UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG, et al, Plaintiffs, v. IMMIGRATION AND CUSTOMS ENFORCEMENT Defendant.	Civil Action No. 17-cv-01097 (APM)

DECLARATION OF PATRICIA J. DE CASTRO, Ph.D.

I, Patricia J. de Castro, Ph.D., pursuant to 28 U.S.C. §1746, hereby declare as follows:

INTRODUCTION

1. I am an Operations Research Analyst within Enforcement and Removal Operations ("ERO"), Law Enforcement Systems Analysis ("LESA"), Data Driven Management Unit, at U.S. Immigration and Customs Enforcement ("ICE"). I have held this position since April 2018. As an Operations Research Analyst, my responsibilities include working with a team of analysts, statisticians, detention and deportation officers, program analysts, and mission support staff to support data-driven management and FOIA processes and litigation.

2. Prior to my work at ICE, I worked at the U.S. Department of Energy Loan Programs Office. There I provided strategic planning, operations and staff planning, budget planning and execution, standard procedures development, enterprise risk management and internal controls, and other operations expertise for a $45 billion loan portfolio comprising advanced and emergent energy technology energy projects. Prior to that I taught secondary math

courses for approximately 20 years.

3. I hold a doctorate degree in Business/University Administration and have expertise in business processes.

4. I have been tasked with facilitating LESA efforts to more fully support the ICE Office of the Principal Legal Advisor ("OPLA") in FOIA litigation responses, due to the recent increase in the quantity, complexity, and pace of FOIA requests, as well as associated litigations.

5. I make this declaration in my official capacity based on my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

6. This Declaration supplements and supports the previous Declarations of Marla Jones made in this case dated November 8, 2017 and January 25, 2018.

LAW ENFORCEMENT MISSION/OPERATIONS SECURITY

7. ICE is a law enforcement agency with more than 20,000 personnel in the United States and around the world. Immigration enforcement is the largest single area of responsibility for ICE's Enforcement and Removal Operations (ERO) and is a critical component of the overall safety, security, and well-being of our nation. ERO's mission is to enforce the nation's immigration laws in a fair and effective manner. It identifies and apprehends removable aliens, detains these individuals when necessary, and removes illegal aliens from the United States.

8. Most data on ICE computer systems is law enforcement sensitive, also known as sensitive but unclassified. Unauthorized disclosure or misuse of this law enforcement data would compromise the ability for ICE to successfully execute its mission, and also increases the risk to the physical safety of ICE employees and contractors, immigration attorneys and judges, and the U.S. public. It is used for monitoring active federal criminal investigations, maintenance of

investigative records related to the execution of arrests and other enforcement actions, the detection and apprehension of criminals, adjudication proceedings, and the housing, transportation, and safekeeping of aliens in our custody.

9. ICE must ensure operations security ("OPSEC") and public safety by anticipating and attempting to mitigate risks to the operation and the U.S. from bad actors. An example of OPSEC in daily life is the measures one might take when leaving home for a vacation. One might anticipate that their home would be a more likely target for bad actors if newspapers and mail piled up, the lawn went unattended, and lights were out. For that reason, one would deny adversaries any such indicators by having a neighbor gather newspapers and mail, place lights on a timer, and hire a lawn care service. The same is true with ICE data security. The ICE mission would be placed in jeopardy if bad actors gained access to information about federal law enforcement techniques and procedures which would enable them to circumvent the law. Therefore, ICE personnel must take reasonable steps to anticipate and mitigate risk--to ensure that ICE data are used appropriately. One of those steps is to ensure that FOIA requesters are given all required records *without jeopardizing either privacy or law enforcement interests*.

PAST AND CURRENT DATA PRODUCTIONS

10. ERO personnel have made every effort, over several years, to accommodate Plaintiffs' many hundreds of complex FOIA requests. ICE comes to this Court with clean hands and a strong record of good faith in prior and current production of data for Plaintiffs—including years' worth of voluminous and regularly requested and provided data--even when such production was discretionary, unreasonably burdensome, required analysis or calculations, answered questions, or required the creation of new records. Our principled staff members have worked diligently to provide Plaintiffs with hundreds of complex data sets per year in response to

their FOIA requests.

11. From 2011 to July 2016, ERO analysts discretionarily performed analysis, research, and creation of new records to fulfill Plaintiffs' FOIA requests. Plaintiffs have consistently requested data in a format which does not correspond to the structure of IIDS (ICE Integrated Decision Support) ("the database"): they seek to follow an *individual* through the immigration law enforcement system--but the database is not structured to produce data in that format, and data requested cannot be produced from the database without analysis, calculations, and the creation of new records. Plaintiffs' multivariate requests, in this case involving individuals who were removed as a result of IDENT/IAFIS interoperability match under the Secure Communities ("SC") program--with dozens of data points and sub-data points for that population of interest, means ERO analysts would be required to take disparate data sets and create new, temporary connections between data that exist, unconnected, in separate areas in the database.

12. Some of the data Plaintiffs request is readily available and was already produced; however, Plaintiffs have insisted that ERO either (1) create new data connections that are not connected in the database--so Plaintiffs can follow individuals through the system, or (2) provide data with associated random unique IDs--so Plaintiffs can conduct analysis and calculations themselves to follow the individual through the system. The FOIA does not require ERO to create new data combinations/correlations, nor to create new random unique IDs connecting individuals for Plaintiffs' interests. Plaintiffs state that they prefer to "conduct any required analysis ourselves," but either of the above options would first require ERO to create the new connections for Plaintiffs. In option (1), ERO would have to create new data combinations through extensive programming, analysis, calculations, and the creation of new reports; and in option (2), ERO would have to create and maintain new randomized unique IDs, *after* creating those data connections between events for individuals. Generating randomized unique IDs would constitute the creation of new records; it would also

constitute a cybersecurity risk. Random IDs would also require maintenance, and would ultimately not enable Plaintiffs to achieve their goal of following an individual through the system because cybersecurity concerns would require that individuals be assigned different random unique IDs in ensuing productions.

13. Plaintiffs are mistaken when they assert that any data are "missing" in this case. They state that because ERO produced similar data for Detainers in the New York FOIA case, the same data is connected to Removals with "SC Matches." That is not so. Different data are collected and entered when different law enforcement actions occur. For example, when a Removal occurs, officers enter data regarding that removal into the database. When a Detainer occurs, officers enter data regarding that Detainer into the database. The database is organized by law enforcement events, and those events do not automatically connect to each other. ERO has provided all data that can be provided without creating new records.

AGENCY DECISION TO STOP CREATING NEW RECORDS

14. Due to a precipitous (90%) increase in the overall volume and complexity of FOIA requests submitted to ERO in the past two years, ERO simply stopped being able to go beyond the FOIA requirements to continue creating new records or conducting analysis for Plaintiffs. This change in approach is based purely on increases in FOIA requests and resource limitations. We must meet FOIA requirements for all requesters. This necessitates balancing the needs of other requesters with Plaintiffs' needs for data, as well as balancing personnel resources with FOIA tasks and other mission-essential tasks.

15. On July 29, 2016, the ERO Executive Associate Director ("EAD") indicated that ERO should cease creating records in response to FOIA requests. The decision was based on the FOIA statute and the FOIA case law, neither of which require agencies to answer questions or

create records for a FOIA request. From that date, ERO implemented the agency's new posture. Because FOIA requests were in various stages of completion at that time, as well as a large backlog that existed at the time, the discretionary responses did not stop at the same exact time, and the change in discretionary responses slowly rolled out after that date.

16. ERO supports the full production of records required under the FOIA—for Plaintiffs and all members of the public. ERO is entitled to follow the FOIA. Extending efforts for Plaintiffs beyond those required by the FOIA--as we have done since 2011, has caused disruption of ERO analysts' ability to fulfill their mission. Plaintiffs' numerous, ultra-complex queries have exceeded the computational power of ERO's extremely large database, often causing it to freeze and require a reboot, which interferes with agency operations.

17. Plaintiffs seem to believe that the database is organized to follow individuals, but that is not true. When a Removal action occurs, officers enter removal data into the database. Removal actions and Detainers are indeed in different areas of the database, and data associated with each is not the same. Data associated with Removals actions can be produced for Removals requests; data associated with Detainers can be produced for Detainers requests. Although Plaintiffs seem to imply that data related to removals can be produced for detainers, that is not the case. The database is not structured that way. As more fully described below, creating a "connection" between data for different law enforcement actions requires ERO to conduct analysis and calculations, and create new records.

18. Plaintiffs imply that because ERO created data discretionarily for past similar requests, those discretionary productions must continue. Defendants' position continues to be that this discretionary production that requires the creation of new records goes beyond the scope of the FOIA. Plaintiffs state that data that was formerly produced is now missing. That is not true. ERO simply stopped producing data which require analysis, calculations, and the creation of new records.

19. The New York case (Long v ICE, No. 17-506, N.D.N.Y) is related to this case because it also tests whether making new connections between all individuals' Detainer history and other law enforcement events constitutes analysis, calculations, and/or the creation of records, and whether requests are unreasonably burdensome. Other than the specific type of data being requested, the cases are the same.

20. The IIDS pulls data from the EID because we cannot report from the EID. Unlike in many databases, IIDS contains no master "individual" record that allows ERO to pull up all actions related to that individual. The database is structured to track law enforcement *actions—not individuals*. When Plaintiffs seek data and information about following an individual through the system, we must conduct analysis and calculations and create new records because law enforcement actions regarding individuals exist uncorrelated to each other in our database.

21. Plaintiffs continue to request data, in their hundreds of requests per year, in a format which does not correspond to the structure of the database: they seek to follow individuals through immigration law enforcement processes. The database, described in more detail below, is not structured to produce data in that format--and the data cannot be fully produced as Plaintiffs request--without analysis, calculations, and the creation of new records. FOIA requesters who seek to follow the individual through immigration proceedings can request such records from U.S. Citizenship and Immigration Services.

THE NEW YORK CASE IS SQUARELY RELATED TO THIS CASE; THE ONLY ISSUES ARE THE CREATION OF RECORDS AND BURDENSOMENESS

22. The issues in the New York case are virtually indistinguishable from this case, other than that Plaintiffs are seeking data for different law enforcement events (one Detainers and the other SC Removals). Both cases hinge on just two issues: whether Plaintiffs' requests require the creation of records, and whether Plaintiffs' requests are unreasonably burdensome.

PLAINTIFFS' REQUESTS ARE UNREASONABLY BURDENSOME

23. The LESA/STU Unit is responsible for preparing official ERO and ICE reports for senior ERO and ICE administrators, Congress, and the President. It also responds to FOIA requests and provides all data available that do not require creation of records.

24. Plaintiffs have monopolized ERO LESA FOIA processing by filing hundreds of ultra-complex requests per year. Other FOIA requesters are negatively impacted since *Plaintiffs now submit at least 64% of all FOIA requests received by ERO LESA.* At the current pace, Plaintiffs' requests will reach a new high volume of approximately 343 requests for FY19. That represents greater than 1.3 requests received for every single work day of the year.

25. ERO LESA believes this constitutes an "unreasonably burdensome" volume and complexity of requests for one requester alone. This is particularly true, in this case, since Plaintiffs' requests are for data generated using expired algorithms and that hold little value for informing anybody of current immigration statistics. Other requesters seeking useful data based on current policies must wait for Plaintiffs' requests to be processed. This lawsuit is the only reason ERO has not archived the SC data.

26. ERO supports the full production of records required under the FOIA—for Plaintiffs and all members of the public. Plaintiffs have relied on and demanded compliance with the FOIA. ERO is also entitled to follow the FOIA, and to provide timely data to all other requesters besides Plaintiffs. . Plaintiffs' ultra-numerous and ultra-complex queries have exceeded the computational power of ERO's extremely large database, often causing it to "crash" and require a reboot, which interferes with agency operations.

27. ERO analysts steadfastly endeavor to provide Plaintiffs with full, transparent access to ICE records. *See* Exhibit D for a list of recurring FOIA requests from Plaintiffs.

PLAINTIFFS' REQUESTS REQUIRE CREATION OF RECORDS;
THE FOIA RESTAURANT

28. The ICE database contains data organized by law enforcement events. Unlike USCIS, who are the custodians of the Alien Files ("A-File") which follow an individual's history in immigration enforcement, ICE has little to no operational need to connect such enforcement events to each other in the database. ICE does not need to follow the individual through every aspect of the immigration experience. Rather, when ICE Officers record *distinct enforcement events*, such as an arrest, detainer, or removal, they do not become "connected" to each other in the database because we have no operational need for them to be connected. The place where these data are connected is in the individual's A-file, which is what ICE Officers use if they wish to see an individual's enforcement history all in one place. Those files are available through USCIS.

29. Rather, ICE needs summary information for its operations. ICE senior leadership, along with Congress and the President, require summary information or reports regarding law enforcement events in order to make policy, operational and funding decisions. On occasion, ERO analysts will also create ad hoc reports based on a request from ICE senior leadership, Congress, or the President.

30. First, it is important to state again that *ICE cannot report from the EID.* Rather, the IIDS pulls data from the EID. The IIDS is the only reporting tool available to ICE. The database is structured to track law enforcement actions—not individuals. In fact, even when ICE officers want to see all actions related to one individual, *they must request that individual's alien file from USCIS.*

31. If a FOIA requester seeks data regarding detainers, ERO can easily and readily produce detainers data. If a FOIA requester seeks data regarding arrests, ERO can easily and readily produce arrests data. However, when a FOIA requester seeks data that combines various

law enforcement actions (such as all detainers plus arrests plus removals for an individual), those data do not exist connected in the IIDS.

32. Let us consider the example request above (for all detainers plus all arrests plus all removals for an individual). It might initially seem like this would be a simple task. However, due to the structure of the database, it is not. One might ask, "Can't you just pull up all the "files" for an individual?"

33. In the IIDS, there is no one unique identifier for all individuals. Even if an ERO analyst were required to combine the data for detainers, arrests and removals for an individual, it would be very time consuming and difficult to create such a new record. Many different identifiers for an individual are entered based on the enforcement event. There are different types of ID for different events. An individual also might have numerous arrests or no arrests. An individual might have numerous detainers or no detainers; the same is true for arrests and removals. So, for the millions of lines of data, analysts must attempt to "connect" the millions of individuals, with many different types of ID number, to all the arrests, detainers, or removals that occurred for that person. This requires difficult and extensive programming, meticulous analysis, and creation of a new record that did not exist before. ERO neither needs nor uses data that follows an individual.

34. To make the above example even more complicated, requests often ask for law enforcement events which are causally or time-related. Because law enforcement events exist separately, there is no record of whether a particular arrest occurred before, after, or as a result of a particular detainer, or whether a particular removal was related to a particular arrest or detainer--or whether the arrest or the detainer, if they exist, have any relationship at all. There is also the problem of the many-to-one relationships which exist in this scenario. For example, if an

individual has numerous arrests and numerous detainers, it is extremely difficult to identify if a particular arrest or detainer are related in any way. And if a requester seeks information about a removal that occurred after a detainer, the analysts must look at all the detainers, look at all the removals, try to connect each of millions of individuals who have no universal ID number, and then create a new method to compare dates, which does not exist in the database.

35. When statisticians have been required to design new ad-hoc queries for Plaintiffs (that are not maintained or updated—and will not work in the future as the data source changes) to create new, multifactorial data connections, the computer has many times "crashed"—in other words, its computational power was exceeded. IIDS was not designed to create complex new connections for Plaintiffs, because causing the computer to "crash" interferes with the agency's computer system and has a direct, negative impact. When this occurs, the ERO analyst must exit the system, wait for a reboot, and re-try the work being attempted before the "crash." Burdening computational capacity to the extent that the computer "crashes," substantially interferes with the agency's computer system.

36. ERO statisticians have only the tools and database as they exist. It was designed for the needs of a law enforcement agency and fulfills all ERO's operational needs, in addition to fulfilling the needs of FOIA requestors who do not seek analysis or creation of new records. To provide the data to Plaintiffs in the manner requested would require ERO to far exceed the requirements of the FOIA.

37. The ICE database can be likened to a "FOIA Restaurant," where FOIA requesters can freely order from a menu of various law enforcement events. In the FOIA Restaurant, the FOIA laws apply. The restaurant will prepare anything you want on the menu, but keep in mind the chefs do not have to make <u>anything new</u>.

38. In the FOIA Restaurant, any entrée (data points entered when a law enforcement action occurs) on the menu (database) can be ordered. Customers may not substitute items or ask for new items to be added to an entrée—the entrée exists in the database with the ingredients (data points) listed, and no other ingredients. A customer may ask for a side order of any ingredient (data point), but it must be served by itself—not newly combined with anything. A customer may ask for as many side orders as they want, but they must also be served uncombined with anything—since combining ingredients anew requires the chef (STU personnel) to blend ingredients (data points) that were not blended already (analysis), and thus create a new entrée (create new records) that does not appear on the menu (database). However, the customer may combine their own ingredients (data points) however they would like *after they are served*.

39. The "FOIA Restaurant" has limited personnel and operating hours, so ordering dozens or hundreds of entrées at once (unreasonably burdensome and would substantially interfere with the agency's computer system) causes the chefs (STU personnel) to be so engaged that they are unable to serve other customers (conducting their mission, or serving other FOIA requesters) or cause the kitchen equipment to overload ("crash"). The "FOIA Restaurant" is not required to reveal its recipes (database structure) or its cooking methods (law enforcement techniques and procedures).

40. If Plaintiffs, for example, were to ask for the Detainers (entrée) from the "menu," STU/LESA personnel could easily prepare that "entrée." Officers enter a combination of data (entrée) when a detainer occurs, and that "entrée" appears in the database (menu). However, no extra data points (ingredients) appear in the database associated with that Detainer (entrée), i.e., a removal that occurred after a Detainer. Simply put, a detainer entered into the database contains no information about what happened following that detainer. Therefore, when Plaintiffs seek a

Detainer (entrée) associated with other law enforcement actions (entrées)--such as an arrest following a detainer--they are asking for multiple new connections to be created (new entrées) to be made from the database (menu) to follow individuals through each of those events (multiple entrées to all be combined into one big, new entrée that does not appear on the menu). This requires much analysis, calculations, work, and computational power due to the database limitations and structure. The FOIA "menu" (aka database) is the only tool available, as-is, to the agency (Restaurant) to fully comply with the FOIA. The "FOIA Restaurant" cannot be required to create new data combinations (entrées) or new single menu items (data points) that do not exist, combined with other menu items (data points), into new custom "entrees."

41. Creating multiple new connections (entrées) requires extensive analysis, and the creation of a new, temporary combined record (entrée). That is what ERO statisticians face each time Plaintiffs request not only one combination, but dozens to hundreds of new sub-combinations, which do not automatically connect to each other in the ICE database, and for which multiple new, complex temporary computer programs, extensive analysis, and hundreds of hours are required, just to create a temporary new record for Plaintiffs. Plaintiffs are asking the FOIA Restaurant to create *hundreds of new entrees*.

42. Requiring ERO's "FOIA Restaurant" to exceed the FOIA requirements transforms ERO into a giant computer research firm captive to the whims of Plaintiffs at great public expense (a "FOIA Restaurant" where *one customer places 64% of all the orders*) because Plaintiffs have insisted on information about individuals that does not exist as requested (creating entirely new, custom menu items). This has been unduly burdensome (exceeded the kitchen's capacities).

43. If this Honorable Court were to order ERO to produce data which would require the analysis, calculations, and the creation of new records as described above (offering newly

combined items that do not appear on the menu), that would essentially require ERO, which is now at the center of confounding political disquietude nationwide, to (1) exceed the requirements of the FOIA and allow one requester to monopolize resources; or (2) be forced to develop or design and purchase an entirely new computer program or system (entirely new menu), at great expense (likely many millions of dollars), for Plaintiffs, who here seek outdated data, data not needed for enterprise operations, and data following individuals—which is readily available through USCIS.

44. Ultimately, the problem is that Plaintiffs seek data (and extensive data connections) concerning individuals and all their immigration enforcement experiences, and the ICE database structure simply does not accommodate that request format. When informed of this fact, Plaintiffs have numerous times offered to accept data with randomized unique ID numbers for individuals, with the stated intention of assembling the requested data intersections (to construct the "individual") on their own.

45. Issuing randomized unique ID numbers would simply constitute an *additional layer of creation of records*. The randomized ID numbers first would have to be created, after creating all the new data connections requested by the Plaintiffs--and then maintained by ERO, which far exceeds the requirements of the FOIA. Even if it did not exceed the requirements of the FOIA, the production and release of randomized unique ID numbers constitutes a cybersecurity risk. Modern technology allows re-identification/de-encryption of data with relative ease. This is particularly true if the same randomized unique ID numbers were used more than once—a maximum cybersecurity and public safety risk--which is the only way Plaintiffs could achieve their goal of following the individual, over time, through the ICE system. I remind this Honorable Court that the ICE database contains individuals who are involved in terrorism, international

gangs, and other serious crimes—as well as individuals, such as asylum seekers and informants, in need of protection. Producing randomized unique IDs for Plaintiffs (or other requesters) would introduce significant risk that bad actors could use de-encrypted information regarding individuals, law enforcement techniques, and procedures for investigation, prosecutions, and detention to increase the attack vectors available to the enemies of the United States, and endanger the safety of our officers, special agents, asylum seekers, informants, and the general public. The "FOIA Restaurant" (ERO) should not (and is not required by the FOIA to) provide Plaintiffs newly-created randomized/encrypted data.

46. Plaintiffs have alleged in this case that ERO has stated that the database does not contain items requested by Plaintiffs. That statement is true regarding data connections that do not exist in the database (entrees not appearing on the menu) that Plaintiffs request. The database is not neatly organized in a way Plaintiffs seemingly would have designed it. Rather, it is based on law enforcement actions, and is not person-centric. The ICE "FOIA Restaurant" will gladly produce any existing, non-exempt data for Plaintiffs from all the "entrées" on the "menu."

47. The ultimate solution is for Plaintiffs to seek data (entrées) which ERO has explained IS readily available in the ICE database (menu), and which ERO regularly provides to Plaintiffs and to others. There is no master electronic "individual" record, or ID, or place, where all events are neatly organized in one master file per alien. *If that were the case, ERO would produce the data.* A-Files are the official paper file for all immigration and naturalization records created or consolidated since April 1, 1944, and are under the purview of USCIS.

ALL EXISTING DATA HAVE BEEN PROVIDED

48. Plaintiffs' requests in this case seek person-by-person information on arrestees engaged in criminal activity who were removed as a result of IDENT/IAFIS interoperability

matches under the Secure Communities ("SC") or subsequent similar program.

49. The original SC program led to the creation of an SC Match Removals report. That report was requested by Congress. When that request came in from Congress, ERO analysts took the Removals report, and created an extensive set of algorithms, analyses and calculations that could be applied to that Removals report, so they could provide Congress what was being requested—a "connection" between Removals and the IDENT/IAFIS interoperability matches. That was called the SC Match Removals report.

50. When the SC program was discontinued in 2014, ICE no longer needed the SC Match Removals report. All those algorithms and calculations created for the SC Match Removals report were discontinued because there was no reporting requirement going forward.

51. The Priority Enforcement Program ("PEP") replaced the SC program, but it was discontinued in 2017. It had no reporting requirements.

52. When the SC program was reactivated in 2017, there were also no reporting requirements.

53. The algorithms and calculations created for the SC Match Removals report have not been needed or used by ICE since the original SC program was discontinued in 2014. The only reason ICE has continued conducting these expired analyses is for Plaintiffs and this litigation. All data regarding those discontinued programs have been previously provided to Plaintiffs.

54. However, Plaintiffs here are requesting current enforcement data (Removals) to be connected to SC data using the outdated "SC matching" algorithm. *The algorithms are outdated, and have little value for informing anybody of current immigration statistics*. They have not been modified to address current policies, so the resulting data are of little value. ICE is only using

those expired and unnecessary algorithms, and they only continue to exist, because of this litigation.

55. Each time ERO runs the SC Removals report, it is a new report. This is because the algorithms for making the connection between the SC Matches and Removals must be applied anew each time the "SC Match Removals" report is run. New connections have to be created between the current Removals report and the SC interoperability data each time, and extensive expired algorithms newly applied each time.

56. Since enforcement events are not automatically connected in the database, and there is no one universal ID for individuals, the only way to create a connection between those disparate data is through complex analysis, research, analysis, and extensive computer programming. For example, to determine the "latest arrest," our analysts not only have to create the new connections between individuals, but then must analyze which, of the sometimes many arrests, is the latest. In this situation, analysts are creating a new combined dataset that did not exist before, and then conducting extensive analysis and writing computer programs to "pick" the latest arrest, if any. Plaintiffs' characterization that this is a "simple" search reflects their misunderstanding of how the database is organized.

57. Plaintiffs are mistaken when they assert that any data are missing in this case. They imply that because ICE produced a specific data point for a Detainers law enforcement action in the New York case, the same data point will also exist for the SC Removals data here. That is not so.

58. One example is Aggravated Felon yes/no. This is complicated, but whether an individual is an aggravated felon is entered differently depending on the law enforcement event. So if a Detainer occurs, we know that individual is an aggravated felon if the Officer checks a box

on the Detainer form. But for Removals, the individual's status as aggravated felon or non-aggravated felon is not connected to that event in the database. So analysts could produce this item for Removals (and discretionarily provided it previously), but it requires quite a bit of analysis and calculations to connect the Removal to the felon status. It goes beyond the scope of the FOIA.

59. Because ERO produced data discretionarily for past similar requests, those discretionary productions must continue. Defendants' position continues to be that any production that results in the creation of new records goes beyond the scope of the FOIA.

60. In the FOIA Restaurant, the SC Removals report is the equivalent of an entrée from a menu that hasn't existed since 2014. Plaintiffs have entered the FOIA Restaurant and demanded that, even though SC Removals has not been on the menu in five years, they should be allowed to order that Entrée, even though it no longer appears on the menu. Where any ingredients from that Entree still exist on the menu, they have been provided already. In fact, ICE has generously invested significant effort and time in an attempt to provide all ingredients in that former entrée to the Plaintiffs. However, the FOIA Restaurant is not required to go back and re-craft that Entrée anew from a former menu just to suit Plaintiffs.

61. ICE takes careful note of this Court's Memorandum Opinion and Order dated September 28, 2018. In case the Court believes greater issues than creation of records and burdensomeness exist, I will now address the specific questions that the Court had, and will offer clarifications where a need for such was noted.

SPECIFIC RESPONSES TO EACH REQUEST ITEM

62. Should this Court require the information, the table in Exhibit A provides a

precise technical justification for each item requested. I will also address each item separately here in, hopefully, less technical jargon. This can be difficult, since the database is complex.

63. It is important to note that the original reason ICE produced a report regarding "SC Match Removals" was an ad-hoc request from Congress. The only reason ICE has continued conducting this defunct analysis is for purposes of this FOIA requester.

64. To prepare the original report for Congress, ERO analysts begin with a particular population (law enforcement event)—in this case, the "Removals." They then created a new algorithm to create extensive new "connections"— between Removals that took place and SC Matches that took place. It is a Removals report to start with, but with many, many dozens of new analyses and calculations applied, which allow "connections" to be made between these two law enforcement events—Removals events and SC Matches events. When Congress requested the report, the data were current because the SC program was active.

65. Each time the SC Match Removals algorithm is run for Plaintiffs, it connects the current Removals report to SC Matches. Those outdated algorithms for the report are actively conducted anew every time it is run—just for Plaintiffs. This may result in inaccurate data. The problem is that after 2014, ICE had no further requirement for the SC Match Removals report. The algorithms built and applied here, for Plaintiffs, now have little value for informing anybody of current immigration statistics--they have not been modified to address current policies, and continue to exist only because of this litigation.

66. It is also important for the Court to consider that there are two completely separate policies involved in these requests: the SC Program and the PEP Program. Plaintiffs' requests must be looked at in light of which program was in place. See Exhibit "B" for the Morton Memo and Exhibit "C" for the Johnson Memo. Plaintiffs would have this Court be confused about

whether ICE is able to provide identical items for two different programs. For items since November 20, 2014, there were no SC "matches" because there was no longer any interoperability. In addition, ICE does not use or need any report regarding this item.

67. All the items that exist for this request have been provided. None of the items below exist in the database. In other words, for each item below, Plaintiffs are asking that new "entrees" be created in the FOIA Restaurant. To provide each item below, ERO analysts would be required to create a new, difficult connections between data that are not connected.

68. Item 7, "Priority levels based on November 20, 2014 announced criteria." The first FOIA request asked for "Non-Criminal ICE Priorities." Non-Criminal ICE Priorities" is a *different item* than "Priority levels based on November 20, 2014 announced criteria." These items relate to two separate programs. Data were provided regarding the original program, even though it required a calculation and thus exceeded FOIA. When the new PEP program started in November 2014, there were no priority levels at all, so this does not exist in the database--so it cannot be provided.

69. Item 17, "ICE fugitive yes/no." There is nothing in IIDS that indicates directly that an individual is a fugitive. An ICE Officer cannot open up the IIDS and look for "ICE fugitive yes/no." To provide this item, STU analysts would have to create a temporary algorithm to determine if each individual was a fugitive. So this is a field that must be created through analysis and calculations each time an "SC Match Removals" report is run. Therefore, this item cannot be produced because it requires creation of records.

70. Item 17(a), "Date of previous removal order." This item also does not exist in IIDS. Because Item 17 cannot be produced, and this is a subset of Item 17, this item cannot be produced. Even if this item were not a subset of Item 17, it still does not appear in the IIDS. To

provide it, analysts would be required to conduct all the analysis for Item 17 above, then develop a new method to analyze (1) whether each individual had a previous removal order and (2) if yes, produce the dates. This is analysis upon analysis; ICE has no operational need or use for the date of a previous removal order.

71. Item 17(b), "Whether previous removal order was an expedited removal order." This item appeared only in the second FOIA request. It is also a subset of Item 17, which cannot be produced without analysis. Even if this item were not a subset of Item 17, it still does not appear in the IIDS. To provide it, analysts would be required to conduct all the analysis for Items 17 and 17(a) above, then develop a new method to analyze, for each individual, whether each of the previous removal orders, if any, was an expedited removal. This is analysis upon analysis; ICE has no operational need or use for knowing whether previous removal orders were expedited.

72. Item 18, "Prior removal or return (yes/no)." This item only appeared in the second FOIA request. This item does not exist in IIDS. To produce this item, ERO analysts would have to create a new record through analysis and calculations. They would have to start with the SC Match removals report, and then attempt to "match" all the millions of individuals (without any one universal ID number) with the regular removals to see if there was another removal associated with each individual. However, many individuals will have numerous removals, including removals that took place after the SC Removal. Therefore, the ERO analysts would also then need to compare Removal dates to ensure that they are reporting removals that occurred prior to the SC Removal. This is known as a computed field. The only way to provide this item is to create a new record that did not exist prior to the request.

73. Item 18(a), "Date of previous removal or return." This item does not exist in IIDS. This item is also a subset of Item 18. To produce this item, analysts would need to take all

the steps for Item 18 above, then add much *more analysis* to determine, for each "yes" from the calculations in Item 18, the dates of all the removals and/or returns. Therefore, this item is not required under the FOIA.

74. Item 19, "EWI yes/no." This item does not exist in IIDS. To produce this item, ERO analysts would have to create a new record through analysis and calculations. They would again have to start with the SC Match Removals, then find a new way to identify an individual's "EWI" status, even though that is not a field in the database. So it must be done through analysis and calculations. This is known as a computed field. The only way to provide this item is to create multiple new records that did not exist prior to the request.

75. Item 19(a), "Date of previous entry without inspection." This item was not included in the first request, but only in the second request. This item also does not exist in IIDS. This sub-item cannot be produced since this is a sub-set of Item 19, and EWI status cannot be produced because it requires analysis and calculations. However, if analysts were required to produce 19(a), they would need to complete all the analysis and calculations for Item 19 above, and then add *more analysis*, to determine for each individual identified as an EWI, whether there was a previous entry—and if yes, identify the date.

76. Item 19(b), "Number of previous recorded entry without inspections." This item was also not included in the first request, but only in the second request. This item does not exist in IIDS. This is a sub-set of Item 19, which cannot be produced with analysis and calculations. To provide this item, ERO analysts would have to complete all the steps from Item 19 and Item 19(a) above, and then, for each individual identified as EWI, and who had a previous entry, count the previous entries. This requires numerous analyses and calculations.

77. Item 20, "Visa violator yes/no." This item does not exist in IIDS. To produce

this item, ERO analysts must create a new record through analysis and calculations. They would again have to start with the SC removals population, create all the new "SC matches," as above, then for all the "SC matches," determine whether each individual was a "visa violator." This requires analysis and calculations. This is known as a computed field. The only way to provide this item is to create multiple new records that did not exist prior to the request.

78. Item 20(a), "Overstayed visa (yes/no)." This item does not exist in IIDS. This item is also a subset of Item 20 above. It has never been produced for Plaintiffs in either FOIA request. To produce this item, all the analysis and calculations from Item 20 would be required, with the addition of significantly more analysis to create a method to determine not only whether the individual was a visa violator, but to also to calculate what type of visa violator the individual was. Therefore, this item is not required under the FOIA.

79. Item 20(b), "Other type of visa violator yes/no." This item does not exist in IIDS. This item is a subset of Item 20 above. The same process would be required as above, with the addition of more analysis to determine not only whether the individual was a visa violator, but to also to create a method to determine what type of visa violator the individual was. Therefore, this item is not required under the FOIA.

80. Item 22, "Was I-247/I-247D issued for individual before removal (yes/no) and date issued." This item does not exist in IIDS. Although the Jones Declarations more narrowly interpreted this request, the position remains the same—that providing this item requires fairly extensive analysis and calculations. The database does not connect individuals to their detainers history. To produce this item, ERO analysts would need to first develop a method to connect millions of individuals (with no universal ID number) with all their detainers. Then they would need to develop a new way to analyze relative SC removals and detainer dates to see if a detainer

occurred before a removal. To further complicate what would be required, an individual can have many removals and many detainers. The database does not connect a particular detainer to a particular removal. Even if we assume that simply identifying whether even one of the requested detainers had been issued at all prior to the SC removal, it would still require analysts to create extensive these calculations and conduct all this analysis. Regardless of how liberally or closely this item is interpreted, the only way to provide this item is to create multiple new records that did not exist prior to the request.

81. Item 23, "Was I-247N issued for individual before removal (yes/no) and date issued." This item does not exist in IIDS. The response to this item is identical to Item 22 above since both requests are for detainers. However, this response would be specific to I-247N.

82. Item 26, "City, county and state of jail or facility in which the individual was detained prior where the I-247/I-247D/I-247N was sent." This item does not exist in IIDS. ICE provided "Detainer detention facility" at its own discretion. This field was provided since it was the closest field that existed which might address Plaintiffs' request. However, it does not reflect that an individual was detained "prior where the [detainer] was sent." To produce more for this item, ERO analysts would again have to start with all the "SC matches," and determine whether each individual had a detainer issued. After they "matched" individuals with detainers, they would then need to create a new connection between that group and all individuals who were in detention at that time. In addition, they would then have to make a new connection to the detention facility for that individual. It is extremely difficult to determine definitely which matches are accurate if an individual had numerous detainers, removals, and detentions. This is known as a computed field. The only way to provide this item is to create multiple new records that did not exist prior to the request.

83. Item 27, "Detainer threat level (or corresponding notice threat level)." This item exists in IIDS, but not connected to removals. This is another example of an item which requires extensive analysis and calculations; it is also a computed field. To produce this item, analysts would have to take the results from Items 23 and 26 (those individuals who had detainers before a removal), then conduct additional analysis to figure out or "match" each individual, with a "detainer threat level" for that removal. To complicate this analysis, any individual might have numerous detainers or removals, and of course, there is no one universal identifier.

84. Item 43, "Charged with a crime (yes/no) (any charge, not restricted to convictions)." This item does not exist in IIDS. To produce this item, ERO analysts would have to create a new record through analysis and calculations. They would again have to start with the SC Removals events, create all the new "SC matches," as above, between the Removals events and SC matches that occurred. Then, for all the "SC matches," they would then create a new connection between all those individuals and the criminal data, and for each person, determine a "yes" or "no" based on whether they were charged with a crime. This is complicated by the fact that an individual may have numerous removals and numerous criminal charges. In that case, the analysts would have to ensure that they looked at each matching record for an individual to determine if even one met the standard of "charged with a crime."

85. Item 54, "Information on every conviction not just the most serious (date of the charge, date of the conviction, NCIC code for charge, level of offense (felony, misdemeanor, citation, etc.), sentence received)." This item does not exist in IIDS. This item would involve all the analyses and calculations in Item 43, with the addition analysis of matching each individual with every conviction they had received. Then, if the analysts identified a "match" between an individual and a conviction, they would have to create a new match, for each conviction, for the

NCIC code, a match for level of offense, and a match for sentence received, for each conviction for each individual.

86. Item 55, "Information on every charge not just the most serious for which a conviction has not occurred (date of charge, current status, NCIC code for charge, level of offense (felony, misdemeanor, citation, etc.) This item does not exist in IIDS. Creating this item would involve all the extensive analyses and calculations in Item 54 above, but with the distinction of all the new matches being connected to charges versus convictions.

87. Item 57, "Aggravated felon (yes/no)." This item does not exist in IIDS. Analysts discretionarily provided this item for prior FOIA requests. However, it is a calculated item. To create this item, analysts had to conduct extensive analysis to combine the SC Removals "matches" individuals, then each step from in Items 54 and 55 above, to determine whether each individual had been convicted of a crime. After that, analysts had to create an entirely new method of determining whether, for each individual who had a conviction, whether that conviction was an aggravated felony. This was done through extensive calculations and analysis.

88. Item 60, "Latest program code before departure." This item does not exist in IIDS. For this item, ICE, at its own discretion, did previously provide something called "Removal Current Program," which is the closest item that exists which is even close to responsive. To produce this item, ERO analysts would have to create a new record through analysis and calculations. They would again have to start with the entire SC removals population, create all the new "SC matches," as above, between the Removals events and SC matches that occurred. There is no item such as "latest program code before departure," so analysts would have to create some new method to connect each individual to their removals, then also make a connection with the program associated with the encounter, known as "Removal Current Program." The problem is

that individuals often have numerous removals, so analysts had to compare all the dates for each removal associated with each individual to figure out which "Removal Current Program" was the latest prior to the SC Match removal. All this is in the context of an obvious problem with the data provided. The problem is that the "program" associated with the encounter represents the program that the Officer was connected to, versus the individual. For example, if an Officer is assigned to Fugitive Operations, all that officer's events would be recorded as Fugitive Operations. If an Officer is assigned to CAP, all that Officer's events would be recorded as CAP. Therefore, this data point, even if it were provided through extensive analysis and calculations, does not provide meaningful data.

89. Item 61, "Case category at the time of the latest arrest." This item does not exist in IIDS. It is very similar to Item 60 above, because to produce this item, analysts would again have to start with the SC Removals population, create all the new connections, as above, between the Removals events and SC matches that occurred. Then, for all the resulting "SC Removals," they would then create a new connection between all those individuals and the arrest data, and for each person, determine all their arrest dates. Then, they would have to compare all the arrest dates to determine which is the latest. Then, they would have to continue as described in Item 60 above, and create a new connection between all those individuals' latest arrest date and the "case category" associated with the latest arrest. As indicated above, after all this analysis and calculation, the "program code" associated with the arrest only represents the program that the Officer was connected to, versus the individual. For example, if an Officer is assigned to Fugitive Operations, all that officer's events would be recorded as Fugitive Operations. If an Officer is assigned to CAP, all that Officer's events would be recorded as CAP. Therefore, this data point, even after being provided through extensive analysis and calculations, does not provide

meaningful data.

90. Item 62, "Program code at the time of latest arrest." This item does not exist in IIDS. For the same reasons specified for Item 61 above, this item requires complex analysis and calculations to create a "program code" for the latest arrest. This item, even if created by the STU analysts, would not provide meaningful data.

91. Item 63, "Date of latest arrest." This item was previously provided at ICE's discretion. To produce this item, STU analysts have to create a new record through analysis and calculations. They would again have to start with the entire SC removals population, create all the connections "SC Removals," as above, by matching between the Removals events and SC matches that occurred. Then, they would have to create a new connection between all those "SC Removals," and the arrest dates for each individual. After they "matched" individuals with arrests, they would then need to conduct analysis to create a way to choose the latest arrest. This is a calculated field and requires extensive analysis and creation of multiple connections between different law enforcement events—connections that do not exist in IIDS.

92. Item 64, "Name of the program or area associated with the original arrest or apprehension (criminal alien program, fugitive operations, office of investigations, border patrol operation streamline, other border patrol program, 287(g), etc.)." This item does not exist in IIDS. To produce this item, STU analysts would have to create a new record through analysis and calculations. They would have to create a new connection between all those "SC Removals," and the arrest dates for each individual. After they "matched" individuals with arrests, (with no one universal ID), they would then need to conduct analysis to create a way to choose the "original" arrest. This is a calculated field and requires extensive analysis and creation of multiple connections between different law enforcement events—connections that do not exist in IIDS.

Then, analysts would have to make a new connection between the program of the Officer behind the "original" arrest and report that. Unfortunately, all this analysis and calculation would not even lead to meaningful data since the "program or area" associated with the arrest only represents the program that the Officer was connected to, versus the individual. For example, if an Officer is assigned to Fugitive Operations, all that officer's arrests would be recorded as Fugitive Operations. If an Officer is assigned to CAP, all that Officer's arrests would be recorded as CAP. Therefore, this data point, even if being provided through extensive analysis and calculations, would not even provide meaningful data regarding that individual.

93. Item 65, "The apprehension method associated with the latest apprehension." This item does not exist in IIDS. ICE, at its discretion, previously released the date of the latest arrest, which is the closest item which might be somewhat responsive. To produce this item, ERO analysts would have to create a new record through analysis and calculations. They would again have to start with the SC matches population, create all the new "SC Removals matches," as above, between the Removals events and SC matches that occurred. There is no item such as "apprehension method associated with the latest apprehension," so analysts would first have to have to create a new connection between all those "SC Removals" individuals and each arrest date for each individual. They would then have to conduct analysis and calculations to determine which of the individual's removals was the latest. After they determine each individual's latest arrest, they would then have to make a new data connection between those latest arrests and an apprehension method for each of those latest arrests. Once again, the problem is that the apprehension method associated with the encounter represents the program that the Officer was connected to, versus the individual. For example, if an Officer is assigned to Fugitive Operations, all that officer's arrests would be recorded as Fugitive Operations. If an Officer is assigned to

CAP, all that Officer's arrests would be recorded as CAP. Therefore, this data point, even after being provided through extensive analysis and calculations, would not provide meaningful data.

94. Item 66, "Ordered removed by court, where order has become final (yes/no)." This item does not exist in IIDS. First, ICE does not, in any way, track the difference between removals that are ordered by courts or ordered administratively. In the past, in an attempt to provide anything meaningful, ICE discretionarily provided the final order date. There is nothing else that exists or can be provided that would be responsive to this item.

95. Item 68, "Administratively ordered removed, where order has become final (Yes/no)." This item does not exist in IIDS. Just as for Item 66 above, ICE does not, in any way, track the difference between removals that are ordered by courts or ordered administratively. In the past, in an attempt to provide anything meaningful, ICE discretionarily provided the final order date. There is nothing else that exists or can be provided that would be responsive to this item.

96. Item 70, "Reinstatement of prior removal order (yes/no)." This item does not exist in IIDS. For this item, ICE provided data produced through calculations. To produce this item, STU analysts would have to create a new record through analysis and calculations. They would, again, have to start with the SC removals population, and create a new "SC Removals" record by matching between the Removals events and SC matches that occurred. Then, they would have to create a new connection between all those "SC Removals," and the final removal dates for each individual. After that, they would have to connect all the individuals with the appropriate case category, then connect the resulting data with final order dates, and calculated which final order date to provide.

97. Item 71, "Date of latest reinstatement of prior removal order." This item does not exist in IIDS. ICE discretionarily provided this item previously. However, it requires analysis

and calculations. To produce this item, STU analysts would need to complete all the steps for Item 70 above, then find a way to determine which removals would qualify as a reinstatement, and add an additional calculation to determine which of the "reinstatements" was the latest one.

98. Item 74, "Prior removal (yes/no)." This item does not exist in IIDS. To produce this item, ERO analysts would have to create a new record through analysis and calculations. They would again have to start with the SC matches population, create all the new "SC Removals matches," as above, by connecting Removals events and SC matches that occurred. There is no item such as "prior removal," in IIDS, so analysts would first have to create a new connection between all those "SC Removals" individuals and every other removal associated with each individual. They would then have to conduct analysis and calculations to determine whether any of the individual's removals was the prior to the SC removal. After they determine whether there was a prior removal, they then would have to develop a method to indicate "yes" if the individual "matched" with a removal that occurred prior to the SC removal.

99. Item 75, "Date of latest prior removal." This item does not exist in IIDS. The logic for providing this item is the same as in Item 74 above. Each step for Item 74 would have to be taken, except instead of identifying whether a "prior removal" had occurred, analysts would then also have to identify all the removal dates associated with the individual, and then create a method of analyzing the resulting "prior removal" dates and choosing the latest one.

100. For Plaintiffs and all other FOIA requesters, ERO analysts read requests liberally and attempt to provide any meaningfully responsive data, regardless of whether the request matches or does not match exact words or phrases in the database. The ICE FOIA Restaurant has supplied Plaintiffs with every item the Plaintiffs ordered which existed on the current menu (not an expired menu) and which did not require the "chefs" to create something new which doesn't

appear on the "menu."

CONCLUSION

101. This case is the same as the New York case. Its two issues are: (1) the creation of records; and (2) burdensomeness.

102. ERO personnel have, for years, performed far above the requirements of the FOIA to produce data for Plaintiffs. ERO is no longer able to provide discretionary data to Plaintiffs due to staffing limitations and the increasing complexity and number of FOIA requests. Plaintiffs' repeated demands and monopolization of ERO resources has hampered ERO LESA's ability to provide data to other FOIA requesters. ERO remains dedicated to providing the public, including Plaintiffs, with all documents required under the FOIA, and has provided all of the requested data that exists in the database that does not require analysis, calculations, and/or the creation of records.

103. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 7th day of October, 2019.

Patricia J. de Castro

PATRICIA J. DE CASTRO, Ph.D.

EXHIBIT A

TECHNICAL EXPLANATIONS FOR EACH ITEM IN QUESTION

Req No.	Item	Response
7	Priority levels based on November 20, 2014 announced criteria	Before addressing 'PEP Priorities', it is important for the Court to understand that Plaintiffs' erroneously grouped Requested Item 7 under the 'Non-Criminal ICE Priorities' on page 6 of Judge's Opinion. 'Non-Criminal ICE Priorities' is specific to the policies outlined under the Morton Memorandum and was a grouping designation applied to the SC Match Removal population. Additionally, this is not a prioritization that is stored within the ICE database but is a complex set of calculations applied SC Match removal record. When the SC Program was replaced in 2014 with the PEP Program, reporting the Morton 'Non-Criminal ICE Removal Priorities' became obsolete. Plaintiffs' themselves recognize the policy reporting differences when they requested "Priority levels *based on November 20, 2014 announced criteria*." As there were no specific operational reporting requirements under PEP Program to develop 'PEP Priorities' in relation to SC Match Removal population, ICE was and continues to be unable to report anything for Requested Item 7.
17	"ICE fugitive yes/no"	This data record does not exist in the ICE database. The 'ICE Fugitive' subfield was created and calculated *within* the SC Match Removals population report as part of the "Non-Criminal ICE Priorities" under the policy memo Morton Memorandum. The 'Non-Criminal ICE Priorities' field itself was created *within* the SC Match Removals population by applying hierarchy calculation in order to fulfill ICE's operational reporting requirement for Secured Communities at this time. When this memo expired, this item no longer had operational context and ICE no longer created for Plaintiffs. The only way to provide Item 17, "ICE Fugitive Yes/No' beyond the outdated "Non-Criminal ICE priorities" is if the Court requires ICE to create a new general "ICE Fugitive Yes/No" record that would be reported for the *entire* SC Match removal population. This is a data field has not been created in the ICE database nor ever produced for Plaintiffs in either FOIA. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in the SC Match Removals population and determine which records have criteria qualifying as "ICE Fugitive." The calculations are created for each reported SC Match removal record to define the

		fugitive status and record the new data field, "ICE Fugitive Yes/No." The Non-Criminal ICE Priorities' always created ICE fugitives for a small portion of the population as ICE stated in the footnote provided in good faith to Plaintiffs in the first submission: As provided in the original submission footnotes: For the priority categories "ICE fugitive," "prior removal or returns," "EWI," "Visa Violator," and "Overstayed Visa" please refer to the Non-Criminal ICE Priorities. This is a field computed from the ICE Priorities (17, 18, 19, 20, 21). Please note an alien can only show one ICE Priority. For example a theoretical subject could be an immigration fugitive, have a prior removal on record, and be a visa violator; this case will show as an Immigration Fugitive (Priority).
18	Prior removal or return yes/no	This item does not exist in the ICE database. "Prior removal or return" subfield was created and calculated *within* the SC Match Removals population report as part of the "Non-Criminal ICE Priorities" under the policy memo Morton Memorandum. The 'Non-Criminal ICE Priorities' field itself was created *within* the SC Match Removals population by applying hierarchy calculation in order to fulfill ICE's operational reporting requirement for Secured Communities at this time. When this memo expired, this item no longer had operational context and ICE no longer created for Plaintiffs.
19	EWI yes/no	This data record does not exist in the ICE database. 'EWI subfield was created and calculated *within* the SC Match Removals population report as part of the "Non-Criminal ICE Priorities" under the policy memo, Morton Memorandum. The 'Non-Criminal ICE Priorities' field itself was created *within* the SC Match Removals population by applying hierarchy calculation in order to fulfill ICE's operational reporting requirement for Secured Communities at this time. When this memo expired, this item no longer had operational context and ICE no longer created for Plaintiffs. The only way to provide Item 19, "EWI Yes/No' beyond the defunct 'Non-Criminal ICE priorities' beyond the outdated "Non-Criminal ICE priorities" is if the Court requires ICE to create a new general "EWI Yes/No" record that would be reported for the *entire* SC Match removal population. This is a data field has not been created in the ICE database nor ever produced for Plaintiffs in either FOIA. If the ICE analyst is required to produce the

		requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all SC Match removals population records and build the individual's arrival details. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the arrival details leveraging the multiple identifiers, the ICE analysts would then need to evaluate the individuals within these records that satisfy which records have criteria qualifying as "EWI Yes/No." The calculations are created for each reported SC Match removal record to define the EWI status and record the new data field, "EWI Yes/No."
20	Visa violator yes/no	This data record does not exist in the ICE database. The "Visa violator" subfield was created and calculated *within* the SC Match Removals population report as part of the "Non-Criminal ICE Priorities" under the policy memo Morton Memorandum. The 'Non-Criminal ICE Priorities' field itself was created *within* the SC Match Removals population by applying hierarchy calculation in order to fulfill ICE's operational reporting requirement for Secured Communities at this time. When this memo expired, this item no longer had operational context and ICE no longer created for Plaintiffs. The only way to provide Item 20, "Visa Violator Yes/No' beyond the outdated "Non-Criminal ICE priorities" is if the Court requires ICE to create a new general "Visa Violator Yes/No" record that would be reported for the *entire* SC Match removal population. This is a data field has not been created in the ICE database nor ever produced for Plaintiffs in either FOIA. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the charge records for the SC Match Removals population to determine which records have criteria qualifying as "Visa Violator." The calculations are created for each reported SC Match removal record to define the visa violator status and record the new data field, "Visa Violator Yes/No."
20(a)	Overstayed visa yes/no	This data record does not exist in the ICE database. "Overstayed Visa" was one of the data options produced under the 'Non-Criminal ICE Priorities' data field that was created for SC Match Removals. Additionally, "Overstayed Visa" was not reported as a sub-set of "Visa Violators." 'Non-Criminal ICE Priorities' field itself was created *within* the SC Match Removals population by applying hierarchy calculation in order report to fulfill ICE's

		operational reporting requirement for Secured Communities. The continued creation of records under 'Non-Criminal ICE Priorities' data field no longer had operational context when the Morton Memorandum expired. The only way to provide Item 20(a), "Overstayed visa yes/no" beyond the defunct "Non-Criminal ICE priorities" is if the Court requires ICE to create a new general "Overstayed visa Yes/No" record that would be reported for the *entire* SC Match removal population. The only way to provide Item 20, "Overstayed Visa Yes/No' beyond the outdated "Non-Criminal ICE priorities" is if the Court requires ICE to create a new general "Overstayed Visa Yes/No" record that would be reported for the *entire* SC Match removal population. This is a data field has not been created in the ICE database nor ever produced for Plaintiffs in either FOIA. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the charge records for the SC Match Removals population and determine which records have criteria qualifying as "Overstayed Visas." The calculations are created for each reported SC Match removal record to define the visa overstay status and record the new data field, "Overstayed Visas Yes/No."
20(b)	Other type of visa violator yes/no	This item does not exist in ICE database. ICE has not reported this to Plaintiffs in either FOIA nor does ICE track the general field "Visa Violator Yes/No" as discussed under Requested Item 20. ICE would be required to define "Other Type of Visa Violators Yes/No" and create the data field similar to Requested Item 20(a).
22	Was I-247/I-247D issued for individual before removal yes/no	While the Jones Declarations more narrowly interpreted this request according to the Court, it still does not change Defendants' position here. A more general interpretation to assess "whether a detainer exists," regardless of any "causal connection between the detainer…and the removal" still yields a similar response because the Plaintiff is asking for ICE to build detainer details, including any history, for an individual. As previously stated, there is not one unique universal identifier across all records to identify the individual. The ICE database is not organized to determine if a detainer has been issued for in individual prior to a removal without extensive research and analysis resulting in the creation of records. In fact, the ICE database is not organized to pull all detainers related to a specific individual.

		"Was I/247/247D issued for individual before removal (Yes/No)" does not exist in the ICE database. If the ICE analyst were required to produce the requested item, the analyst would have to create a new record through analysis and calculations. This prior detainer status data field has not been created in the ICE database nor ever produced for Plaintiffs in either FOIA. The analyst would be required to evaluate all the records in SC Match Removals population and determine which of these individuals within these records had a detainer. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated for this analysis. After these records are "matched" against the detainers population leveraging the multiple identifiers, the ICE analyst would create a calculation to evaluate those individuals' detainers records to that came "prior" to the departed date for each SC Match Removal record and then determine the detainer form type of I/247/247D. Once the analyst defines the prior detainer form status and records the new data field, "Was I/247/247D issued for individual before removal (Yes/No)," then the associated detainer prepare date(s) can be produced.
23	Was I-247N issued for individual before removal (yes/no) and date issued	"Was I/247N issued for individual before removal (Yes/No)" does not exist in the ICE database. The response to this item is identical to Requested Item 22 since these are both types of detainer forms with this response being specific to the to I-247N notification form.
26	City, county and state of jail or facility in which the individual was detained prior where the I-247/I-247D/I-247N was sent	This data record does not exist in the ICE database. In lieu of providing the requested detainer facility details, ICE provided "Detainer detention facility" at its own discretion. While this provided field does not reflect that an individual was detained "prior where the [detainer] was sent," it exists in relation to the SC Match Removals population and is provided as similar to the requested field. If the ICE analyst were required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population and determine which of these individuals within these records had a detainer issued. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the detainers population leveraging the multiple identifiers, the ICE analyst would then need to evaluate the individuals within these records against the detentions population to determine those individuals with detainers and detention. Again, since a universal individual identifier does

		not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. Since individuals can have multiple detainers and detentions, calculations are created for each reported SC Match removal record to define the latest detention occurring prior to the detainer being prepared as it relates to the SC Match Removals populations and record the new data Detainer Facility details items.
27		While this item does exist in the ICE database, "detainer threat level" does not exist as it relates to the SC Match Removals population. If the ICE analyst were required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population and determine which of these individuals within these records had a detainer issued (similar to Items 23 and 26). Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. Since individuals can have multiple detainers, calculations are created for each reported SC Match removal record to define the latest detainer prepared prior to the Removals with SC Match and record the new data "detainer threat level" item.
43	Charged with a crime (yes/no) (any charge, not restricted to convictions)	This is a data field that has not been created in the ICE database. If the ICE analyst were required to produce the charge details, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population and build the individual's criminal charge detail records (similar to Items 54 and 55). Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the criminal charge details leveraging the multiple identifiers, the ICE analysts would then need to evaluate the individuals within these records that identify individuals are charged with a crime. The final calculations are created for each reported SC Match removal record to create the new data field, "Charged with a Crime yes/no."
54	Information on every conviction not just the most serious (date of the charge, date of the conviction,	This data record does not exist in the ICE database. If the ICE analyst were required to produce the conviction details, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population and build the individual's criminal charge detail records (similar to Item 43). Since a universal individual identifier does not exist in the ICE

	NCIC code for charge, level of offense (felony, misdemeanor, citation, etc.), sentence received)	database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the criminal charge details leveraging the multiple identifiers, the ICE analysts would then need to evaluate the individuals within these records that identify which charges are convictions. Since individuals can have multiple convictions, calculations would have to be created to determine which convictions occurred prior to the Removal with SC Matches. The calculations are created for each reported SC Match removal record to define the conviction details and record the new data conviction details items.
55	Information on every charge not just the most serious for which a conviction has not occurred (date of charge, current status, NCIC code for charge, level of offense (felony, misdemeanor, citation, etc.)	This data record does not exist in the ICE database. If the ICE analyst were required to produce the charge details, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population and build the individual's criminal charge detail records (similar to Item 54). Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the criminal charge details leveraging the multiple identifiers, the ICE analysts would then need to evaluate the individuals within these records that identify which charges without convictions. Since individuals can have multiple charges, calculations would have to be created to determine which charges occurred prior to the Removal with SC Matches. The calculations are created for each reported SC Match removal record to define the charge details and record new data charge details items.
57	Aggravated felon yes/no	This data record does not exist in the ICE database. While a similar item (Aggravated felon Yes No as it relates to detainers) does exist in IIDS, it does not exist as it relates to the Removal with SC Matches population. Additionally, since records within the Removal with SC Matches population may not have detainers, it does not make sense to relate this field to the Removal with SC Matches population. In response to the original FOIA, ICE performed analysis and created calculations to provide this field at its own discretion. When the posture on performing analysis and creating calculations fields for FOIA changed, this item no longer had context and was no longer produced. ICE then provided "AgFelB" at its own discretion. While this provided field does not reflect the aggravated felon status of an individual, it does reflect something similar as it relates to the Removal with SC Matches population.

		If the ICE analyst were required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population and build the individual's criminal charge detail records (similar to Item 54 and 55). Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the criminal charge details leveraging the multiple identifiers, the ICE analysts would then need to evaluate the individuals within these records that identify which charges without convictions. Since individuals can have multiple charges and convictions within their criminal charge detail records, calculations would have to be created to determine which charges and convictions occurred prior to the Removal with SC Matches. Then, additional calculations would have to be created for each reported SC Match removal record to define the aggravated felon status and record the new data item, "Aggravated Felon Yes No".
60	Latest program code before departure	This data record does not exist in the ICE database. In leu of providing this item, ICE provided "Removal Current Program" (the program associated with the cause encounter of the removal) at its own discretion. While this provided field does not reflect the "latest program code before" the Removal with SC Match, it is provided as an available item similar to the requested item. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population to build the individuals' removal details. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the arrival details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these removals is the latest removal occurring prior to the Removal with SC Matches. Then calculations are created for each reported SC Match removal record to define the latest program and record the new data item, "latest program code before departure."
61	Case category at the time of the latest arrest	This data record does not exist in the ICE database. This field was created and calculated within the ICE Removals population report as part of the Non-Criminal ICE Priorities under the policy memo Morton Memorandum. When this memo was deactivated, this item no longer had context and was no longer produced.

		If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all SC Match removals population records and build the individual's arrest details. Since a universal individual identifier does not exist in the population reports, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the arrest details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these arrests is the latest arrest. Then, the analyst would have to evaluate each arrest record to identify the removal case of that arrest from the removals population. Then calculations are created for each reported SC Match removal record to define the case category and record the new data item, "case category at the time of the latest arrest."
62	Program code at the time of latest arrest	This data record does not exist in the ICE database. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all SC Match removals population records and build the individual's arrest details. Since a universal individual identifier does not exist in the population reports, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the arrest details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these arrests is the latest arrest. Then, calculations are created for each reported SC Match removal record to define the program code of the officer associated with that arrest and record the new data item, "program code at the time of the latest arrest."
63	"Date of latest arrest"	The Jones Supplemental Declaration stated that Requested Item 63 "was in fact, provided in both FOIA submissions." This is a data field that has not been created in the ICE database. In response to the FOIA requests, ICE performed analysis and created calculations within the SC Match Removals population report and provided this field at its own discretion. When the second FOIA submission was provided, the name of the data field was produced as 'Arrest Date' instead of full descriptive name 'date of latest arrest'. ICE further demonstrated going beyond the FOIA law by creating a record with footnote "Please see arrest date for the latest arrest that resulted from an interoperability query and that is associated with the case (63)."

64	Name of the program or area associated with the original arrest or apprehension (criminal alien program, fugitive operations, office of investigations, border patrol operation streamline, other border patrol program, 287(g), etc.	This data record does not exist in the ICE database. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all SC Match removals population records and build the individual's arrest details. Since a universal individual identifier does not exist in the population reports, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the arrest details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these arrests is the earliest arrest. Then, calculations are created for each reported SC Match removal record to define the program code of the officer associated with that arrest and record the new data item, "program at associated with earliest arrest."
65	The apprehension method associated with the latest apprehension	This data record does not exist in the ICE database. ICE was able to provide "date of latest arrest/arrest date" as it relates to the Removal with SC Match population because they had already created the analysis and calculations. However, additional arrest details such as apprehension method were not included in those analysis and calculations. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all SC Match removals population records and build the individual's arrest details. Since a universal individual identifier does not exist in the population reports, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the arrest details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these arrests is the latest arrest. Then, calculations are created for each reported SC Match removal record to define the apprehension method associated with that arrest and record the new data item, "apprehension method associated with latest arrest."
66	Ordered removed by court, where order has become final (yes/no)	ICE does not track the difference between removal orders *issued by the court* or *administratively* (see Item 68) in either FOIA. ICE has provided the "Final Order Date" data field in both FOIA submissions so that Plaintiffs have the underlying details for final orders issued. Additionally, ICE created a record for Plaintiffs' by providing a footnote explaining further that the type of final order is

		not tracked. In the second FOIA response, ICE provided this footnote: *"…Final Order Date has been provided. Please note differentiation between court- and administrative-orders is not tracked."*
68	Administratively ordered removed, where order has become final (Yes/no)	Similar to Item 66, ICE between removal orders *issued by the court* or *administratively* (see Item 68) in either FOIA. ICE has provided the "Final Order Date" data field in both FOIA submissions so that Plaintiffs have the underlying details for final orders issued. Additionally, ICE created a record for Plaintiffs' by providing a footnote explaining further that the type of final order is not tracked. *"…Final Order Date has been provided. Please note differentiation between court- and administrative-orders is not tracked."*
70	Reinstatement of prior removal order (yes/no)	This item does not exist in the ICE database. For this item, ICE created a new data field, "Reinstated Final Order" based upon criteria from other underlying data fields in the SC Match Removals population report for the first FOIA submission. However, ICE did create the following footnote record to Plaintiffs in the second FOIA submission stating, "The requested items 12 through 16 are contained within existing case information, not singular checkboxes or yes/no fields….for "*reinstatement of previous removal order" please refer to cases with a Case Category of 16*…" ICE provided the underlying data fields that do exist in the ICE database, "Case Category" and "Final Order Date" for each SC Removal population record. Plaintiffs' have the underlying data to create their own calculations and analysis.
71	Date of latest reinstatement of prior removal order	I would like to reinforce the Jones Supplemental Declaration statement that Requested Item 71 "date of latest reinstatement of prior removal order" was in fact, provided in both FOIA submissions. This is a data field that has not been created in the ICE database. In response to the original FOIA, ICE performed analysis and created calculations to provide this field at its own discretion. When the posture on performing analysis and creating calculation fields for FOIA changed, ICE discontinued creating the new data field, "Date of Reinstatement of Prior Removal" as it was beyond the scope of FOIA. In response to the second FOIA, ICE choose to create the following footnote record to Plaintiffs in the second FOIA stating, "The requested items 12 through 16 are contained within existing case information, not singular checkboxes or yes/no fields….. for "reinstatement of previous removal order" please refer to cases with a Case Category of 16 .." in addition to providing the underlying data fields that do exist in

		the ICE database, "Case Category" and "Final Order Date," which provide Plaintiffs' with means to perform their own calculations and analysis. If the ICE analyst is required to produce the requested item, the analyst would have to create a new record through analysis and calculations. The analyst would be required to evaluate all the records in SC Match Removals population to build the individuals' removal details. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the removal details leveraging the multiple identifiers, the ICE analysts would then need to evaluate the removals within these records that satisfy criteria qualifying as reinstatement of removal occurring prior to the SC Match Removals population. Then calculations are created for each reported SC Match removal record to define the date of the prior removal and record the new data item, "Date of Reinstatement of Prior Removal."
74	Prior removal (yes/no)	This item does not exist in the ICE database and was discussed in Item 18 within the context of "Non-Criminal ICE Priorities." If the ICE analyst is required to produce the requested item "Prior Removal Yes/No," the analyst would have to create a new record with analysis and calculations. To create this new data field, "Prior Removal Yes/No" for all the SC Match Removal population records in the report, the analyst would be required to evaluate all SC Match removals population records and build the individual's removal details. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the removal details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these removals occur prior to the departed date for the Removal with SC Matches. Then, calculations are created for each reported SC Match removal record to define the prior removal status and record the new data item, "Prior Removal Yes/No."
75	Date of latest prior removal	This data record does not exist in the ICE database. This field was created and calculated within the ICE Removals population report as part of the Non-Criminal ICE Priorities under the policy memo Morton Memorandum. When this memo expired, this item no longer had context and was no longer produced. If the ICE analyst is required to produce the requested item, "Date of latest Prior Removal" the analyst would have to create a new

		record through analysis and calculations as in Item 74, but record further details and calculations. The analyst would be required to evaluate all SC Match removals population records and build the individual's removal details. Since a universal individual identifier does not exist in the ICE database, multiple identifiers would have to be evaluated in this analysis. After these records are "matched" against the removal details leveraging the multiple identifiers, the ICE analysts would then need to create calculations to determine which of these removals is the latest removal occurring prior to the Removal with SC Matches. Then, calculations are created for each reported SC Match removal record to define the removal date associated with that arrest and record the new data item, "Date of latest prior removal."

EXHIBIT B

THE MORTON MEMO

Policy Number: 10072.1
FEA Number: 601-14

Office of the Director

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

MAR 0 2 2011

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Director

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.[1]

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.[2]

- Level 1 offenders: aliens convicted of "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act,[3] or two or more crimes each punishable by more than one year, commonly referred to as "felonies";
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as "misdemeanors"; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.[4]

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as "catch and release," the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

- fugitive aliens, in descending priority as follows:[5]

---

[1] This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

[2] The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

[3] As the definition of "aggravated felony" includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

[4] Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

[5] Some fugitives may fall into both this priority and priority 1.

  - fugitive aliens who pose a danger to national security;
  - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - fugitive aliens with criminal convictions other than a violent crime;
  - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
  - previously removed aliens who pose a danger to national security;
  - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - previously removed aliens with criminal convictions other than a violent crime;
  - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.[6]

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls

[6] ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. *See* Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

F. No Private Right Statement[7]

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

[7] This statement was added to ICE Policy 10072.1, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" on February 7, 2011. The policy contained in this memorandum has not been altered or changed.

EXHIBIT C

THE JOHNSON MEMO

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

Homeland Security

November 20, 2014

MEMORANDUM FOR: Thomas S. Winkowski
Acting Director
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

Leon Rodriguez
Director
U.S. Citizenship and Immigration Services

Alan D. Bersin
Acting Assistant Secretary for Policy

FROM: Jeh Charles Johnson
Secretary

SUBJECT: **Policies for the Apprehension, Detention and Removal of Undocumented Immigrants**

This memorandum reflects new policies for the apprehension, detention, and removal of aliens in this country. This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). This memorandum should inform enforcement and removal activity, detention decisions, budget requests and execution, and strategic planning.

In general, our enforcement and removal policies should continue to prioritize threats to national security, public safety, and border security. The intent of this new policy is to provide clearer and more effective guidance in the pursuit of those priorities. To promote public confidence in our enforcement activities, I am also directing herein greater transparency in the annual reporting of our removal statistics, to include data that tracks the priorities outlined below.

The Department of Homeland Security (DHS) and its immigration components-CBP, ICE, and USCIS-are responsible for enforcing the nation's immigration laws. Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. And, in the exercise of that discretion, DHS can and should develop smart enforcement priorities, and ensure that use of its limited resources is devoted to the pursuit of those priorities. DHS's enforcement priorities are, have been, and will continue to be national security, border security, and public safety. DHS personnel are directed to prioritize the use of enforcement personnel, detention space, and removal assets accordingly.

In the immigration context, prosecutorial discretion should apply not only to the decision to issue, serve, file, or cancel a Notice to Appear, but also to a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action, parole, or a stay of removal instead of pursuing removal in a case. While DHS may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. Thus, DHS personnel are expected to exercise discretion and pursue these priorities at all stages of the enforcement process-from the earliest investigative stage to enforcing final orders of removal-subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position.

Except as noted below, the following memoranda are hereby rescinded and superseded: John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,* March 2, 2011; John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens,* June 17, 2011; Peter Vincent, *Case-by-Case Review of Incoming and Certain Pending Cases,* November 17, 2011; *Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems,* December 21, 2012; *National Fugitive Operations Program: Priorities, Goals, and Expectations,* December 8, 2009.

A. Civil Immigration Enforcement Priorities

The following shall constitute the Department's civil immigration enforcement priorities:

Priority 1 (threats to national security, border security, and public safety)

Aliens described in this priority represent the highest priority to which enforcement resources should be directed:

(a) aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

(b) aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;

(c) aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;

(d) aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and

(e) aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the *Immigration and Nationality Act* at the time of the conviction.

The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

Priority 2 (misdemeanants and new immigration violators)

Aliens described in this priority, who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. Resources should be dedicated accordingly to the removal of the following:

(a) aliens convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element

was the alien's immigration status, provided the offenses arise out of three separate incidents;

(b) aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence;[1] sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence);

(c) aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014; and

(d) aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

These aliens should be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or users Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.

Priority 3 (other immigration violations)

Priority 3 aliens are those who have been issued a final order of removal[2] on or after January 1, 2014. Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly to aliens in this priority. Priority 3 aliens should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

---

[1] In evaluating whether the offense is a significant misdemeanor involving ..domestic violence," careful consideration should be given to whether the convicted alien was also the victim of domestic violence; if so, this should be a mitigating factor. *See generally,* John Morton, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,* June 17, 2011.

[2] For present purposes, "final order" is defined as it is in 8 C.F.R. § 1241.1.

B. Apprehension, Detention, and Removal of Other Aliens Unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein. However, resources should be dedicated, to the greatest degree possible, to the removal of aliens described in the priorities set forth above, commensurate with the level of prioritization identified. Immigration officers and attorneys may pursue removal of an alien not identified as a priority herein, provided, in the judgment of an ICE Field Office Director, removing such an alien would serve an important federal interest.

C. Detention

As a general rule, DHS detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirement of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, DHS officers or special agents must obtain approval from the ICE Field Office Director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Exercising Prosecutorial Discretion

Section A, above, requires DHS personnel to exercise discretion based on individual circumstances. As noted above, aliens in Priority 1 must be prioritized for removal unless they qualify for asylum or other form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Likewise, aliens in Priority 2 should be removed unless they qualify for asylum or other forms of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or USCIS Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Similarly, aliens in Priority 3 should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the

integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

In making such judgments, DHS personnel should consider factors such as: extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative. These factors are not intended to be dispositive nor is this list intended to be exhaustive. Decisions should be based on the totality of the circumstances.

E. Implementation

The revised guidance shall be effective on January 5, 2015. Implementing training and guidance will be provided to the workforce prior to the effective date. The revised guidance in this memorandum applies only to aliens encountered or apprehended on or after the effective date, and aliens detained, in removal proceedings, or subject to removal orders who have not been removed from the United States as of the effective date. Nothing in this guidance is intended to modify USCIS Notice to Appear policies, which remain in force and effect to the extent they are not inconsistent with this memorandum.

F. Data

By this memorandum I am directing the Office of Immigration Statistics to create the capability to collect, maintain, and report to the Secretary data reflecting the numbers of those apprehended, removed, returned, or otherwise repatriated by any component of DHS and to report that data in accordance with the priorities set forth above. I direct CBP, ICE, and USCIS to cooperate in this effort. I intend for this data to be part of the package of data released by DHS to the public annually.

G. No Private Right Statement

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

EXHIBIT D

REGULAR FOIA REQUESTS FROM PLAINTIFFS

- Case by case information on apprehensions of individuals by fugitive operation teams
- Case by case information on apprehension of individuals with outstanding removal orders
- Case by case information on apprehension of individuals who at the time of apprehension did not have outstanding removal orders
- Case by case information on apprehension of individuals as a result of targeted enforcement action, raid or round-up designed to take into custody individuals believed to be deportable
- Case by case information on all apprehensions
- Case by case information on particular apprehension fields related to apprehension method
- Case-by-case, detention facility-by-detention facility, anonymous data on all individuals detained
- Case by case information on individuals who were in ICE custody at any point
- Case by case information on individuals who were released from ICE custody
- Alien-by-alien, detention-facility-by-detention-facility, anonymous data covering all individuals who were detained through current date
- requesting the latest alien-by-alien, detention-facility-by-detention-facility, anonymous data covering individuals who were in ICE custody at any point during X dates
- Alien-by-alien, detention-facility-by-detention-facility, anonymous data covering all individuals who were released from ICE custody from the beginning of FY 2012 through current date.
- Alien-by-alien, detention-facility-by-detention-facility, anonymous data covering all individuals who initially entered ICE custody from the beginning of FY 2012 through current date
- Person by person information on removals covering FY 2008 through current date
- Case by case information on ICE removals (including returns) covering FY 2015 through current date
- Person by person information on all deportations covering FY 2008 through current date
- Case by case information on ICE interior removals (including returns) covering

FY 2015 through current date

- Case by case information on ICE removals and returns covering FY 2015 through current date
- Case by case information concerning each outstanding removal orders where the individual has not yet been removed as of the current date
- Case by case information on each individual who was served a Form I-122 or I-221 or I-862 or I-863, a “Notice to Appear” or “OSC” [“Forms”] during FY 2015 through current date
- Detainer-by-detainer data covering those detainers which were honored by the jurisdiction during FY 2015 through current date
- Detainer-by-detainer data covering those detainers where ICE did NOT take the individual into custody for reasons other than a jurisdiction’s refusal to honor the detainer request. The time period this request covers is FY 2015 through current date
- Data concerning detainer and notice requests issued or prepared for FY 2015 through current date
- A field of information whose heading indicated that this recorded the "County" location for the law enforcement agency submitting a fingerprint record. copy of the entries for these counties, along with the values recorded for any additional fields of data that contain information on location, a date, any information concerning the law enforcement agency submitting the fingerprint record, or contain values which were generated as computer assigned sequence numbers. Our request covers all submissions that resulted in a match -- not simply the subset that resulted in a removal -- between the beginning of FY 2009 and current date