



# U.S. Immigration and Customs Enforcement

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**STATEMENT**

**OF**

**GARY E. MEAD  
DEPUTY DIRECTOR,  
OFFICE OF DETENTION AND REMOVAL OPERATIONS**

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY**

**REGARDING A HEARING ON**

**“PROBLEMS WITH ICE INTERROGATION, DETENTION AND  
REMOVAL PROCEDURES”**

**BEFORE THE**

**SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,  
BORDER SECURITY AND INTERNATIONAL LAW**

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## **INTRODUCTION**

Good afternoon, Chairwoman Lofgren, and distinguished Members of the Subcommittee. My name is Gary Mead, and I am the Deputy Director of the Office of Detention and Removal Operations (DRO) at U.S. Immigration and Customs Enforcement (ICE). It is my privilege to appear before you to discuss the enforcement mission of ICE as well as the removal process.

Among its many responsibilities, ICE promotes public safety and national security by ensuring the safe and efficient departure from the United States of all removable aliens through the fair enforcement of the nation's immigration laws. As such, among its core missions are the apprehension, detention, and removal of inadmissible and deportable aliens, the management of non-detained aliens as their cases progress through immigration proceedings, and the enforcement of orders of removal. In carrying out these missions, ICE officers are ever mindful of their sworn duty to protect the rights of all individuals to the best of their abilities.

## **DISCUSSION**

In order to carry out these missions, ICE officers must interview hundreds of thousands of individuals that are encountered annually within the United States to determine citizenship and immigration status. ICE uses its authority to question individuals regarding their citizenship and legal right to be in the United States with the utmost professionalism and respect for individual rights.

Over the last four years more than a million people have passed through ICE detention facilities. During Fiscal Year 2007 alone, more than 322,000 illegal aliens passed through ICE detention

facilities and approximately 280,000 of those were removed from the United States. At no time did ICE knowingly or willfully place a U.S. citizen in detention. ICE immediately releases individuals who are U.S. citizens or who may have legitimate claims to derivative U.S. citizenship. Nevertheless, it should be noted that false assertion of U.S. citizenship is frequently used in order to evade deportation. Unfortunately, it is common for ICE's law enforcement personnel to encounter individuals who make false claims about their immigration status or citizenship. For example, in FY 2007, investigators made more than 1531 criminal arrests in cases involving document or benefit fraud, including those involving individuals who used genuine but fraudulently obtained green cards, birth certificates, social security cards, and other identity documents.

Upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for inspection or examination at a designated Port of Entry. At the border, it is the arriving applicant who bears the burden of proving his or her U.S. citizenship. 8 U.S.C. § 1357(b); 8 C.F.R. § 235.1(b). If an arriving applicant claims U.S. citizenship, he or she must present a valid U.S. passport upon entry (if a passport is required), and prove his or her claim to the Customs and Border Protection (CBP) officer's satisfaction. If an applicant for admission fails to satisfy the examining officer of his or her U.S. citizenship, he or she shall thereafter be inspected as an alien.

In the interior of the United States, ICE bears the burden to prove that an individual is not a U.S. citizen when an individual is detained by an immigration officer. ICE may engage in consensual encounters like any law enforcement officer. Once an individual provides a credible response

that he/she is a U.S. citizen, questioning regarding alienage must stop. See, e.g., Immigration and Naturalization Service v. Delgado, 466 U.S. 210, 217, 219-220 (1984); 8 U.S.C. § 1357(b); 8 C.F.R. § 287.8(b). If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States. If a person refuses to speak to the officer, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual is not detained and is permitted to leave.

### **ICE detainees who may have claims of U.S. citizenship**

For cases involving detainees in ICE custody who are pending removal from the United States, ICE actively works to ensure any claims of U.S. citizenship are timely adjudicated. If a detainee makes a credible claim to U.S. citizenship, the ICE officer will ask the detainee whether he or she can produce evidence. In addition, the officer will review the detainee's file and query all relevant databases to locate information to support the detainee's claim. This file review is necessary, as the majority of ICE detainees encountered rarely possess documentary evidence of citizenship or nationality. Following the review, if the individual is identified as a U.S. citizen, he or she will be released immediately.

If the ICE officer believes the detainee has a valid claim to derivative U.S. citizenship, the ICE officer will make a recommendation to his or her supervisor concerning custody. In that recommendation, the ICE officer will balance the detainee's claim to citizenship against other factors, such as the use of fraud, threat to the community, and criminal history. If the recommendation favors release and is approved, the detainee is released from ICE custody and

told to file an application for a certificate of citizenship with U. S. Citizenship and Immigrations Services (USCIS).

If the individual is classified as a “mandatory detention” case or poses a threat to public safety or national security or his or her claim to U.S. citizenship is found not to be credible based upon review of the file, investigative tools, and interviews, the detainee will remain in custody. Even in this circumstance, ICE encourages the alien to file an application for a certificate of citizenship with USCIS for a prompt adjudication. In many cases, ICE will forward a completed application to CIS with a request that the application be adjudicated expeditiously. Removal proceedings will proceed during this process, but the detainee may concurrently pursue a citizenship claim with the immigration courts and USCIS.

It should be noted that there have been instances of U.S. citizens who claim to be illegal aliens. This is especially true among criminals who are currently incarcerated in an effort to avoid further incarceration. In addition, ICE has also encountered individuals who believed they were not U.S. citizens who ICE has determined to have a valid claim to U.S. citizenship.

In the highly unlikely event where an ICE officer determines that a U.S. citizen has been erroneously removed, ICE would take appropriate action to locate the citizen and ensure immediate repatriation to the United States at no expense to the citizen.

Aside from the safeguards noted above, there is also another incidental safeguard that bears mentioning. With the exception of Mexico and Canada, all other countries must issue a travel document for every individual returned who does not possess a valid passport from that country.

As part of the travel document process, which often includes a consular interview, foreign governments must determine to their satisfaction that the person being returned is a citizen of their country. This additional process makes the removal of a U.S. citizen exceptionally rare.

### **Allegations against ICE**

A recent news article made reference to an unpublished study by the Vera Institute of Justice, a New York nonprofit organization, that allegedly identified 125 people in immigration detention centers across the nation who immigration lawyers believed had valid U.S. citizenship claims. ICE has been unable to obtain a copy of the alleged study, so it is not possible for me to comment on its contents. However, individuals in ICE custody who believe they have a valid claim to U.S. citizenship would only be in custody if ICE has not been able to validate the claim, as mentioned previously. In these cases, the aliens can pursue their claims during their immigration trial before an Immigration Judge, within the Department of Justice. The following are summaries of the three cases that were mentioned in this article:

Pedro Guzman-Carbajal was granted voluntary return to Mexico on May 11, 2007. Prior to his return, Mr. Guzman claimed that he was a citizen and national of Mexico born in Nayarit, Mexico. Mr. Guzman further requested that he be Voluntarily Returned to Mexico in lieu of seeing an Immigration Judge. In October 2000, Mr. Guzman was arrested and convicted of Possession of a Controlled Substance for Sale. He was sentenced thirty-six months probation and one hundred sixty-five (165) days in jail. After Mr. Guzman was returned to Mexico, his family claimed he was a U.S. citizen born in Los Angeles, CA. Personnel from the Los Angeles Field Office obtained a copy of the U.S. birth certificate matching the same name and date of

birth as provided by the family. The Los Angeles Field Office created a Wanted/Missing Person Poster and forwarded it to various law enforcement agencies. The poster was sent to the U.S. Embassy in Mexico, which then forwarded it to the Border Consulates. Additionally, the poster was forwarded to CBP to post at ports of entry along the Southwest border. Mr. Guzman is currently in the United States.

Thomas Warziniack was incarcerated at the Colorado Department of Corrections (CDOC) facility in Buena Vista, Colorado. Mr. Warziniack was serving a sentence for criminal impersonation and possession of a controlled substance. Colorado officials brought him to the attention of ICE because he had informed them that he was a citizen of Russia. Mr. Warziniack had multiple arrests and convictions, including: Conviction for Simple Battery; Conviction for Simple Assault; Arrest for Theft by Conversion Leased or Rented Property; and Arrest for Abandonment of Child/Non-Support.

During his interview with ICE officers, Mr. Warziniack claimed to be a citizen of Russia, born in St. Petersburg on September 1, 1960, who last entered the United States in the late 1960's without permission. After the interview, ICE officers lodged a detainer with the CDOC. ICE conducted additional records checks and found no immigration history. Criminal histories and records checks indicated that Mr. Warziniack may have been born in Minnesota, Colorado, or Alabama. Mr. Warziniack was placed into ICE detention on December 18, 2007. During his stay in detention, he claimed that he was a Russian citizen; however, when he appeared before the immigration judge the following month, he asserted U.S. citizenship. At a subsequent immigration hearing, he denied the allegations in the immigration charging document and

produced a copy of a Minnesota birth certificate, which ICE authenticated. ICE thereafter released him immediately from detention and asked the judge to dismiss the case without prejudice. This example highlights ICE efforts to quickly respond to legitimate claims of citizenship prior to removal.

**Encounter with a six-year-old U.S. citizen.** The ACLU filed a lawsuit claiming that ICE detained a six-year old U.S. citizen while apprehending his fugitive alien father. ICE denies this allegation. The child's fugitive alien father last entered the United States at Nogales, Arizona, on July 24, 1991 without inspection. On November 3, 2000, he failed to appear for a hearing before an Immigration Judge at the Executive Office for Immigration Review and was ordered removed in absentia by the Immigration Judge. A notice to surrender for removal was mailed to Mr. Reyes' last known address. Mr. Reyes failed to surrender for removal on May 2, 2001. On March 6, 2007, Mr. Reyes was encountered at his residence during a targeted fugitive operation. A review of known facts revealed that the child was never detained but he was instead transported to an ICE office until custody arrangements could be made for him. ICE Officers were in Mr. Reyes' home for more than an hour trying to make arrangements for the child, but Mr. Reyes refused to make a call and claimed he had no friends or relatives in the U.S. Once in the ICE office, officers resumed requesting that Mr. Reyes call a relative. The child was at no time confined to a cell. The child and the father were kept in the juvenile area and provided food and drinks. Only when advised that ICE would have no choice but to turn the child over to Child Protective Services, did Mr. Reyes agreed to ask the uncle to take custody of the child. The uncle was immediately contacted and the child was placed into the care of the uncle within an hour.



## **CONCLUSION**

Even though ICE has never knowingly or intentionally detained or removed a U.S. citizen, ICE is currently reviewing its policies and procedures to determine if even greater safeguards can be put in place to prevent the rare instance where this event occurs. ICE anticipates having this review completed within the next sixty days and would welcome suggestions from the Committee.

The integrity of our immigration system requires fair and effective enforcement of our nation's immigration laws. By aggressively enforcing these laws to the best of our abilities, ICE seeks to make our nation secure by preventing terrorism, improving community safety by ensuring that criminal aliens are not released back into the population, and strengthening the legal immigration process.

I would like to thank you, Madame Chairwoman and Members of the Subcommittee, for the opportunity to testify today on behalf of the men and women of DRO, and I look forward to answering any questions you may have.