secretary for Immigration and Customs Enforcement; ALONZO R. PENNA, Deputy Assistant Director for Operations, Immigration and Customs Enforcement; JOHN P. TORRES, Former Deputy Assistant Director for Operations, Immigration and Customs Enforcement; SCOTT WEBER, Director, Office of Detention and Removal Operations, Newark Field Office; BARTOLOME RODRIGUEZ, Former Director, Office of Detention and Removal Operations, Newark Field Office; AGENT 1, AGENT 2, AGENT 3, AGENT 4, AGENT 5, AGENT 6, AGENT 7, AGENT 8, AGENT 9, AGENT 10, AGENT 11, AGENT 12, AGENT 13,

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ELECTRONICALLY**

Honorable Peter G. Sheridan, U.S.D.J.  
Honorable Esther Salas, U.S.M.J.

Civil Action No: 2:08-cv-1652

**CERTIFICATION OF SERVICE**

AGENT 14, AGENT 15, AGENT 16, AGENT 17,  
AGENT 18, AGENT 19, AGENT 20, AGENT 21,  
AGENT 22, AGENT 23, AGENT 24, AGENT 25,  
AGENT 26, AGENT 27, AGENT 28, AGENT 29,  
AGENT 30, AGENT 31; JOHN DOE ICE AGENTS 1-  
18; JOHN SOE ICE SUPERVISORS 1-15; Penns Grove  
Police Officers Carmen Hernandez, Jason Spera, and  
Joseph DiCarolis (sued in their Individual Capacities),  
Defendants.

I, **SCOTT L. WALKER**, of full age, do hereby certify as follows:

1. I am a member of the Bar of this Court and counsel of the law firm of Lowenstein Sandler PC, attorneys for plaintiffs Maria Argueta, Walter Chavez, Ana Galindo, W.C. (by and through his parents Walter Chavez and Ana Galindo), Arturo Flores, Bybyana Arias, Juan Ontenada, Veronica Covias, and Yesica Guzman in the above captioned matter.

2. I hereby certify that on this 16th day of April, 2010, true and correct copies of the following documents: (a) Third Amended Complaint; (b) Exhibits A-E to the Third Amended Complaint; and (c) this Certification of Service were electronically filed via the Court's CM/ECF system.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: April 16, 2010

By: /s/ Scott L. Walker  
Scott L. Walker  
**LOWENSTEIN SANDLER P C**  
65 Livingston Avenue  
Roseland, NJ 07068