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Written Statement
For a Hearing on

"Immigration and Customs Enforcement Interrogation, Detention and Removal"

Submitted to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the House Judiciary Committee

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Introduction

The American Civil Liberties Union ("ACLU") commends the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law for conducting an oversight hearing of interrogation, detention, and removal practices conducted by the Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") Section. We urge the Subcommittee to initiate a rigorous oversight process to ensure that ICE is held accountable to Congress and the public for its enforcement practices. The following written statement, submitted on behalf of the ACLU, will address a range of problematic ICE practices at the interrogation, detention, and removal stages.[1]

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of hundreds of thousands of members, several national projects, and 53 affiliates nationwide. The ACLU was born during the "Red Scare" in 1920, a time when then U.S. Attorney General A. Mitchell Palmer ordered immigrants summarily detained and deported because of their political views. Since its founding, the ACLU has consistently defended and protected immigrants' rights. The ACLU has the largest litigation program in the country dedicated to defending the civil and constitutional rights of immigrants. Through a comprehensive advocacy program including litigation, public education, and legislative and administrative advocacy, the ACLU is at the forefront of major struggles securing immigrants' rights including legal challenges to ICE's unconstitutional laws and practices.

People charged with being removable are entitled to due process including a hearing before an immigration judge and review by a federal court. Among the specific rights that apply in removal proceedings are the right to be represented by counsel (at no expense to the government); to receive reasonable notice of the charges and of the time and place of the hearing; to have a reasonable opportunity to examine adverse evidence and witnesses; to present favorable evidence; to receive competent language interpretation; and to have the government prove its case by clear, convincing, and unequivocal evidence.

ICE has systematically chipped away at these core constitutional protections by pursuing an unprecedented campaign of interrogations, detention, and removal of immigrants. Since 2006, with the initiation of Operation Return to Sender, ICE has aggressively ramped up punitive deportation-only initiatives including:

- large-scale, mass raids in worksites and homes;
- dramatic increase in detention beds;
- expansion of federal immigration enforcement to include state and local police;
- denial of access to counsel for people facing removal from the U.S.;
- mass transfers of detainees to facilities hundreds of miles from their homes;
- incarceration of detainees in unsanitary inhumane conditions;

[1] This written statement is submitted in conjunction with the written and oral testimony of Mark Rosenbaum of the ACLU of Southern California. The testimony of Mr. Rosenbaum and James Brosnahan of Morrison & Foerster focused solely on the experiences of their client Pedro Guzman, a U.S. citizen born in California who was illegally deported to Mexico in 2007.

- denial of medical and dental care to detainees, including those with serious, life-threatening conditions.

I. Unprecedented large-scale round-up raids

Since the launch of Operation Return to Sender in 2006, ICE has engaged in an unprecedented round of raids, both at worksites and in homes, hitting many regions of the country. Below is a snapshot of just a few of the regions that have been hard hit by large-scale immigration raids:

Swift raids: On December 12, 2006, six Swift & Company facilities located in Greeley, Colorado; Cactus, Texas; Grand Island, Nebraska; Hyrum, Utah; Marshalltown, Iowa and Worthington, Minnesota were raided by ICE. ICE estimates that approximately 1,282 Swift employees were detained on immigration violations, and 65 were charged with criminal violations related to identity theft.

New Bedford, Massachusetts raid: On March 6, 2007, the New Bedford community was devastated by one of the nation's largest immigration raids, resulting in the arrest of 361 workers of the Michael Bianco factory. All but a few were detained, and 206 were transferred to detention facilities in Texas, hundreds of miles from their families, homes, and counsel. An estimated 100 to 200 children were separated from their parents. In response, the ACLU and a coalition of groups filed a lawsuit, challenging ICE's misconduct during the raid.

Van Nuys, California raid: On February 7, 2008, more than 100 ICE agents raided a printer supply manufacturer in the San Fernando Valley, taking into custody over 130 employees on immigration-related charges and arresting eight on federal criminal charges. Following the raid, ICE officials denied the workers access to counsel during ICE's interrogation of the workers, even after the attorneys had filed Form G-28s Notice of Entry of Appearance. The ACLU, the National Immigration Law Center, and the National Lawyers Guild recently filed a lawsuit on behalf of the workers, challenging ICE's denial of access to counsel.

Long Island suburbs raids: In September 2007 teams of 6 to10 armed ICE agents raided the homes of Latinos without court-issued search warrants. The raids were conducted during late night or pre-dawn hours. ICE agents pounded on and/or broke down doors and windows while screaming loudly at the inhabitants inside the house. ICE agents represented themselves as "police" and bullied or forced their way into people's homes without obtaining their consent to enter. The ACLU filed a lawsuit challenging that ICE violated the immigrants' Fourth amendment rights by entering and searching their homes without valid warrants or voluntary consent and in the absence of probable cause and exigent circumstances.

Georgia raids: In September 2006 armed federal agents searched and entered private homes without warrants and detained and interrogated people solely on the basis that they looked "Mexican." These raids swept so broadly that they covered homes where all the residents are U.S. citizens. In addition, the agents used excessive and wholly unnecessary force and destroyed private property without cause. The ACLU filed a class action suit on behalf of U.S. citizens who "appear Mexican," challenging that the federal agents violated the citizens' Fourth amendment rights by entering and searching homes without valid warrants or voluntary consent

and in the absence of probable cause or exigent circumstances. The ACLU suit further challenges that the federal agents violated the citizens' Fifth amendment rights by targeting them on the basis of race/ethnicity and/or national origin in violation of the Equal Protection Clause.

DHS Secretary Chertoff has claimed that the ICE enforcement operations launched in 2006 are aimed at capturing "fugitive aliens," with the highest priority on apprehending individuals who pose a threat to national security or the community and whose criminal records include violent crimes. However, 94 percent of those arrested by the San Francisco Fugitive Operations Team between January 1 and March 31, 2007, did not fit within the category of "criminal fugitives." A majority were not even subject to outstanding removal orders according to a letter from the acting ICE director to Congresswoman Anna Eshoo. These numbers indicate that ICE's raids, though purportedly targeted at "fugitive aliens," in reality have swept so broadly that the vast majority of people arrested under Operation Return to Sender were innocent bystanders.

Among the thousands of people who have been rounded up by ICE under the auspices of Operation Return to Sender is Kebin Reyes, six years old at the time of his arrest in March 2007. A native-born U.S. citizen, Kebin was sleeping when ICE officers stormed into his home. Kebin's father Noe told the ICE agents that Kebin is a U.S. citizen, and asked permission to call a relative to care for Kebin while Noe was detained. The ICE agents refused. Instead they made Noe wake up Kebin, who watched as officers handcuffed his father, and then took father and son to the ICE booking station in San Francisco. Kebin spent 10 hours locked in a room with his father. ICE agents never allowed Noe to call someone to pick up Kebin. It was only when a relative heard from neighbors what happened and came to the ICE facility that Kebin was able to leave.

Like Kebin, children all over the country have been traumatized by seeing their parents swept up and taken away or by being left behind without care after school when parents have been arrested without notice. After the raids in which Kebin was arrested, the San Rafael City Schools Board of Education wrote to Congresswoman Lynn Woolsey, reporting, "The ICE raids sent our schools into a state of emergency. Many students were and remain distracted from school work as they worry about their loved ones. Most of these children are, by and large, American-born, full-fledged citizens with a right to a quality education and to live in this country for the rest of their lives." To vindicate Kebin's rights under the Fourth Amendment and to prevent future abuses, the ACLU, the Lawyers' Committee for Civil Rights, and the law firm of Coblentz Patch Duffy & Bass filed a lawsuit against ICE in April 2007.

Just as troubling as the sweeping breadth of recent raids are accompanying reports of rampant constitutional violations. Both DHS Secretary Chertoff and ICE Assistant Secretary Myers have publicly stated that administrative warrants cannot be used by ICE agents to enter people's homes. However, in practice, ICE agents have been entering people's homes, even without consent. ICE's response that people are voluntarily consenting to questioning is insupportable when considering that ICE agents, fully armed and identifying themselves as "police," are banging on people's doors and windows in the pre-dawn hours as the inhabitants are sleeping.

Sweeping and overbroad raids are terrorizing immigrant communities across the U.S. while doing little, if anything, to improve the safety and security of the U.S.

Recommendations: The ACLU urges that ICE:

- Halt large-scale, pre-dawn raids, both at worksites and in homes;
- Refrain from investigating and/or detaining family members, roommates, housemates, neighbors, and other bystanders, without individualized suspicion.
- Clarify standards for determining "consent"
- Not identify themselves as "police."
- Not question any persons represented by counsel without counsel present during the interview.

II. Expansion of federal immigration enforcement to include state and local police

In recent years ICE has entered into an increasing number of 287(g) agreements with states and localities. Under 287(g) agreements, state and local law enforcement can identify, process, and detain immigrants whom they encounter during their daily law-enforcement activity, including traffic stops. The ACLU has challenged such 287(g) agreements on the basis that state and local law enforcement lack the inherent authority to arrest individuals for civil immigration violations. Enforcement of federal immigration laws is an exclusive federal function based on Congress's plenary powers to regulate immigration.

For example, the ACLU has sued Danbury, Connecticut for arresting 11 immigrants in September 2006 in a public park in an undercover immigration sting operation at a public park. A Danbury police officer disguised himself as a contractor/employer looking to hire day laborers. The ACLU lawsuit challenges the arrests on civil immigration violations on the basis of failure to have valid warrants, lack of probable cause, or lack of reason to believe that the detained were engaging in unlawful activity. Additionally, the suit challenges Danbury's immigration enforcement activities on the grounds that federal law preempts state or local police from civil immigration enforcement activity, thereby leaving Danbury without appropriate authority cognizable under 8 U.S.C. § 1357. The case also challenges the detentions on the basis on race, ethnicity, perceived national origin, asserting that the 11 immigrants were subjected to selective law enforcement arising out of a malicious and bad faith intent to drive them out of Danbury.

Supporters of 287(g) agreements often have little or no understanding of immigration law and its complexities. Some proponents envision a fictional database system where a local police officer can enter a person's name in the computer and immediately get an answer from ICE that the person is "legal" or "illegal." In reality, determining an individual's immigration status requires extensive training and expertise in immigration law and procedures, and thus is simply not suitable for state and local law enforcement.

Section 287(g) supporters fail to understand that immigration status is complex, fluid, and very case-specific. For example, many people are in the U.S. pursuant to a non-immigrant visa for employment, study, investment, travel, and other reasons. Most of them are typically admitted to

the U.S. for a certain period of time, but many can then request to extend their stay or to change to a different status with the DHS Citizenship Immigration Services ("CIS"). During the pendency of their application, they may have no documentation that proves they are in current lawful status even though CIS is aware of their presence in the U.S. and permits them to remain here until a decision is made on their application. Many people in the U.S. are in the midst of applying for permanent resident status, sponsored by a family member or employer. Others are seeking refugee protection. Others have been granted special status based on being a victim of family abuse, trafficking in persons, or a violent crime. Still others are in immigration removal proceedings but are applying for relief with an immigration judge. Still others have been denied relief by an immigration judge but are appealing their removal orders to the Board of Immigration Appeals. Finally, it is not uncommon for a single individual to be pursuing simultaneously multiple forms of immigration relief. These are just a few of the many permutations that could apply to a single individual who is arrested by a local police officer.

The practice of deputizing state and local police to enforce federal immigration laws has proven to be highly ineffective and dangerous. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up in Mexico – a country where he had never lived – forced to eat out of trash cans and bathe in rivers. His mother, also a U.S. citizen, took leave from her Jack in the Box job to travel to Mexico in search of her son. She combed the jails and morgues of northern Mexico in search of her son. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. To vindicate Mr. Guzman's rights and to prevent future DHS errors and abuses, the ACLU and the law firm of Morrison & Foerster filed a lawsuit against ICE last year.

In addition, deputizing state and local law enforcement to become deportation agents pushes immigrant communities farther and farther away from police protection. Fearful that a call to the police will result in deportation, immigrant victims of crime, including battered women, are choosing not to summon the police, thereby subjecting themselves and their children to further violence. Ultimately this dynamic jeopardizes all segments of society, not just immigrant communities. Police rely heavily on tips from witnesses or people familiar with suspects. If the police are cut off from these sources of information, they will encounter greater difficulties in apprehending suspects and solving criminal cases.

Finally, charging state and local law enforcement with the responsibility of enforcing immigration laws opens the door for law enforcement to engage in racial profiling. Latinos, Asians, and other immigrants will be at risk of being stopped, arrested, interrogated, and detained by state and local law enforcement for no reason other than looking or sounding "foreign."

Recommendations: The ACLU urges that ICE:

- Halt entering into future 287(g) agreements with states and localities;
- Cease recognition and compliance with 287(g) agreements currently in operation.

III. Growth and expansion of inhumane immigration detention

Immigration detention has more than quadrupled over the past 15 years. Each year Congress allocates more money to ICE for detention bed space and more personnel. The vast majority of detainees have no counsel to represent them in bond matters or immigration removal proceedings. Free or low-cost immigration legal services are completely absent in many regions. Frustrated by the unending incarceration and the lack of assistance in navigating the immigration system, many detainees – even those with legitimate immigration applications – simply give up and are deported. Their stories are the product of a failed immigration system – a system that purports to be premised on due process, but in actuality pushes people out of the U.S. by subjecting them to long periods of incarceration in unsanitary inhumane conditions, without access to appointed counsel.

These due process violations have been exacerbated by ICE's growing practice of transferring detainees to facilities far from their location of arrest, often hundreds of miles away from their homes and workplaces. For example, in October 2007 ICE closed down the San Pedro detention facility in Southern California and subsequently transferred over 420 detainees to facilities in Texas, Arizona, Washington State, and other parts of California. Prior to transferring the detainees to remote facilities, ICE did not notify the detainees' counsel. In many cases an immigration judge had already commenced merits hearings on the detainees' cases. The mass transfer of detainees out of state has resulted in unnecessary prolonged detention, with many detainees forced to start their cases all over again before a new immigration judge in a different jurisdiction.

In addition to challenging the constitutionality of mandatory detention and prolonged detention, the ACLU has been at the forefront of challenging ICE's inhumane unsanitary conditions of confinement including ICE's policy of family detention which resulted in the prolonged detention of families with children. In 2007 the ACLU and the University of Texas Law School sued on behalf of children incarcerated at the Hutto, Texas prison as their parents were pursuing bona fide asylum claims. At the time the lawsuits were filed, the children were receiving only one hour of education per day, were required to wear prison uniforms, were held in jail cells for much of the day, and were often disciplined by guards with threats of separation from their parents. In August 2007 the parties reached a settlement which mandated major improvements in conditions at Hutto. Although those families represented by the ACLU and University of Texas were eventually released from Hutto, other families with children are being detained in Hutto and other facilities.

In 2007 the ACLU filed a class action lawsuit against a Corrections Corporation of America facility in San Diego where detainees were incarcerated in grossly overcrowded quarters. A separate ACLU lawsuit against the San Diego facility challenged the inadequate medical and mental health care afforded to detainees. One of the detainees whose serious medical needs was grossly neglected was Francisco Castaneda, who testified before this Subcommittee on October 4, 2007, at a hearing on "Detention and Removal: Immigration Detainee Medical Care." Detained for eight months in the San Diego facility, Mr. Castaneda suffered extremely painful bleeding and discharge from his penis. Numerous health care professionals—both on-site and off-site—stated that Mr. Castaneda required a biopsy to determine whether he was suffering

from penile cancer. But the biopsy was never authorized. Instead of diagnosing and treating his serious condition, medical professionals provided Mr. Castaneda with pain medication and an order for clean boxer shorts on a daily basis, to replace the boxer shorts that he regularly soiled with blood and discharge. Only after relentless advocacy by the ACLU was Mr. Castaneda released from ICE custody. Mr. Castaneda promptly received a biopsy at the emergency room and learned that he had developed metastatic penile cancer that had already spread to other parts of his body. In February 2008, just four months after testifying before this Subcommittee, Mr. Castaneda passed away, succumbing to the cancer.

Recommendations for Congress:

- Congress should strengthen the long-established statutory right to counsel for all people facing removal from the U.S. by assuring access to appointed counsel.
- Congress should mandate that no detainee be housed in a facility that fails to comply with the detention standards. ICE shall codify, through the promulgation of regulations, national detention standards that are consistent with internationally recognized human rights principles.
- Congress should require that all immigration deaths in detention—including deaths at SPCs, CDFs, and IGSAs—be publicly reported by ICE to Congress on a regular basis.

Recommendations for ICE oversight:

- ICE shall develop non-penal alternatives to detention to decrease the number of people detained and/or subject to ICE supervision, especially with respect to asylum seekers, torture survivors, victims of human trafficking, juveniles, families with children, sole caregivers, survivors of domestic abuse and other violent crimes, and long-term permanent residents.
- ICE shall ensure that all detainees be given a constitutionally adequate custody review before an immigration judge or impartial adjudicator. In cases where ICE seeks to detain an individual beyond six months, ICE shall bear the burden of proving by clear and convincing evidence that prolonged detention is justified. Where ICE cannot make its burden, ICE shall release such detainees on bond with reasonable conditions.
- ICE shall not transfer detainees to remote facilities where a Form G-28 Notice of Entry of Appearance has been filed on behalf of a detainee, where the detainee has requested a bond hearing, where the detainee has filed an application with the immigration court, and/or when an immigration judge has conducted a merits hearing in the detainee's case.
- ICE shall ensure the transfer of complete medical records along with detainees so that receiving facilities have all of the information needed to ensure prompt, necessary treatment.

The ACLU appreciates the opportunity to submit this written statement and urges the Subcommittee to exercise meaningful oversight over ICE by implementing the proposed recommendations.