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A REVIEW OF THE DEPARTMENT OF HOMELAND
SECURITY'S POLICIES AND PROCEDURES FOR
THE APPREHENSION, DETENTION, AND RELEASE
OF NON-CITIZENS UNLAWFULLY PRESENT IN
THE UNITED STATES (PART II)

Thursday, March 19, 2015,
House of Representatives,
Committee on Oversight
and Government Reform,
Washington, D.C.

The committee met, pursuant to call, at 9:04 a.m., in Room 2154, Rayburn House Office Building, the Honorable Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Walberg, Amash, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Hice, Russell, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Norton, Connolly, Cartwright, Duckworth, Lawrence, Plaskett, DeSaulnier, and Lujan Grisham.

*Chairman Chaffetz. The committee will come to order.

I thank everybody for joining us here today. Without objection, the chair is authorized to declare a recess at any time.

We are here today to continue a discussion that began a few weeks ago at a joint subcommittee hearing about the President's executive actions on immigration. I want to thank the subcommittee chairmen, particularly Ron DeSantis and Jim Jordan, for starting the committee's review of the new immigration apprehension policies that Secretary of Homeland Security Jeh Johnson announced on November 20th of the year 2014. We now have a better understanding of the various ways those policies may undermine local law enforcement efforts to protect the public.

Today we are going to follow up with questions for the newly confirmed Director of Immigration and Customs Enforcement, ICE, Ms. Sarah Saldana, and about how ICE will actually enforce the immigration laws and how their enforcement posture will affect public policy.

We want to particularly thank the men and women who do the hard job and work within ICE. They put their lives on the line every day and we are very grateful for their service, and we are thankful for your service and participation here today.

This hearing is important because it allows us to determine whether non-citizens who committed serious offenses will be apprehended, detained, and then ultimately removed per the promise that the President of the United States gave the American people.

The President's executive actions will have two very different effects on approximately 11 million non-citizens unlawfully present in the United States. Through Deferred Action for Childhood Arrivals, or DACA, and Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA, as it is referred to, the Administration intends to provide benefits to about five million otherwise unlawfully present in the Country.

Earlier this month, the subcommittees conducted a hearing focused on how these executive actions may make it easier for these individuals to register to vote illegally. Just this past Tuesday, the subcommittees examined the fiscal costs of these actions to the Federal and State Governments.

Secretary Johnson's November 20th, 2014, announcement will also have an effect on others unlawfully present in the United States. In essence, it will provide de facto amnesty for many of the remaining six million non-citizens unlawfully present in the United States who are not directly covered by DACA or DAPA. Unless these individuals fall within the carefully circumscribed

categories, their removal will not be a priority for Department of Homeland Security.

But the core reason we are here today, even under the immigration policies that predated that announcement, convicted criminals who are unlawfully present in the United States have been released in staggering numbers. And this I simply just don't understand. The President, the Secretary, the Administration, time and again has promised the American people that if you are convicted, if you are a criminal, you are going to be deported. But that is not what is happening.

According to ICE, 36,007 convicted criminal non-citizens were released in fiscal year 2013. In the year 2014 that number is roughly 30,000. More than 60,000 people. These are people that are here illegally, committed a crime, were convicted, and then they were released back into the public, rather than being deported. That is the question that is posed to us today.

Of the 36,007 individuals from the year 2013, not too long ago, they amassed nearly 88,000 convictions -- not accusations, convictions -- including 193 homicide convictions, 426 sexual assault convictions, 303 kidnaping convictions, 16,070 drunken or drugged driving convictions. Convictions.

As of September 2014, 5,700 of those individuals went on to commit another crime. They are here illegally, they get caught, they get convicted, they get released, they go back and commit another crime. One thousand of those individuals were convicted again for offenses including lewd acts with a child under the age of 14, indecent liberty with a child, child cruelty, possible injury or death, driving while intoxicated.

I can't even imagine being a parent and having my child molested by somebody who is here illegally. The President promises he is going to be deported and they didn't. They released them back out. And I want to know from ICE why that is. It is intolerable. I could never look the parents of those children in the face with what has been done here.

The joint subcommittee heard compelling testimony from two family members of victims of these types of criminals. In January of this year, 21-year-old Grant Ronnebeck was murdered while working at a convenience store in Mesa, Arizona by a non-citizen unlawfully present in the United States. Prior to Grant's death, his murderer, Apolinar Altamirano, was facing deportation proceedings after being convicted of burglary, but released on a \$10,000 bond just four days after his detention in 2013.

In March of 2008, Jamiel Shaw was a 17-year-old high school football star in Los Angeles, California, when he was murdered by Pedro Espinoza, an illegal immigrant gang member who had been released from jail just two days before after serving time for

assault with a deadly weapon. They released him back into the public.

While the Department of Homeland Security was invited to testify at that previous hearing, they declined. And I think it is important for the Department representative to hear and see from the American people those lives that are directly impacted by these policies.

We put together a very brief video which is a highlight from the last hearing, and I would like to play that now, if I could, please.

[Video.]

*Chairman Chaffetz. I don't know how you look into the eye of Mr. Shaw. Our heart bleeds for somebody like that. The person is here illegally. Are there good people that are here that probably shouldn't be here? Yeah, I am sure there are. But we are talking about the criminal aliens. We are talking about people that are convicted of violent crimes. And instead of being picked up and deported, as the President promised, that person was put back out on the street and committed murder.

I am going to ask unanimous consent to enter into the record 1,000 of these convictions. This is a list, it is numbered 1 to a 1,000, a breakdown of subsequent convictions -- subsequent convictions -- associated with criminal aliens placed in non-custodial setting. And this is just the fiscal year 2013.

Without objection, so ordered.

[The referenced information follows:]

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*Chairman Chaffetz. It is not difficult to imagine that people like Mr. Ronnebeck and Mr. Shaw often wonder if their loved ones would still be here today if our immigration enforcement laws were enforced.

Secretary's Johnson's November 20th announcement exposes the American people to even greater danger. In his November 20th, 2014 guidance, Secretary Johnson set forth three levels for priorities for immigration enforcement. The top priority for deportation was listed as terrorists, spies, and other threats to national security; those apprehended at the border and ports; some criminal street gang members; and certain aliens convicted of felonies.

While these should be priorities for deportation, the agency is no longer considering as the top priority for apprehension aliens who have been convicted of certain misdemeanors, including sexual abuse or exploitation, drug distribution or trafficking, burglar, firearms offenses, driving under the influence, domestic violence.

Talk about a war on women. This is not a priority for this Administration. This is not a tier one priority according to Homeland Security. These are offenses that also endanger our communities and affect a much larger number of Americans in a very personal way. Many criminals, including some that Congress has stated should be subject to mandatory detention, are not listed as a priority for removal at all.

While Secretary Johnson's November 20th, 2014 prioritization guidelines dictate that "due to limited resources, DHS and its components cannot respond to all immigration violations or remove all persons illegally in the United States," the Department does not appear to be using all the resources it has available to enforce the immigration laws.

According to statistics from ICE reviewed by the Center for Immigration Studies, from 2009 to 2014, there was almost a 60 percent decline in annual deportations. In other words, while 2009 ICE deported more than 236,000 individuals from the interior of the United States, in 2014 ICE deported around 1,224.

The number of criminals deported from the interior declined by 21 percent between 2013 and 2014. It went from 110,115 down to 86,923. Further, Congress provided ICE with funding for 34,000 detention beds and mandated those beds be filled. According to a review of ICE records, however, the average daily population of detainees has declined every year since fiscal year 2012. As of January 2015, the average daily detainee population was 25,480, the lowest level since 2006, when the bed mandate was at 20,800.

I have seen firsthand the hard work of the people within

Customs and Border Patrol and ICE. I can't thank them enough for their good work. But we are not fulfilling the mission that was promised by the President of the United States. I think this body is committed to making sure that criminal aliens are deported, and that is why we are having this hearing here today.

I have gone well past my time. We will now recognize the gentleman from Maryland, the ranking member, Mr. Cummings.

[Prepared statement of Chairman Chaffetz follows:]

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*Mr. Cummings. Thank you very much, Mr. Chairman, and I thank you for holding this hearing. I think it is a very important hearing.

This morning, as I read over the testimony from the subcommittee hearing that took place about a month ago, I could not help but feel a deep sense of sorrow for Mr. Shaw and his family, and Mr. Ronnebeck and his family. As one who experienced the murder of my nephew, who was like a son to me, three and a half years ago, I know the pain that comes with that, to see a young person snuffed out. So I can understand, Mr. Chairman, how you feel.

And that puts a lot of weight on you, Assistant Secretary Saldana, and I hope you can understand that members on both sides of the aisle have our concerns and have a lot of concern about this. So I want to thank you for being here, and I am sure you will explain exactly what your priorities are and how those things are laid out, and hopefully talk about the court decisions that dictate how you do what you do.

There are about 11 million undocumented immigrants in our Country today. Many of these people are from hard-working, taxpaying families simply looking for a better life. Many have lived here since they were children and many have raised children of their own. They are the ones that I met this weekend, about 150 of them, who were law-abiding people, and the thing that they said to me over and over again is why do they consider us all criminals. They also said that they simply wanted to keep their families together.

I heard firsthand how they live in fear and uncertainty about their futures. They work hard and make their homes in our neighborhoods; yet they live every day in the dangerous outskirts of our society. Almost everyone agrees that our immigration system is broken. That is right, this is not a bulletin coming over the wire. Everybody knows the system is broken.

In the last Congress, the Senate passed legislation supported by Democrats and Republicans that would have offered a comprehensive approach to this problem. The bill not only would have provided a responsible path to citizenship for those who passed background checks and meet other requirements, but it also would have improved our visa systems and established stronger enforcement mechanisms.

The House Republicans refused, refused to call up this bill for a vote. I guarantee you, if it had been called up for a vote, it would have passed.

Despite Speaker Boehner's pledge to address comprehensive immigration reform, a minority of House members in the Republican party stood in the way, blocking, blocking

comprehensive reform. As a result, in November, I joined with 116 of my colleagues urging President Obama to use his executive authority to address some of the problems facing our immigration system.

On November 20th, 2014, the Administration took a series of steps to strengthen enforcement, enhance public safety, and temporarily provide peace of mind to qualifying immigrants. In response, House Republicans attacked the Administration's actions, even as they refused to act themselves. For example, they held up funding for the Department of Homeland Security and they criticized the Administration for not removing immigrants who commit crimes.

Let me make a few points for the record in response to this claim. The Obama Administration has removed more people from this Country than any administration in history. Removals hit an all-time high of 438,421 individuals in 2013.

Now, Secretary Saldana, as I read the transcript, there was an issue as to the counting and how that counting was done. I would like for you to talk about that. There was an issue as to whether this Administration is counting differently than past administrations.

Under the Obama Administration, criminal removals have also reached record highs. They have more than doubled from the prior administration, increasing from 84,000 in 2003 to 2007 in 2012.

With respect to the release of immigrant criminals, the Administration is bound by court cases and immigration judge rulings that require releases in many instances. In other cases, DHS releases detainees on a discretionary basis after weighing risk factors, including criminal records, medical histories, and flight risk.

These are the same types of factors routinely considered by local, State, and Federal law enforcement agencies every single day for the general population. In fact, according to an April 2014 report issued by the Department of Justice, the recidivism rate after 12 months for prisoners released across 30 States is more than 20 percent. In contrast, DHS data on immigrant criminals released in fiscal year 2013 shows a recidivism rate of less than 3 percent.

I want to be clear here. These decisions are not easy, and the dangers of recidivism are very, very real. Personally, I would be devastated to learn that someone who injured or killed a member of my family had been in custody, but was released. And I would feel exactly the same way regardless of whether the attacker was an immigrant or a United States citizen.

We have the ability to work together to tackle these issues. That is what the American people want. They do not

want us walking away from the hard problems, leaving them on the table when we go home.

The fact is that the comprehensive immigration bill adopted by the Senate on a bipartisan basis would have doubled the number of Border Patrol agents, established an improved system for employers to verify their workers' legal status, and provided new security measures along the border. But it was never allowed a vote in the House of Representatives. So it is time to reach out across the aisle and pass comprehensive immigration reform legislation.

So I look forward to your testimony.

And with that, Mr. Chairman, I yield back.

[Prepared statement of Mr. Cummings follows:]

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*Chairman Chaffetz. I thank the gentleman.

We will hold the record open for five legislative days for any member who would like to submit a written statement.

We will now recognize our sole witness today. I am pleased to welcome the Honorable Sarah Saldana, Director of U.S. Immigration and Customs Enforcement. Welcome.

Pursuant to committee rules, all witnesses will be sworn before they testify, so if you would please stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witness responds in the affirmative.]

*Chairman Chaffetz. Thank you. You may be seated.

We try to hold the testimony to five minutes, but we will give you some latitude. Your entire written comments will be entered into the record.

You are now recognized. Thank you.

STATEMENTS OF THE HONORABLE SARAH R. SALDANA, DIRECTOR, U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT

*Ms. Saldana. Thank you, Chairman, thank you, Ranking Member Cummings, and other committee members. I appreciate the opportunity to testify today, and I really do mean that. I know that many remarks made to this committee start out like that, but I will tell you this is the first congressional committee that I have testified before since I have been the assistant secretary for Homeland Security Immigration and Customs Enforcement, 86 days, 9 hours, and 25 minutes ago.

I consider this a very important part of my job. I do not shirk away from it and I welcome it, and it is part of my education to hear from you all as to your concerns.

As you all know, ICE has a very vital role in securing the homeland through the enforcement of more than 400 laws governing immigration. But we also have laws that affect border control, customs, and trade.

I most recently served as the United States attorney for the Northern District of Texas. I say that very, very proudly. One of the greatest jobs in the world, you will hear every U.S. attorney say. As the chief Federal law enforcement officer for a district that spanned 97,000 square miles, I oversaw the enforcement of these 400 laws and, quite frankly, thousands more under all the Federal statute.

From my early years cutting my teeth, my prosecutorial teeth on the immigration docket in my office to these first 90 days as Director of Immigration and Customs Enforcement, I have personally observed what the chairman recognized, and that is the talent and dedication of ICE's agents, its officers, its attorneys, its international and mission support staff as they go about the business of securing the homeland. I consider it a great privilege to continue my law enforcement career as the leader of this agency.

Given the topic upon which you have asked me to testify, I want to give you a brief overview of ICE's enforcement and removal operations, a little bit about our recent activity, and then also just highlight some of the challenges that we face.

ICE's Enforcement and Removal Operations Office, again, just a portion of what ICE does, a significant portion, referred to as ERO, is a team of almost 6,000 dedicated law enforcement offices stationed throughout the world, actually, who apprehend and remove undocumented immigrants in a way that focuses our finite resources on those who present the greatest risk to the American public.

In carrying out this mission, they have a wide array of important, very important and complex responsibilities, not the

least of which are overseeing the detention facilities, coordinating departures all over the world, and obtaining travel documents from other countries, some of which do not care to cooperate with ICE in any manner.

We work closely with our sister agencies within the homeland security umbrella, Customs and Border Protection, as they encounter and apprehend undocumented immigrants at our borders and at our ports of entry; and citizenship and immigration services as they perform their immigration benefit services.

In 2014, ICE removed nearly 316,000 individuals unlawfully present in the United States. More than 213,000 of these individuals were apprehended while or shortly after attempting to cross our borders. I should point out, in line with the theme of the opening remarks of our chairman and ranking person, that about 85 percent of these interior removals were of undocumented immigrants previously convicted of a criminal offense. That is an 18 percent increase over 2011 and it reflects the agency's renewed focus for some time now on aggressively targeting and removing the worst criminal immigrants: security threats, convicted felons, gang members, and the like.

With respect to the operational challenges we face, first, as you all well know, our Country faced an unprecedented migration of families last summer, including unaccompanied children coming up from the Rio Grande Valley, which requires ICE, as well as many other agencies, to shift resources to address that. ICE detailed or transferred almost 800 personnel away from what they were doing and additional monetary resources to deal with this extraordinary influx.

A second challenge is the dramatic increase in the number of jurisdictions that have declined to cooperate with ICE in its law enforcement activities. A detainer advises other law enforcement agencies that ICE intends to assume custody of an individual before that individual is released from the agency's custody, and we ask that individual to be held for a very short time until we can get that custody.

Re-arresting at-large criminal aliens released by State and local jurisdictions only increases the already extraordinary risks our law enforcement officers already face, and is a waste of resources that reduces the number of criminal aliens ICE can apprehend and remove.

Last calendar year, State and local jurisdictions rejected more than 12,000 ICE detainee requests. These are convicted criminals. And ICE has been denied access to more than 275 detention facilities, including those in some of our Country's largest cities and States.

A third challenge we face is the changing migrant demographic. We have recently seen more Central Americans and fewer immigrants from Mexico attempting to cross our borders. It requires more time and resources to complete the removal process for Central Americans, as they demand additional time, resources, staff, enhanced efforts to get travel documents to remove them, and the arrangement of air transportation.

My first 90 days or so as director have been full, both in becoming familiar with the challenges as I just described that face ICE and in formulating and implementing plans to try to address them.

I would be remiss if I did not express my gratitude, since obviously we cannot do our job without proper funding, for the passage earlier this month of a full year appropriation bill for the Department of Homeland Security, which include our agency and its 20,000 employees.

Let me conclude by saying, Mr. Chairman, that I left my family, my friends, the State I have lived in for all my 63 years behind, which, as many of you here facing me have done so as well, for the sole purpose, for the sole purpose of assisting a very proud agency to move forward and to help in whatever small way I can, help our Country to address these very difficult, complex, and divisive issues facing the Country.

Thank you, and I look forward to your questions.

[Prepared statement of Ms. Saldana follows:]

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*Chairman Chaffetz. Thank you.

I will now recognize myself for five minutes.

Madam Director, if you are a criminal, will you be deported?

*Ms. Saldana. Those are the people we are looking for, yes.

*Chairman Chaffetz. But they have been in your detention. They have been detained. They were convicted. Were they deported?

*Ms. Saldana. They are in the process of being deported. Everyone in our detention facilities is in the process of being deported, chairman.

*Chairman Chaffetz. Well, that is not true. I mean, you regularly release them back out into the public before they get deported, correct?

*Ms. Saldana. Actually, I do want to address that number. I think you talked about 36,000, Chairman, earlier?

*Chairman Chaffetz. Yes.

*Ms. Saldana. And I think you, the members of this committee, and the American public deserve a thorough explanation regarding that 36,000.

I think I mentioned earlier, we have many challenges at ICE. One of them is the opinions we get from the highest court in the land, the Supreme Court. You all are familiar and have heard the term *Zadvydas*, which is the Supreme Court decision that requires ICE, requires ICE, does not give us an option, to release persons without hurting them.

*Chairman Chaffetz. Our time is all limited.

How many criminal convicted aliens were released under the discretionary authority of ICE?

*Ms. Saldana. You mentioned 36,007 in fiscal year 2013. A little bit more were those that we don't have any discretionary control over.

*Chairman Chaffetz. So you don't automatically deport them, correct?

*Ms. Saldana. Automatically, sir? No. The statute, the laws that this Congress has passed, deny these people due process.

*Chairman Chaffetz. No, no, you have discretion. You have discretion. You have a lot of discretion. You said half of them you have discretion.

*Ms. Saldana. Yes, sir. The law gives us that discretion.

*Chairman Chaffetz. So when you say, if you are a criminal, you will be deported, that is not necessarily true.

*Ms. Saldana. It is true, sir.

*Chairman Chaffetz. After they get released back into the public for untold number of times?

*Ms. Saldana. It does happen. It does happen, yes, that is exactly what we are here to do.

*Chairman Chaffetz. What does happen, they get released?

*Ms. Saldana. Yes. Even criminals that are released. And, mind you, we are talking about -- let's focus on the ones that you were talking about with respect to ICE, the 22,000 or so in 2013. Those people were released under the laws of the United States. We are allowed to, discretionarily, as you pointed out, to give a bond.

*Chairman Chaffetz. But you could have deported them. You could have deported them, correct? And you chose not to.

*Ms. Saldana. No, sir, it is not a matter of choosing; it is a matter of following the law.

*Chairman Chaffetz. No. You have discretion. That is not what the President of the United States said. He said if you are a criminal, you will be deported. That is not true.

*Ms. Saldana. The discretion you are talking about, sir, if I may explain to you so that you and the American public can appreciate what the process is.

*Chairman Chaffetz. Sure.

*Ms. Saldana. The discretion we have is to determine custody pending that person's removal. The removal process is in the hands of the immigration courts. Those immigration courts are under the auspices of the Department of Justice, the Department I previously worked for. And with respect to those people, it can take, following due process, months and even years to deport folks.

*Chairman Chaffetz. And that is what is the total disconnect. Do you believe that somebody who is convicted of domestic violence, sexual abuse, or exploitation, burglary, unlawful possession, use of a firearm, drug distribution, drunk driving, are those dangerous?

*Ms. Saldana. Yes, those are dangerous crimes.

*Chairman Chaffetz. And yet they are your priority two; they are not even your top priority.

*Ms. Saldana. The priorities are priorities, sir, whether they are one, two, or three.

*Chairman Chaffetz. But they are not your top priority. Let me ask you this. This is the weekly departure detention report from ICE dated January 26, 2015, and in that report it says there are 167,527 non-detained, final order convicted criminals on the loose in the United States, correct?

*Ms. Saldana. What was that number, sir, again, over what?

*Chairman Saldana. It is 167,000 convicted felons. These are people -- I shouldn't say felons. Convicted people. These are people that are here illegally, get caught, get convicted, and you release back into the public.

*Ms. Saldana. Sir, we only release pursuant to the statute. I don't know of a single officer, detention officer or other officer, that comes to encounter an illegal immigrant who looks at that person and says, you know what, I think I am going to release someone into the public who can commit another crime.

*Chairman Chaffetz. But that is what you are doing. That is what is happening. Your budget request requested less beds, not more beds. You could have detained these people. And the President promised the American people he would deport them, and he is not.

*Ms. Saldana. I am very familiar with detention and the idea of detention, chairman, because as a United States attorney we face these decisions every day in the courts. So do the Federal judges we practice before. Detention is provided by statute, and the considerations for detention are provided by statute.

*Chairman Chaffetz. Don't be blaming all the courts. You have discretion on this and you have made some very, very bad decisions. It is inexcusable to have somebody who has been convicted of these crimes and not immediately deport them. The parents that we listened to there, why were these people -- these persons are convicted and they go out and they murder people. I listed off all the statistics.

My time has expired, but don't tell me that it is just the courts and you are mandated by law to do this. You have 167,000 convicted criminals who are here illegally that should be deported that are on your list, and you better give us an explanation about how you are going to round those people up and immediately get them deported. I don't think you have a game plan to do that.

*Ms. Saldana. I am trying, chairman.

*Chairman Chaffetz. What is your plan to do that? And then I will yield to the ranking member.

*Ms. Saldana. Our plan is what we do every day. You mentioned these convicted felons out there. We have information in databases that we use hundreds of people, both right here in the District.

*Chairman Chaffetz. These people were already in your possession and you let them go. They were already sitting in jail and you let them go.

*Ms. Saldana. Chairman? There is a process provided by statute in which the officers, Congress gave us the authority to exercise discretion with respect to every person, as we do on a case-by-case analysis, not picking and choosing little facts out of a file, but the entire file of this individual. Is this person terminally ill and cannot be removed from the Country because we cannot get medical authorization to do so? That is

actually one of those cases you are talking about. This is an exercise that we take very seriously and we determine on every case's facts.

*Chairman Chaffetz. So you are telling me because they have a medical condition, you are going to release them back out into the public?

My time is far expired.

I will now recognize Ms. Plaskett from the Virgin Islands. You are now recognized for five minutes.

*Ms. Plaskett. Yes, good morning and thank you, Mr. Chairman, ranking member.

Secretary Saldana, I thank you so much for the work that you and your agency are doing. I actually was at the Justice Department and working with Larry Thompson and then Jim Comey when your Homeland Security was created, and I think that it has come a far way in its mandate and the mission that it has.

I wanted to talk a little bit about this discretion that the chairman was taking you through in his questioning, and I want to focus on where that discretion comes from, the prosecutorial memorandum that was issued that was created, I believe, because you have not just the courts and the laws, but also limited resources in determining how you are going to detain the individuals that you have, and prioritizing those based on not only the law, but the resources, as you said, the finite resources that are available to your agency.

I did want to note in your testimony that you did say, however, that despite this there has been an 18 percent increase in the amount of individuals that have been deported over the very small period of time and that you are working in that area. So if you would focus your attention on the executive actions that you are taking based on that memo. It provides guidelines for prosecutors and specifically targets areas that we believe are the highest threat to the entire homeland, that being our national security, public safety, and border security.

Could you please explain how this memorandum is different, also, from past guidance that was regarding prosecutorial discretion?

*Ms. Saldana. Thank you, Congresswoman. Yes, I do want to talk about this subject because, actually, I have been exercising prosecutorial discretion for over 10 years as a United States attorney and assistant United States attorney and, of course, now in managing ICE.

I should say that the origins of prosecutorial discretion are those that you all have given the Secretary of Homeland Security. Perhaps not the individuals in this room today, but the Congress. And I will read from the 2015 bill that was passed that I thanked you for earlier, chairman, where it says,

specifically in the language that you authorized, that the Secretary of Homeland Security shall prioritize the identification and removal of aliens convicted of a crime by the severity of that crime. That is precisely what you have directed the secretary to do, that is what the secretary has directed me to do, and that is what we have done.

As the United States attorney, as I said earlier, I think somebody at the Department of Justice tried to count the number of statues that we are responsible for enforcing. The person stopped at 3,000. There is no way that, with the limited budget that United States attorneys have and, by analogy, that the director of ICE has, finite resources, that we can prosecute, in the case as the United States attorney, that I could prosecute people who break the 3,000-plus Federal laws of the United States.

So, as a United States attorney, I set specific prosecutorial guidelines for my office to make sure that we were having the greatest public safety impact over that 97,000 square mile district that I described earlier. The greatest impact to ensure that. I would have loved to have prosecuted every case.

*Ms. Plaskett. So in the discussion that the chairman had about priority number one, it is the agency's belief that that is the highest impact to the United States by doing that.

*Ms. Saldana. Yes. Obviously, terrorists, convicted felons, persons who are gang members, all of those who threaten public safety. The secretary has very clearly laid out -- you asked about the difference between the guidance that already existed. I would probably have come in and reviewed that guidance and made my own decisions, but the secretary had just reviewed that, sent out his memo of November 20th, and specifically outlined those priorities.

*Ms. Plaskett. So to further that discussion, when the chairman said priority one, that includes terrorism and espionage, aliens apprehended at the border while attempting unlawfully to enter, aliens convicted of an offense that are related to criminal street gang, felon in a convicting jurisdiction, and convicted of aggravated felony.

Priority two, which was alluded to, were misdemeanors, correct?

*Ms. Saldana. Yes. And significant misdemeanors. And I should also point out, because I have directed all my staff to do this, that the priorities specifically allow for that person facing the individual illegal immigrant to exercise their best judgment, as we expect of them every day, that even if they don't meet those three priorities, if in their opinion, based on all the facts and circumstances pertaining to that individual, that they deem them to be a public safety threat, that we detain

those people and put them in removal proceedings.

*Ms. Plaskett. Well, I see that I have run out of my time, and I just want to once again thank you and thank the chairman and ranking member for allowing us to discuss this issue because, of course, the release of convicted felons and release of individuals is something that none of us want. But we do understand the limited resources that you are working with and the efforts that all of our law enforcement are making to continue to make our homeland safe.

Thank you, and I yield the balance.

*Chairman Chaffetz. I thank the gentlewoman.

We now recognize the gentleman from Florida, Mr. Mica, for five minutes.

*Mr. Mica. Thank you, Mr. Chairman

Director, welcome. I have a couple of questions. I heard in your opening testimony I know you say that you administer 500 laws and maybe as many as 3,000 --

*Ms. Saldana. Four hundred for ICE, sir, 3,000 or thousands more with respect --

*Mr. Mica. So a lot of laws that you are responsible for enforcing. You have also had a couple of actions by the President, one for Deferred Action of Parents of Americans, or legal permanent residents, DAPA and DACA, Deferred Action for Childhood Arrivals that the President has ordered as actions. It has created a certain amount of confusion, too, I think, with some of the line officers, as to what they are supposed to enforce, whether the law or these actions.

What are they supposed to enforce?

*Ms. Saldana. They are supposed to enforce all the immigration laws.

*Mr. Mica. The laws would take precedent over the President's action requests?

*Ms. Saldana. As I mentioned earlier, with those difficult decisions as I had with a United States attorney, Congressman, we have focused the attention of all of our officers, the 5,000 or so that I mentioned, to focus on those who most threaten our national security.

*Mr. Mica. But there is confusion. In fact, I got a release from the National Border Patrol Council, and they were concerned about the President's threats for consequences for Border Patrol agents. That is what this says. When the President was in my State, in Miami, recently, he said there would be consequences. So some of it Border Patrol, again, are concerned about what those consequences would be.

What are the consequences for noncompliance that they face?

*Ms. Saldana. And as I mentioned, Congressman, Border Patrol is our sister agency; they are the folks at the border

and the ports of entry.

*Mr. Mica. Right.

*Ms. Saldana. I am responsible for ICE, and this is what we have done with respect to clearing any confusion that there is. We have required very specific training to have been completed by 100 percent, not 98, 96, 95, but 100 percent --

*Mr. Mica. Well, the President said, I have his quote, if somebody is working for ICE and there is a policy and they don't follow the policies, there is going to be consequences to it. So he referred specifically to those you have control over.

My point is there is confusion about enforcement. There is confusion about what takes precedent. The other thing, too, is you testified about the number of deportations, domestic deportations. You said 2,000 -- I am sorry, how many domestic deportations in 2014?

*Ms. Saldana. I believe I said that number was --

*Mr. Mica. Well, while you look for that, the Administration and the President has said that we have had more deportations in the past six years of criminals; they are up 60 percent. We have conflicting information.

Put up this chart that shows -- I updated the chart that shows deportations, interior deportations, domestic. This wasn't quite to the end, so it was 102,000, to be fair. That actually shows a decline, is that correct?

*Ms. Saldana. Over that period of time, that is.

*Mr. Mica. That is until last year.

*Ms. Saldana. And I see that the source is ICE. I am not sure what in particular, but I think those numbers you got from us --

*Mr. Mica. So it is actually declined. You are not saying this information is wrong.

*Ms. Saldana. No, sir.

*Mr. Mica. Okay. The other thing, too, is we were recently told from one of the ICE officers that his office used to process as many as 100 aliens a day, but since the President's executive orders went into effect, they are now processing 5 to 10 aliens a day. That means that they are spending 20 times as much in resources, because you have similar resources, to deport each alien. Is that the case?

*Ms. Saldana. I am not familiar with those numbers that you are quoting.

*Mr. Mica. Well, again, we are also deporting fewer, if you do the math, it is costing us more to deport fewer folks.

*Ms. Saldana. And I think you and the American public deserve a response to that, sir.

*Mr. Mica. We do.

*Ms. Saldana. As you know, and this is good news, Customs

and Border Protection has been apprehending far fewer persons at the border this past year than they ever have. They are at 24 percent decline in apprehensions at the border. That should be good news. I know that Mexico and other countries that I have visited since I have been with the Department have ramped up their efforts to try to stop people before they come into the United States.

*Mr. Mica. But the fact is, as the chairman pointed out, we are harboring, keeping, and releasing criminal illegal aliens and not taking care of that important aspect.

Thank you.

*Chairman Chaffetz. Thank you.

We will now recognize the gentleman from Pennsylvania, Mr. Cartwright, for five minutes.

*Mr. Cartwright. Thank you, Mr. Chairman.

And thank you for being here, Director Saldana.

*Ms. Saldana. Thank you.

*Mr. Cartwright. I want to revisit what the gentleman from Florida, Mr. Mica, said, he had a chart up and he showed you that for about 25 seconds. Had you ever seen that before, Director Saldana?

*Ms. Saldana. I have not.

*Mr. Cartwright. Okay. Did you get a full chance to analyze what subset of immigration data that was representing, director?

*Ms. Saldana. No. There was very fine print down there. I am 63 years old; my eyes are not as good as they used to be.

*Mr. Cartwright. And are you aware of any reason members of this committee could not have provided you that chart ahead of time so that you could have analyzed it and answered questions intelligently about it?

*Ms. Saldana. No. In fact, I would be delighted to do so, take that chart and come back.

*Mr. Cartwright. Okay. Since we are talking about statistics, under the Obama Administration, DHS has enforced U.S. immigration laws, resulting in the removal of more unauthorized immigrants in the United States than during any other administration in United States history. Am I correct in that?

*Ms. Saldana. Yes, sir.

*Mr. Cartwright. All right. The removal of criminals has also more than doubled from the prior administration, that is, the George W. Bush Administration. Removal of criminals has more than doubled from the Bush Administration, from 84,000 in 2003 to 207,000 in 2012, another record high. Are you aware of that, director?

*Ms. Saldana. Yes, I have that.

*Mr. Cartwright. All right.

I want to talk about the DHS funding bill. A few years ago we had bipartisan momentum in the House of Representatives for comprehensive immigration reform. But that was before what I call the shutdown crowd took over. And it is not all the Republicans, but there is a certain element of them that I call the shutdown crowd. Last year the shutdown crowd among the Republicans refused to budget on immigration reform, they refused to take action on the Senate-passed bipartisan comprehensive reform bill.

So, of course, the Administration carried out a series of executive orders to address the problems directly, and since then the Republicans have focused their efforts really on attacking the President rather than attacking the problem of comprehensive immigration reform. In fact, they were willing to, yes, shut down the Department of Homeland Security over it. They held the DHS funding bill hostage to protest the executive actions; they refused even to allow a vote on comprehensive immigration reform.

Director Saldana, when your agency heard that Congress might not pass a DHS funding bill in time, what did ICE have to do to prepare for the possibility of a shutdown?

*Ms. Saldana. It was extraordinary and, of course, we went through this when I was the U.S. attorney back in Dallas last year, as well. You have to take the attention of people off the very important work they are doing and provide guidance on things like not showing up for work, for example, if we did not have any money; certainly not carrying on with the grants that we have that we award local law enforcement in order to assist us in our very important efforts. Never mind the human toll it takes on the 20,000 employees that we have.

The mission is the most important thing in terms of the impact, and to take away our ability to do what we can do -- and we can do a lot -- is by guessing whether or not we are going to have funds at the end of the week. I think we went through this very painfully two weeks in a row. It was just very difficult.

*Mr. Cartwright. What sort of resources and staffing did you have to redirect to make the preparations for the shutdown?

*Ms. Saldana. Well, all of our front office governing all the staff we have in the Country -- and let's not forget the attaches we have in 47 foreign countries -- were taken off of their daily tasks and put to identifying the staff that we might need to lay off, might need to send home; making sure we had made arrangements for people to have a place to work even though they weren't getting paid; lining up our budget people who had to work day and night in order to make sure that we were going to be able to honor the contracts, for example, with respect to

the detention facilities that we have in several parts of the Country, to be able to honor our contracts with those people to maintain those folks in detention that were in detention in our facilities.

*Mr. Cartwright. I don't mean to interrupt, but can you give us an idea, a ballpark figure, of how much it costs to get ready for this shutdown that was looming at the time?

*Ms. Saldana. It was millions of dollars, sir, but I don't have a precise number.

*Mr. Cartwright. In your opinion, was that a wise use of taxpayer funds?

*Chairman Chaffetz. I thank the gentleman.

Go ahead and answer that question, but we will need to move to the next.

*Ms. Saldana. No, sir.

*Mr. Cartwright. Yield back.

*Chairman Chaffetz. And I would remind the gentleman that the Democrats had the House, the Senate, and the presidency the first year, two years of the Obama Administration, and they didn't even introduce a bill dealing with immigration. And I would also remind the gentleman who was in the 112th Congress, that we actually passed a bill that I sponsored. I am grateful for the broad bipartisan work. It went over to the Senate and Harry Reid decided never to pull it up; otherwise, I think we would have helped this problem.

We will now recognize the gentleman from North Carolina, Mr. Meadows, for five minutes.

*Mr. Meadows. Thank you, Mr. Chairman.

Thank you for your testimony here today. I want to return to what the chairman started out with, and it is about the word discretion, because you have indicated about laws and about the rule of law, and yet there are many who would say that this Administration, specifically ICE, picks and chooses which laws they choose to enforce. And you may call it prioritization, but is that not just a discretion that you choose to use on what you enforce and what you don't enforce?

*Ms. Saldana. Well, it is grounded in a rational approach, Congressman.

*Mr. Meadows. Is it discretion or not? Yes or no? I am not saying --

*Ms. Saldana. Is discretion discretion?

*Mr. Meadows. I am not saying that it is not grounded in something. But are you using discretion on who we deport and who we don't deport?

*Ms. Saldana. I believe discretion means discretion, yes.

*Mr. Meadows. Are you using discretion, yes or no?

*Ms. Saldana. Yes.

*Mr. Meadows. Okay, so let me ask you this. If you are using discretion on who we deport and, according to your report, there are some 900,000 people who are waiting to be deported, they are not detained, how are we going to find those people in the United States?

*Ms. Saldana. We have a number of information databases that have last known addresses --

*Mr. Meadows. So if they have moved from their last known address and you have 900,000, almost a million people that you are saying that you are going to deport, do you believe that you can find 900,000 of them here in the United States?

*Ms. Saldana. Perhaps 900,000, 100 percent, but we have some very savvy law enforcement officers who can do some good old fashioned police work and are very good at it.

*Mr. Meadows. So would it not have been a better use of resources, Mr. Cartwright was talking about resources, just to have kept them in custody?

*Ms. Saldana. Custody decisions, sir, by law, are determined by two basic factors: public safety -- we can't just detain people because we want to detain them.

*Mr. Meadows. Granted.

*Ms. Saldana. And threat to the community.

*Mr. Meadows. So let's go on to another. Let's go to the tier two. Sexual abuse, exploitation. You have already talked about how that is awful. But according to your deportation priority, if they commit a crime, sexual abuse or exploitation, you don't deport them. That is not a priority, is that correct? Yes or no? Is it a priority?

*Ms. Saldana. It is a priority. It is called priority two, sir. It is priority level two.

*Mr. Meadows. So do you deport all illegals that are here that have committed a sexual abuse or exploitation? Do you deport them all?

*Ms. Saldana. We don't have the ability to deport without an order of removal. We will apprehend and arrest them if we encounter them.

*Mr. Meadows. All right. So let me bring it back home, then, maybe, because sitting at that same table -- and the reason why we are so passionate -- were two relatives of people who lost their lives because of our prioritization or the discretion that you are using.

But let me go even further, because when we look at a number of people in North Carolina that have been killed by drunk drivers, that they have failed to be deported over and over -- one of these had been convicted of drunk driving five times, killed a husband named Scott, certainly put the wife in a vegetative state. But it is not just that. It is Marcus, who

was seven years old. He was killed by a drunk driver with repeated offenses that all we had to do was just deport them. And yet you are saying that that is not a priority.

*Ms. Saldana. I didn't say that, sir. And let me tell you, as a prosecutor, I would give my right hand --

*Mr. Meadows. But you are not a prosecutor anymore; you are a Director of ICE.

*Ms. Saldana. If I may answer the question.

*Mr. Meadows. Well, I didn't ask a question.

*Ms. Saldana. -- so the American public can know who the director of ICE is.

*Mr. Meadows. You are making a comment.

*Ms. Saldana. As a prosecutor, I would love to get my hands on those people and personally prosecute them.

*Mr. Meadows. But you had your hands on those people. You had them in custody and you let them go.

*Mr. Meadows. You let them go.

*Ms. Saldana. Congressman, with all due respect, I do not have the facts that you have just cited in front of me.

*Mr. Meadows. Would you like for me to give them to you?

*Ms. Saldana. I would love to. In fact, I would like every case that you know of --

*Mr. Meadows. But this is over and over.

*Ms. Saldana. If I may finish, sir.

*Mr. Meadows. There are 22,000 examples --

*Ms. Saldana. If I may finish, sir.

*Mr. Meadows. There are 22,000 examples where this has happened. And the American people have had enough.

*Ms. Saldana. And let me tell you what I have learned. With respect to Mr. Shaw and Mr. Ronnebeck, that is not an unusual situation to me. I have sat next to victims of crime and homicides, and had to deal with them when we were prosecuting cases, and I will say that I would love to be the first person to prosecute Mr. Altamirano, the person who committed that horrendous crime.

And let me say a frustration of mine, if I sound emotional on this also. My frustration is the quibbling I hear here when we are trying to do a law enforcement job, the quibbling I hear. Mr. Ronnebeck, in that very emotional, tremendously personal statement, said something that I thought was so wise. He urged this committee and every member of Congress to set aside their personal interests and differences, and to move forward with comprehensive immigration reform so that this does not happen again. I am all for that.

*Mr. Meadows. But here is the thing. Comprehensive immigration reform does not affect when we allow convicted criminals to go free. It would not affect that.

I yield back.

*Chairman Chaffetz. Let me just mention year after year the budget request, with this year being the first time the budget request in the Administration keeps going down. So to say that you want to be able to do this and that you need more resources, but the budget does not reflect that is just inconsistent.

*Mr. Cummings. Mr. Chairman? Mr. Chairman?

*Chairman Chaffetz. Sure, sure.

*Mr. Cummings. Would you let her respond to what you just said? I think that would benefit the whole committee.

*Chairman Chaffetz. Sure.

*Mr. Cummings. Why is it that the budget requests have gone down?

*Ms. Saldana. From last year, sir?

*Chairman Chaffetz. Each year, with the 2016 budget request being the exception, 2012, reduction in funding by \$53 million; 2013, reduction by \$91 million; 2015 was a reduction in funding by \$155 million.

If you could get back to us on the record on this. It doesn't make sense because I always here from law enforcement, oh, we wish we could, we wish we could. But then when we look at the requests, less and less beds. That was the request.

Let me recognize Mr. Mica here for a unanimous consent request.

*Mr. Mica. Mr. Chairman, I just ask unanimous consent to insert in the record after the end of our discourse on the interior deportations between 2009 and 2014, and I have annotated the chart. It was 100,000, 114 with 14 days, the final figure being 102,224. The director had said she had not seen this and was not aware of these figures. So I would ask that be put in the record.

I will also provide her with a large copy she won't have to use her glasses for.

*Ms. Saldana. Thank you so much.

*Mr. Mica. And I will provide the minority with a copy, too, Mr. Cummings.

*Chairman Chaffetz. All right, without objection, so ordered.

[The referenced information follows:]

***** COMMITTEE INSERT *****

*Chairman Chaffetz. We wanted to make sure that if you wanted to say anything else about the budget request, that you had an opportunity to do so.

*Ms. Saldana. Sir, I can only speak for the agency. We welcome any amount of money that we have. We can always do more with more resources. We are just doing the best we can with the resources we have right now.

*Chairman Chaffetz. Thank you.

We now recognize the gentlewoman from Michigan for five minutes.

*Mrs. Lawrence. Thank you, Chairman and Ranking Member Cummings for holding this hearing.

I want to echo something that as we as a committee and members of Congress debate and analyze and do our due diligence, that it is truly important, and I think we highlight it every time we have a hearing, that we need comprehensive immigration reform. It is badly needed to address these issues that we are talking about. And I wish that we would use as much passion as we are using in finding those areas that we find unacceptable to use that to improve and to develop comprehensive reform.

Assistant Secretary Saldana, I understand that there are hundreds of thousands of immigrants waiting an average of 587 days for a hearing, and that they are waiting three to five years for their cases to be resolved. It is also my understanding that there are only 260, only 260 immigration judges operating in 58 U.S. immigration courts in our Country. In fact, my home State of Michigan, we only have two immigration judges for the entire State.

With immigration judges responsible for an average, an average of 1,500 cases a year, it is no wonder that the National Association of Immigration Judges is saying that these people can wait for years, for years, for a final hearing of their cases.

I know that the Office of the Chief Immigration Judge is housed in the Department of Justice and not in the Homeland Security. But as they are essential to the removal process that we are talking about, or the litigation process, I am trying to understand how your two agencies work together.

So, Assistant Secretary, you tell me what happens to detainees while they await their court dates, and specifically outline your role and the Department of Homeland Security.

*Ms. Saldana. Okay. And when you were referring to detainees, Congresswoman, we are talking about people who are in our custody?

*Mrs. Lawrence. Yes.

*Ms. Saldana. Obviously, we have some very important standards to ensure their safety and their attention to all

their needs; medical, food, housing, and everything, while they are waiting. I will tell you that I am not blaming the courts, but I will tell you this is a system, the immigration system involves various parties, and the immigration courts are obviously a very important part of that.

We have almost half a million people waiting to hear about their petitions. And I know that the Congress did allow for some more judges. I would urge this committee to do everything it can, and I am more than happy to work with you all to try to come up with some more answers to adding more judges to the immigration courts. But they are an essential part of what we do.

I have met with Juan Osuna, the coordinator for the Department of Justice. I had worked with Mr. Osuna when I worked on the Attorney General's Advisory Committee for Immigration and have a good relationship with him. We are going to try to have meetings fairly regularly to talk about everything we are doing and what they can do help us and what we can do to help them.

I have also tried to solicit a meeting with the chief judge of the immigration courts to explain to that person the need to coordinate and get as much help as we can to reduce the backlog.

I just plead for more help in that regard from all of you all.

*Mrs. Lawrence. At this committee's hearing on February the 25th, we discussed a number of legal constraints that DHS faces, and releasing these detainees. ICE sent a letter on August 15th, 2014, to Senator Grassley, addressing some of these issues.

I ask for unanimous consent to enter this response into the record, Mr. Chairman.

*Chairman Chaffetz. Without objection, so ordered.

[The referenced information follows:]

***** COMMITTEE INSERT *****

*Mrs. Lawrence. According to this letter, "ICE has no discretion for the release of many of these individuals." This letter also explains that a 2001 Supreme Court case, *Zadvydas v. Davis*, requires certain detainees to be released from DHS custody. Can you explain how it affects ICE's ability to keep individuals in detention?

*Ms. Saldana. As I mentioned earlier, we are a part of a large group of organizations that touch undocumented workers. Immigration courts are ones, the Supreme Court of the United States is another. And in that decision they required us, they ordered us. So when we say there are 30,000 releases that ICE does, that leaves out a couple of facts, and one of those is that almost half of those are those that ICE is required under the *Zadvydas* order; the other half are the immigration courts, which have made their own custody determinations, and they are allowed to by law, and have revisited and decided that we are to release those. We follow orders of the court.

*Mrs. Lawrence. Mr. Chairman, before I yield my time, I just want to make sure that we understand that comprehensive immigration reform is needed. We have the courts, we have the Department of Homeland Security, we have ICE. And until we, as a Congress, step forward and do what we need to do with comprehensive reform, we will continue to come forward looking at these issues and finding what is not right, and we need to make it right.

Thank you so much.

*Chairman Chaffetz. I thank the gentlewoman.

Members are advised that we have a vote on the Floor. We are going to recognize Mr. Hice for five minutes and then the intention is to go into recess. We do not anticipate being back here any sooner than 25 minutes before the hour, so other members are advised to vote on the Floor. We are going to recognize Mr. Hice for five minutes and then go into recess.

*Mr. Hice. Thank you, Mr. Chairman.

The bottom line of what we are dealing with, obviously, is the question as to why ICE is releasing convicted criminals who are non-citizens back into the public square. Is it fair to say that the reason for that ultimately comes down to policy?

*Ms. Saldana. I am sorry, with respect to those that we have discretion over, sir?

*Mr. Hice. Well, why are we releasing illegal criminals back into the public square? That evidently has to do with policy at the end of the day, is that true?

*Ms. Saldana. It has to do with our case-by-case determinations that some person can meet the --

*Mr. Hice. So there is no policy overruling this? So it is just a case-by-case; some you let go, some you keep, and

there is no policy dictating who you keep and who you release?

*Ms. Saldana. Actually, it is very specific guidance.

*Mr. Hice. So it is policy?

*Ms. Saldana. It is direction and policy, yes, sir.

*Mr. Hice. Okay. All right, so when it comes to policy on who is released and who is not released, we are not dealing, then, with rogue agents or law enforcement individuals who are not abiding by the policy. They are not making their own determination; they are doing what they are told to do, is that correct?

*Ms. Saldana. That is correct.

*Mr. Hice. Okay. So then we must go a level up higher than that. The problem is not the agents or law enforcement individuals; the problem is either with you or with policy that is coming and pressuring you one way or the other. But it is not the problem with the agents. So who is putting this policy forward? Is this your policy, is this your choice, your discretion to release these illegal criminals back into the public square?

*Ms. Saldana. Sir, it is our discretion based on a very rational analysis of the facts and circumstances for every person that comes before us. To answer your question, let me say the secretary put out the November 20th memorandum where he outlined specifically his priorities, and I will tell you that, just like you and the chairman and the ranking member, that number of 30,000 caught my attention real quick.

*Mr. Hice. The 66,000 over the last two years, and this is very poor discretion if policy is saying these people should be deported and they are not being deported, they are being placed right back in our neighborhoods. I spoke this morning with a sheriff in Gwinnett County, which is the third largest county in the Nation in terms of dealing with this problem, and he says that he doesn't even hear from you when you all are releasing illegal criminals back in his county. Why is it that ICE is not even informing law enforcement departments?

*Ms. Saldana. Let me point out, Congressman, again, I don't want to quibble with you, but when you say ICE released 66,000, I point out to you once again that about half of those were releases that we were ordered to do. Now, with respect to the other half, let me say specifically I have directed our chief counsel, our field office directors, and our officers out there, all of them.

*Mr. Hice. Please be quick.

*Ms. Saldana. Because of my concern, I announced another level of review so that I can be satisfied that these decisions are being rationally made. It may offend somebody that we are looking over their shoulders, but we are going to do it so that

I can be satisfied of this. I am asking every field officer, director at that level or close to that level, associate directors, to review every --

*Mr. Hice. All right, let's go on. I want you to answer my question here. We are dealing with sheriff departments across this Country who are not even in communication with your department, with ICE, and ICE is releasing criminals back in these areas, and these sheriffs are not being informed of it. Why is that?

*Ms. Saldana. I am trying to answer the question.

*Mr. Hice. Well, be quick, please.

*Ms. Saldana. Okay. That policy that I am talking about that I have advised everybody about includes notification to State and local law enforcement when we do release a criminal; not only the additional levels of review which I announced and have put in place and actually issued a press release with respect to it yesterday, the additional level of reviews.

*Mr. Hice. So are you telling us that law enforcement agents from here on out are going to be informed? Give me the bottom line.

*Ms. Saldana. It is going to take us a little time to get the system going and make sure we are all talking to each other electronically, but that is what we are doing.

*Mr. Hice. When will that be in place?

*Ms. Saldana. I cannot give you a specific date, but we are working as fast as we can on that. And let's not forget the secretary and the deputy secretary's efforts, along with myself, going across the Country, meeting with police chiefs and sheriffs to discuss this new system and everything we are doing in connection with --

*Mr. Hice. Will it be in place this year, by the end of this year?

*Ms. Saldana. I am very hopeful, sir, yes. I will get back to you on specifically where we are when we get back after this hearing.

*Mr. Hice. Mr. Chairman, I yield back.

*Mr. Cummings. Mr. Chairman, as has become the custom in our committee, when we have folks coming before us and they say that they are going to get something done, I would like for us to have some kind of deadline so that you can come back. The gentleman asked some good questions. I just want to make sure we follow up.

*Chairman Chaffetz. What is a reasonable timeline?

*Ms. Saldana. To return?

*Chairman Chaffetz. No, to provide the information that he is asking for.

*Ms. Saldana. Oh, two weeks?

*Chairman Chaffetz. Fair enough. Fair enough. Thank you.

*Ms. Saldana. Thank you.

*Chairman Chaffetz. The committee will stand in recess. We will reconvene no sooner than 10:35, depending on the length of the votes.

[Recess.]

*Chairman Chaffetz. The committee will come to order.

We are now going to recognize the ranking member. I believe we had a follow-up question just prior to going into recess, and then after that question we will recognize the ranking member for five minutes.

*Mr. Cummings. Madam Secretary, what we were asking about before, Mr. Hice had asked you some questions about when the things that you announced yesterday, I think, would be up and running. That is the deadline that we were talking about.

See, what happens, madam, is that after being here for 18 years, one of the things I have noticed is that people will come in, tell us they are going to do things, and we don't follow up. They wait until another Congress, and it never gets done. So what we are trying to do, and I applaud the chairman for this, we are trying to -- you tell us when, and then we need to bring you back in or somebody back in to say it was done. Okay? So tell us. You know what I am talking about, right?

*Ms. Saldana. Yes.

*Mr. Cummings. Is your mic on? Because I want us to be clear. I want our expectations to be clear with each other.

*Ms. Saldana. Yes, absolutely. I am one of these people that makes lists and try to check them off, so we will be sure to be doing that.

*Mr. Cummings. Tell me what it is that you will be doing so that we will all be clear.

*Ms. Saldana. Okay, what I announced yesterday is with respect to this issue of the criminal releases, I want to satisfy myself that we are doing everything we can to make sure we are doing the right decisions. So there were four aspects to that initiative that, quite frankly, I was directed by the secretary to review and have come up with. And in addition to the additional oversight of every decision that is made with respect to a criminal release, that has already been done.

Actually, that is one, two, and three of my directive. Those are already in place. Everybody who is out there is acting accordingly. That is, a person makes a custody decision or a bond determination; a field office director or someone equivalent is reviewing that; and on a monthly basis we are gathering senior managers to review all of those decisions.

The fourth aspect is the one I said -- so let me just be clear. Those top three are done.

*Mr. Cummings. Are done. Okay.

*Ms. Saldana. They are in place. They are happening now.

*Mr. Cummings. Okay. Now, tell me number four, because that is where I want to go.

*Ms. Saldana. Number four is the communication with State and local jurisdiction is to make sure they know ahead of time that we are releasing a criminal into their community, because we want them to keep tabs on those folks, too, and be aware of that. So that is the one that is going to take a little bit more time because it involves tapping into a system we already have for victim notification to expand it to State and locals. That is just going to take a little bit more time, and that is what I was saying, is I have to go back and visit with my folks to see exactly where we are with respect to that.

*Mr. Cummings. When can you give us a date? I want you to tell us when you can give us a date so that we will be certain. I want you to be real clear why I am saying this. Life is short, and I want to be effective and efficient in every single thing I do, even if it is going to that door. So we want to make sure that we have some kind of check, that is all.

*Ms. Saldana. I am with you, sir.

*Mr. Cummings. Okay, so you will let us know by?

*Ms. Saldana. I will let you know by the end of the week the best date that I can come up with.

*Mr. Cummings. Okay. That is good.

*Ms. Saldana. I am going to come up with a date, sir.

*Mr. Cummings. All right. Okay. All right.

*Chairman Chaffetz. Okay, go ahead.

*Mr. Cummings. Thank you very much. Thank you, Mr. Chairman. Just trying to be effective and efficient.

Assistant Secretary, according to publicly released information, 36,000, we have heard this figure over and over again, criminal immigrant detainees were released during fiscal year 2013. Is that correct?

*Ms. Saldana. It is 30,007, I believe is the number.

*Mr. Cummings. Okay. Well, DHS determined that 1,000 of these individuals were since convicted of new crimes. Is that right?

*Ms. Saldana. Yes.

*Mr. Cummings. So if I did my math right, that is about 2.8 percent recidivism rate, is that about in that vicinity?

*Ms. Saldana. It is under 3, yes.

*Mr. Cummings. Okay. And in April 2014, the Department of Justice issued a report on recidivism, and I ask unanimous consent to enter that report in the record.

*Chairman Chaffetz. Without objection, so ordered.

[The referenced information follows:]

***** COMMITTEE INSERT *****

*Mr. Cummings. This report shows that prisoners released in 30 U.S. States at the 12-month mark had a recidivism conviction rate of more than 20 percent. Does that surprise you?

*Ms. Saldana. No, that is a figure I am very familiar with as a United States attorney.

*Mr. Cummings. By the way, as a lawyer, I can tell you that I have a lot of respect for U.S. attorneys. I don't know whether you were leaving the U.S. attorney's spot to come to this one. I don't know why you did that.

*Ms. Saldana. You question my intelligence, sir?

*Mr. Cummings. No. But I am just saying you are held in high esteem.

But how do you believe ICE officials are performing, given a recidivism rate of 2.8 percent? Are you satisfied?

*Ms. Saldana. I would like it to be zero.

*Mr. Cummings. Yes, I would too.

*Ms. Saldana. But I cannot -- I will tell you if we were to get it down to zero, we were almost requiring our officers to have total prescience, be able to predict things that have not yet happened; and that is an extraordinary standard I can't hold folks to. What I do hold them to is to be trained on what to look for in determining flight risk and threat to the public.

*Mr. Cummings. Well, that leads me to my next question. What are you doing to further improve the risk assessment processes that ICE officials use for the release of criminal detainees? And are those criteria for risk assessment, are they reviewed at any time? Do you review them and change them?

*Ms. Saldana. Yes. And when you say you, not me personally, but persons responsible for them.

*Mr. Cummings. Yes.

*Ms. Saldana. We actually have been re-tweaking this risk classification system. Mind you, we put in all kinds of data with respect to the undocumented immigrant, and it gives us a risk classification. We took another look at it after these priorities came out in November 20th that the secretary announced; we re-tweaked it. We are looking at it all the time, Congressman. So what we have asked, though -- that is just an assessment.

*Mr. Cummings. I understand.

*Ms. Saldana. Then you have a human being actually looking at the entire facts, the number that comes out in the assessment, the facts and circumstances to make a determination based on their training and their experience -- we have some very well experienced officers out there -- to make a judgment on whether these people meet the bond requirements or not.

*Mr. Cummings. So my sense is that if we want to talk

about recidivism rates, let's do that, but let's not narrowly assume that the struggles that ICE faces are unique among law enforcement agencies.

*Ms. Saldana. Very familiar with that struggle.

*Mr. Cummings. I think about a judge. One reason why I have never been asked to be a judge is because it is hard to judge sometimes. I mean, in other words, you have to assess a situation, in sentencing, for example, and try to figure out what fits in this particular instance.

I also understand that ICE uses alternatives to detention and that ICE's full service program has a 95 percent success rate. Can you explain how alternatives to detention work? What is that?

*Ms. Saldana. That is an identification of good candidates for, based on again, intensive factual analysis, to be released and not detained based on whether, again, they represent a risk, whether they are a good candidate.

And we have had extraordinary success with that; those people are actually showing up. We have asked for and gotten a little more money in 2015 to expand this program. We are making those decisions all the time with respect to the candidates. Based on that success, we are asking for even more money in 2016 in regard to this, because when we see something that works, we want to continue using it.

*Mr. Cummings. Just one more question, Mr. Chairman. Let me ask you, what are the alternatives? Is there more than one?

*Ms. Saldana. Yes. It is anything you would use actually with a bond person; that is, monitoring, ankle bracelets. They are out, but they are being supervised, for example; report in more often than otherwise. There are alternatives to putting someone in a detention center versus having them out there but with a short leash.

*Mr. Cummings. In the prison cell.

Thank you very much, Mr. Chairman.

*Chairman Chaffetz. Thank you.

I will now recognize the gentleman from Florida, the chairman of the Subcommittee on National Security, Mr. DeSantis, for five minutes.

*Mr. DeSantis. Thank you, Mr. Chairman.

Good morning, director. I have noticed that the President, particularly since he issued his executive actions on November 20th, has stressed that we are doing this in order to protect the public from criminals, gang members, and he has repeated that a lot. In fact, I think we have a clip very recently where he was --

[Video.]

*Mr. DeSantis. Well, we are having technical difficulties.

But I think the quote was a very emphatic admonition that criminals, gang members, these likes, these are the folks who, when they are here illegally, they obviously need to be returned to their home country.

But it has come to our attention on the committee that law enforcement officers are being provided with mixed guidance in this regard. There is a hypothetical scenario that we have received in some of the training materials that officers use, and basically here is the scenario: John Doe entered the United States illegally in 2009. He does not have any lawful status. He is 25 years old and in State custody on a pending criminal street gang charge. When Border Patrol contacts the police department about the case, it advises the Border Patrol officer that Doe is a known gang member with gang affiliations and documented gang tattoos on his body.

He has not been convicted of this yet, so is it the case that he may not fall into priority 1(c), relating to gang members?

*Ms. Saldana. It is the case that he may not. But as I mentioned earlier, I am not sure that you were here at the time, the priorities also are very clear that on that case-by-case assessment that the officer does, he must take a look at the whole picture and whether or not there is a conviction or some other very obvious reason to hold him, that if that officer believes, in that extensive experience that most of them have and the training they have received, that that person presents a threat to public safety, they have the discretion to request that they be detained.

*Mr. DeSantis. And I understand that and I trust some of these officers are very knowledgeable and have great experience, but it does conflict a little bit with what the President is saying. The President is saying if you are a gang member, you are gone. And basically what this guidance is saying is, well, if you are a gang member, if you haven't been convicted, you may be gone, but you also may not be gone. And the problem with that is that I think that allows people who would represent a danger to our society to potentially fall through the cracks.

Now, this is a little bit different than the gang situation, but we had the family member of the convenience store clerk in Arizona who was murdered by someone who was in the Country illegally, was involved with the law, was definitely a problem individual released by DHS and obviously really shattered that family's life.

So I think that what I have learned by just looking at this, and this is before you became director, when there is discretion, sometimes this is a big bureaucracy, there are so many people that are involved in this and it has been stated on

both sides of the aisle and it is true, there are way more people here illegally than we have the resources to enforce the law against.

But I just worry that if you are saying that we have zero tolerance for gang members, I think the policy should be zero tolerance. I mean, if we have that intelligence from a local law enforcement, the person is here illegally anyway, so they wouldn't even have needed to do that to be sent back under existing law, so I just wonder why we would leave it to chance. If mistakes are made, those mistakes are going to end up having the American people pay for those mistakes, potentially.

We had a fellow by the name of Jamiel Shaw in front of this committee a couple weeks ago on the subcommittee, and this was long before you were there, it was even before I think the current President was in office, but his son was an aspiring football player, was doing well in school. They lived in the LA area and he was murdered on the way back home from school by somebody who was a gang banger, had been in trouble with the law, but had been released, and there wasn't coordination between the local and the Federal authorities.

So I would just say the President's guidance needs to match his rhetoric. And if we are going to have zero tolerance for gang members, I would like to see, once we understand that, I would like to see an expeditious repatriation to that individual's home country.

My time has expired and I yield back.

*Ms. Saldana. May I comment on that real quickly?

Thank you, sir. I did look at that testimony of Mr. Shaw and I was very moved. We have reviewed that file. There had been no encounter with ICE before he committed that offense.

*Mr. DeSantis. Why was that, though, because the locals didn't want to coordinate?

*Ms. Saldana. I can't speak for the locals, I am sorry. But I will tell you that, again, it is on me if these officers aren't being properly trained and having their questions answered. As I said earlier, I have directed everyone to take these criminal cases very seriously; have instituted those procedures I talked about earlier. I am with Mr. Shaw on this.

*Chairman Chaffetz. Thank you.

We will now recognize the gentleman from Georgia, Mr. Carter, for five minutes.

*Mr. Carter. Thank you, Mr. Chairman.

*Chairman Chaffetz. Wait, wait, wait. My bad. I did not recognize Eleanor Holmes Norton, who is the gentlewoman from the District of Columbia. It is her turn to go first, and then we will recognize the gentleman from Georgia.

*Ms. Norton. Thank you very much, Mr. Chairman.

Ms. Saldana, as you heard the questions, some of them are the kinds of questions you would expect certainly from the average Americans, you know, kind of throw the bones out questions. And, of course, if you catch people at the border, that is one thing. If you catch people who have been involved in our criminal justice system, it is another. And I would like to put some of that on the record because part of this is the frustration, forgive me, with due process of law, how it operates, even with respect to people that have been found, yes, to have committed crimes in this Country, but they have been found through our due process court system.

I want to ask you about Section 236 of the Immigration and Nationality Act, about discretionary release. For example, such people who you apprehend may, for example, qualify for bond, is that not the case?

*Ms. Saldana. That is.

*Ms. Norton. Now, if you caught those people at the border, that would be one thing, but they are now in our criminal justice system. And though they are illegal and perhaps shouldn't be here, and perhaps have committed a crime, now they are in the criminal justice system. Under Section 236 of the Immigration Act they qualify for bond the way any other defendant would.

*Ms. Saldana. Congresswoman, if I could just clarify. They are not part of the criminal justice system. Bond determinations are made comparable to, analogous to what the criminal justice considerations are when determining bond in those cases. But these are administrative detentions.

*Ms. Norton. Yes, that is an important distinction you make. I am trying to get to the due process question.

*Ms. Saldana. Right. And that detention, the bond determination is provided in the statute.

*Ms. Norton. That is what 236 does.

*Ms. Saldana. Yes.

*Ms. Norton. So it says bond. It says that part of due process does apply to these detainees. Now, in these cases, why might it be better for DHS, the detainee, for that matter, and the community at large to release the detainee?

*Ms. Saldana. Why is it better?

*Ms. Norton. Why might it be better to release them.

*Ms. Saldana. Well, every case, Congresswoman, every case, the only thing we are thinking about is public safety; and the two considerations about flight risk and threat to the community; and, by statute, even in some cases, humanitarian reasons.

*Ms. Norton. Would you say what some of the factors are in releasing detainees?

*Ms. Saldana. There are a whole host of them, and this is very much like the criminal justice system in bond determinations: the severity of the crime, how long ago it was committed, the circumstances and facts of the underlying offense, the ties to the community.

*Ms. Norton. Can you talk about a flight risk? I mean, is that one?

*Ms. Saldana. Yes, absolutely. That is where ties to the community, financial resources, where the person has a job.

*Ms. Norton. I see.

*Ms. Saldana. All of those are considerations. There is a whole host of them.

*Ms. Norton. What about the criminal record?

*Ms. Saldana. Absolutely. The nature of their criminal record, their offenses, their current offense, all their history going back that we have access to.

*Ms. Norton. Of course, we see in our own criminal justice system how problematic these decisions are made. Many of them are guesstimates, but at least they are on the record based on a record of some considered judgment.

*Ms. Saldana. Yes.

*Ms. Norton. Some evidence. And many of the questions you have had this morning assume that based on what we think we already know, and some of that may absolutely turn out to be true, these people should be thrown out of the Country. And I remind my colleagues who over and over again refer to the Constitution at-large, that when you get into the nuts and bolts of it, some of it is very frustrating; and one of the most frustrating parts of the Constitution is due process of law.

And what you have explained here today about bond and flight risk is what we see every day in the ordinary criminal justice system, and 236 of the Immigration and National Act that this Congress has passed says that those same factors must be considered by ICE.

I thank you, Mr. Chairman.

*Ms. Saldana. And if I may just say it is a frustration that we all have. I took issue many times with the Federal courts decisions on matters when I was asking for bond and did not get it. Congresswoman, I started out my career very early on in the Equal Employment Opportunity Commission as an investigator and an intake person, so I became familiar with you at that time.

*Ms. Norton. Look at you now.

*Ms. Saldana. My goodness.

*Chairman Chaffetz. Now recognize the gentleman from Georgia, Mr. Carter, for five minutes.

*Mr. Carter. Again, thank you for being here, Ms. Saldana.

We appreciate it very much.

It is my understanding that ICE officers and Border Patrol agents are being directed through internal memos not to ask questions concerning why people are here illegally in the United States. Can you tell me what these internal memos say?

*Ms. Saldana. I can only speak for Immigration and Customs Enforcement, sir. I am not aware of any such memo. I can't speak for CBP; I really don't know. The memos we are sending out is to give guidance on the secretary's priorities that he announced on November 20.

*Mr. Carter. Okay. Let me ask you this and let me remind you you are under oath, and you recognize that. Let me ask you are you directing officers or agents, or anyone, not to follow the law but, instead, to follow the policies of the Administration?

*Ms. Saldana. Anything I have done since December 23rd, when I was sworn into office, has been to direct our people to follow the law.

*Mr. Carter. So you are not directing your people to follow the policies of the Administration.

*Ms. Saldana. The law and the policies as the Secretary of Homeland Security has announced November 20th.

*Mr. Carter. Okay.

Mr. Chairman, at this time I would like to ask to be entered into the record a press release by the National Border Patrol Council dealing with a recent town hall meeting in Miami that President Obama said there would be consequences for Border Patrol agents or ICE officers who do not follow the DACA and DAPA policies and remove qualifying illegal aliens from the United States.

*Chairman Chaffetz. Without objection, so ordered.

[The referenced information follows:]

***** COMMITTEE INSERT *****

*Mr. Carter. In fact, we have a clip of that.

*Ms. Saldana. This is Border Patrol?

*Mr. Carter. Yes, ma'am.

*Ms. Saldana. That is our sister agency.

*Mr. Carter. We have the clip. Here we go.

[Video.]

*Mr. Carter. Can you tell me what these consequences are?

*Ms. Saldana. That the President is talking about?

*Mr. Carter. Yes, ma'am.

*Ms. Saldana. I cannot. I can tell you in general with respect to any member of an agency, organization, a private company, any member has to abide by the policies and the directives at the top. I mean, that is pretty straightforward.

*Mr. Carter. But, you know, when you use the word consequences, that is somewhat threatening. I want to know what the consequences are. Can you tell me what those are?

*Ms. Saldana. The consequences, I cannot tell you what the President was talking about. I cannot. I can tell you that if someone is not doing their job, there are consequences, up to and including termination; there is discipline, there is suspension, there is penalties. All kinds of things that can start from a written reprimand all the way to termination. That is basic employment.

*Mr. Carter. But do you consider not doing their job as not following the law or not following the Administration's policy?

*Ms. Saldana. It is not following the law and the policies of this Administration. It is both, sir. Policy is just as critical as law.

*Mr. Carter. Policy is just as critical as law?

*Ms. Saldana. Yes.

*Mr. Carter. But what about when policy doesn't agree with what the law is, when it is in direct conflict of what the law is?

*Ms. Saldana. I would say that is a problem. But I am not aware of that in this case with respect to immigration and customs enforcement. And again, Congressman, I really can't speak to Border Patrol and the customs and border protection.

*Mr. Carter. Okay, a minute ago you spoke about the memos that you have sent out. Can we get copies of them?

*Ms. Saldana. Absolutely. The one I was talking about, in fact, we may have a copy with us right now. I will make sure you get it even before the conclusion of this hearing, the one that I sent out yesterday.

*Mr. Carter. Now, I am not talking about just the one. I want to see the internal memos that you have sent out to Border Patrol agents and to ICE officers.

*Ms. Saldana. Sir, let me make it clear. I am the Director of Immigration and Customs Enforcement. There are seven agencies within Department of Homeland Security. I do not send directives to employees of Customs and Border Protection; they are not my employees.

*Mr. Carter. I understand. What about ICE?

*Ms. Saldana. Yes, I do send directives to ICE.

*Mr. Carter. Can we get those?

*Ms. Saldana. You may have any directive I have sent to ICE.

*Mr. Carter. Okay. One last question. Are you familiar, are you aware of any other director involved in this process who has sent out directives to ICE officers, Border Patrol offices, or anyone else, not to follow the law, but, instead, to follow the policy of the Administration?

*Ms. Saldana. I am not aware of that.

*Mr. Carter. Okay. Thank you very much.

I yield back my time.

*Chairman Chaffetz. Thank the gentleman.

We will now recognize the gentleman from South Carolina, Mr. Mulvaney, for five minutes.

*Mr. Mulvaney. Thank you, Mr. Chairman.

Thank you, Ms. Saldana, and thank you for sticking around after the votes. I just have a couple of random questions following up on things that you have said and things that other folks have asked you.

You mentioned earlier on today that apprehensions at the border are down and that this is good news. Were you aware that previously Ms. Napolitano had testified before Congress that apprehensions at the border were up and that this was good news?

*Ms. Saldana. No, I was not aware of that.

*Mr. Mulvaney. So it seems like it is good news if we are apprehending more and good news if we are apprehending less. Really, the number of apprehensions at the border isn't the measure, is it? It is the number of folks who actually are able to cross without being apprehended. Would you agree with that?

*Ms. Saldana. Of course. Of course.

*Mr. Mulvaney. Okay. So you come and you say, look, apprehensions are down. That is not determinative as to whether or not it is good news.

*Ms. Saldana. Not determinative, sir, but I would think you all would think that is a good thing.

*Mr. Mulvaney. No, ma'am, actually, because you could come in and say we didn't apprehend anybody, that is zero, and that is great news, and we would disagree with that.

*Ms. Saldana. It reflects border security to me if we are stopping everybody that comes across and there are zero

apprehensions.

*Mr. Mulvaney. Okay, so there is my question. How many folks are getting across without being apprehended?

*Ms. Saldana. How do I know something that is not happening?

*Mr. Mulvaney. Do you have any idea as to whether or not that number is increasing, decreasing, staying the same?

*Ms. Saldana. And let me be sure I understand your question.

*Mr. Mulvaney. Sure.

*Ms. Saldana. Would you repeat it, please?

*Mr. Mulvaney. Sure. You have mentioned the number of folks who are apprehended at the border. I have suggested to you that that is not the measure of success of the program. The measure of success of what you are doing is the number of people who are crossing into the Country illegally, without being apprehended.

So my question to you is do you have any data as to whether or not that number is going up in the last couple of years, going down, or staying the same.

*Ms. Saldana. I have no data that reflects something that is not happening.

*Mr. Mulvaney. Okay. So you have no idea if it is working or not.

*Ms. Saldana. Oh, I do. I do.

*Mr. Mulvaney. No, ma'am, you don't, because you could come in here and say, look, we apprehended five times as many as we did last year, and that is evidence of us doing a great job; and that is what Ms. Napolitano said previously. Or you could come in and say what you said today, which is we only apprehended half as many as we did last year, and that is evidence of us doing a good job. And those things are nonsensical.

*Ms. Saldana. I presume that you, sir, as well as every other congressperson here, wants us to apprehend everybody that is coming across the border illegally.

*Mr. Mulvaney. Yes, ma'am.

*Ms. Saldana. And, if possible, get that down to zero.

*Mr. Mulvaney. Yes, ma'am.

*Ms. Saldana. So zero would be good news. I believe we all agree on that.

*Mr. Mulvaney. But you are talking about the other half of the equation, which is the number of people you are apprehending, not the people who don't get apprehended.

Let me ask you this. Has the definition of turned back south or deported, has that changed in recent history?

*Ms. Saldana. I am not familiar with that.

*Mr. Mulvaney. So when you come in and you say that the number of people we turned back at the border has gone up or gone down, that definition of what you are using, I think the term is TBS, that definition has not changed in the last couple years?

*Ms. Saldana. The persons at the border are Customs and Border Protection, most likely, and there are some circumstances, if I am understanding this correct, where they do turn back people back into Mexico.

*Mr. Mulvaney. I guess the point I am getting at, when the President says that we deported more people than we ever have before, has the definition of what that means changed in the last couple of years?

*Ms. Saldana. Not that I am aware of.

*Mr. Mulvaney. Okay. All right.

Let me follow up on a couple different things. You said before that there were communities and local governments that were denying you access. Tell me about that.

*Ms. Saldana. This is one of the challenges that I mentioned in my opening statement, sir, and I enlist the help of anybody that I can get help from on this issue. Because our biggest priority is criminals, convicted felons in particular, we need to work with State and local jurisdictions who are apprehending undocumented workers for offenses against State and local law.

They have them in their custody; we can now communicate with the State and local jurisdiction and get some notice in advance, through our detainer request, to let us know that they are about to release them because they have served their State custody sentence and that we can take possession of them because of their violation of the law; and now we have a convicted criminal here.

*Mr. Mulvaney. But they are denying you the ability to do that.

*Ms. Saldana. Some jurisdictions are.

*Mr. Mulvaney. Why?

*Ms. Saldana. I can't speak for them. I will tell you some of them have policies and laws that are telling --

*Mr. Mulvaney. Do you believe that you have -- I am sorry to cut you off. Do you believe that you have the legal right to force them to comply with your requests?

*Ms. Saldana. I cannot say that the detainee notices are mandatory; they are definitely discretionary.

*Mr. Mulvaney. Would it surprise you if the Administration had taken a different position on that in the recent past?

*Ms. Saldana. Well, we have argued that and there is pending litigation everywhere on this topic. I think you may be

familiar with the Oregon case.

*Mr. Mulvaney. Would it help you if we clarified the law to make it clear that it was mandatory that those local communities cooperate with you?

*Ms. Saldana. Thank you. Amen. Yes.

*Mr. Mulvaney. Thank you, Ms. Saldana. I appreciate the opportunity.

*Chairman Chaffetz. Thank you.

Now recognize the gentleman from Texas, Mr. Hurd, for five minutes.

*Mr. Hurd. Thank you, Mr. Chairman, thank you, ranking member.

And to Director Saldana, as a fellow Texan, welcome to Washington, D.C.

*Ms. Saldana. Thank you.

*Mr. Hurd. My first question is, how does the inability of deporting every person that violates our laws impact future illegal immigration?

*Ms. Saldana. I am not sure. I think if we could deport 11 million people there might be a message sent that you really shouldn't be coming into the United States. But I think that is fairly impractical.

*Mr. Hurd. So how does a criminal alien actually get released, the process? They are in our custody, in U.S. Government custody, they get charged. What is that process?

*Ms. Saldana. I can speak to when we are in the picture.

*Mr. Hurd. Sure.

*Ms. Saldana. And this is bound by statute. I think the Immigration and Nationality Act is about this big. But what happens is we arrest them, they come into custody, we process them, take fingerprints, get all kinds of information on them so we can establish a database. Very early on the question is we have to make ICE -- this is ICE -- has to make a custody determination and whether bond is appropriate.

Based on the factors that I talked about earlier, that decision is made. Either they go into a detention center because we say there is no bond allowable, or we say the bond, and I believe the minimum is \$1500 all the way up to whatever is necessary in our view to get them to report in the future is then assessed.

If not, they can challenge that determination by ICE, and they do very, very often. So then they go into the immigration court for the immigration court then to say, ICE, you were right in your bond determination or no, you should let these release. So that half of the people that I think we have been talking about, 30,000 that were released in 2013 and another, 36,000 in 2013 and another 30,000 in 2014, that is where the immigration

courts have come in or the Zadvydas case and said they must be released; ICE, you do that.

*Mr. Hurd. So do you think all criminal aliens should be deported?

*Ms. Saldana. Yes. If we encounter them and get our hands on them, sure.

*Mr. Hurd. Okay.

Shifting a little bit to another topic, the surge of unaccompanied minors and families that we experienced last summer. Are you anticipating another surge this spring or summer? And what are you doing specifically? And I recognize that all elements of DHS are involved in that, and I am interested in hearing what ICE is doing to be prepared.

*Ms. Saldana. Well, we learned some very hard lessons last summer, so as I think many of you are aware, we have ramped up our family facilities because, of course, the surge involved unaccompanied children and families with children. So we have established Dili that I visited about a month ago and have 400 or so units already developed with people in them, and we are expanding and should conclude up to 2400 units by May.

We are gathering all the intelligence we can get, some of which I cannot share in public here, but I am happy to share it with you in a classified setting, to try to see if we can expect that again this year. I do know that what I met with the minister of security in Mexico City a few weeks ago, that he feels very strongly that we may be getting some more people up here. Mexico has done an extraordinary job in stopping quite a few people -- they report in the six figures -- before they even get to the United States.

*Mr. Hurd. On that area, you are saying Mexico is doing a good job of helping. What areas, what countries where we are seeing illegal immigration come from that are not being supportive or where there is room for growth?

*Ms. Saldana. A very critical one is China. I am actually going there this next week to sign a repatriation agreement where, as the result of work that I can't take credit for, although I would like to, that has been done with ICE officials, they have convinced the Chinese government to assist us with respect to interviewing Chinese nationals who we are removing from the Country. We are very happy for that step. We will continue to work with them and other countries to try to improve that situation.

*Mr. Hurd. Thank you.

Thank you, Mr. Chairman.

*Mr. Mulvaney. [Presiding.] And I thank the gentleman.

We now recognize the gentlelady from Illinois, Ms. Duckworth, for five minutes.

*Ms. Duckworth. Thank you, Mr. Chairman. I am glad I made it over here. Running between hearings.

Last week, ICE announced the arrest of over 2,000 convicted criminal immigrants as a result of a nationwide operation known as Operation Cross Check. According to ICE, of the 2,059 individuals arrested, more than 1,000 had multiple convictions and more than 1,000 had felony convictions, including robbery, voluntary manslaughter, and rape.

Assistant Secretary Saldana, is this correct?

*Ms. Saldana. Yes. That is who we targeted, was people with serious criminal offenses, violent offenses.

*Ms. Duckworth. And what led ICE to engage in this nationwide operation?

*Ms. Saldana. Well, actually, this is something ICE does every day, fugitive operations; try to locate those people at-large that we were talking about that perhaps we couldn't get through cooperation with State and local jurisdictions. So what we did was for a matter of weeks we worked towards -- and this is our sixth operation in this regard; we do it once or twice a year. We searched all our resources to go through all the intelligence we had, information we have in databases to identify people who were anywhere in the Country where we could identify people fitting that pattern of meeting our priorities.

Then we went out, and actually I got up 4:30 Sunday morning about three weeks ago with my bulletproof vest, and met up with a team of extraordinary ICE officers and actually we were able to locate and arrest two people on my team. The number is over 2,000. It was an extraordinary effort. Of course, when you do that, then you are not doing the day-to-day work, but that is a function that is right up our wheelhouse and exactly what we should be doing, and that is going after the worst of the worse, and that was an example of it.

*Ms. Duckworth. Can you explain how the individuals arrested will be prosecuted and processed, since you arrested them, and what is the next step? How will they be prosecuted and processed for, for example, removal from the United States?

*Ms. Saldana. They go into the removal process. We issue a notice to appear. In some cases we may have some people who already have an order of removal. That will be easier to get them out of the Country. And, of course, once again, as Congresswoman Norton noted earlier, there are some due process requirements, but we are moving as expeditiously as possible to remove them from the Country.

*Ms. Duckworth. Thank you. As a former U.S. attorney, can you explain how this operation reflects the Administration's new November 20, 2014 prosecution priorities? You said this was right up your wheelhouse.

*Ms. Saldana. Yes. You mentioned the list of offenses. Those are serious assaults, other crimes, serious crimes that have been done, and that is where we should be spending every Federal dollar that the Congress has authorized us to spend, is on getting those people, identifying them, locating them, and getting them out of the Country and away from the American public.

*Ms. Duckworth. Wonderful. You talked about this balance between doing your regular duties and an operation like this, Operation Cross Check, and how if you are doing this you are not able to focus as much on the regular duties. Do you think this was a successful step toward prioritizing for prosecution, convicted criminals and public safety threats, operations like Cross Check? You say you do several of them a year, right?

*Ms. Saldana. Yes, and it was very successful. Actually, it was extraordinarily successful. Again, this is an administrative process. The officer goes up and knocks on the door to see if the individual is in there, and I cannot say this enough. I am sorry if I am repeating myself, but when we don't have the cooperation of State and local jurisdictions, we are putting our officers at greater risk. My palms are sweating again thinking about these officers knocking on a door and not knowing what to expect when somebody opens the door.

We had a very good success rate; I think it was something like 20 percent of the people that we were looking for answered and we were able to arrest them.

*Ms. Duckworth. And targeting and identifying of these criminals, you said that it is better with the local law enforcement support. Are you getting some of that? I assume there will be more of these operations in the future. How do you prepare for that so that you have that high success and arrest rate so that you can go and find the right person and get these very hardened criminals off the streets?

*Ms. Saldana. Well, I am actually thinking about expanding, and we are talking about it internally, our fugitive operations because there are people out there that we need to locate and get out. It is a vital part of what we do and, again, the priorities are these violent criminals, gang members, those kinds of things; and I think we had all of them represented in this group of 2,000-plus that we were able to arrest.

*Ms. Duckworth. Thank you. It is clear that ICE's enforcement efforts continue to contribute to this record number of apprehensions of very serious criminals. Thank you.

I yield back, Mr. Chairman.

*Mr. Mulvaney. I thank the gentlelady.

We now recognize Mr. Russell, the gentleman from Oklahoma,

for five minutes.

Mr. Russell.

*Mr. Russell. Thank you, Mr. Chairman.

And thank you, Director Saldana, for all of the work that you do. Public service is often thankless, as you know. While we might have differences, I do appreciate your service.

The President recently said, in a national address, if you are a criminal, you will be deported. Is that really true?

*Ms. Saldana. If you are a criminal, we are going to locate you, arrest you, and put you in removal proceedings and deport you.

*Mr. Russell. But with over 160,000 convicted criminals still at-large in the United States, do you believe that is being held accountable?

*Ms. Saldana. This is what I do. This is what we are trying to achieve. We are looking for them. We are going to find them. I will tell you there will be no stone unturned to try to locate every one of them. Will we have a 100 percent success rate? That is probably impractical. But we are doing everything we can to find them.

*Mr. Russell. And of the 2,000 criminals recently apprehended this month, as it was announced, how many had been apprehended by ICE previously?

*Ms. Saldana. I think there was 1,000. I think there were 1,000 that we had. You mean by ICE? I am sorry.

*Mr. Russell. Or by anyone.

*Ms. Saldana. Or some other law enforcement agency?

*Mr. Russell. Of the 2,000 criminals that were apprehended as being on the most dangerous list, how many had been in custody of the United States law enforcement agencies before?

*Ms. Saldana. There were quite a few. I don't have that number right at hand.

*Mr. Russell. It speaks to a problem that if these were the most dangerous and these were at the top of the heap for targeted and we had held them in our custody once before, but we didn't think it important enough to prevent their release.

How many of the 2,000 will be deported?

*Ms. Saldana. They are all in removal proceedings.

*Mr. Russell. And can you provide confirmation to us of those numbers as they are deported?

*Ms. Saldana. Yes, sir.

*Mr. Russell. The last interesting thing, in a recent town hall meeting in Miami, President Obama said that there would be consequences for Border Patrol agents or ICE offices who do not follow the DACA or DAPA policies to remove qualifying illegal aliens from the United States. What are those consequences for Border Patrol agents who remove those illegal aliens?

*Ms. Saldana. As I just stated, I am the Director of ICE. Customs and Border Protection is one of the other agencies with the Department of Homeland Security --

*Mr. Russell. And I understand that, but you work interrelated. What do you think the President would be speaking of there that there would be consequences on agents that are trying, like yourself, to uphold the law?

*Ms. Saldana. They are employees and, as I just stated a minute ago, it is like any other employee; if they are not following the directives of the top, then anything from a reprimand to ultimately termination can occur. And I will tell you that is my view. I do not know what the President was talking about.

*Mr. Russell. Well, sure. But let me ask you as the director and as a prosecuting attorney and someone who has served the public for a long time, putting criminals behind bars, do you like such restrictions and being told that you can't uphold what you know the rule of law to be?

*Ms. Saldana. I wish, I wish, and I mean this sincerely, I could get every criminal immigrant who is illegal in the Country out of the Country as quickly as possible, and I am doing everything I can to do that.

*Mr. Russell. Do you feel that you are being prohibited by the executive?

*Ms. Saldana. No, sir. We have our hands full. We have our hands full with the priorities; the murderers, the rapists. We have our hands full. Those are the people we are out to look for. We are interested in public safety, border security, and national security; and that is where our focus is.

*Mr. Russell. But doesn't it create a little bit of an intimidating environment when you have the chief executive making threats to agents that are trying to uphold the law and, when you have limited resources, changing rules? I mean, you deal with these people. You mentioned them yourself in earlier testimony here of how dangerous these criminals were and the types of offenses that they had done. Knowing your passion for upholding that, how does that make you feel, as a director of an agency so vital to our security, to have what appears to be intimidation statements being made by the executive?

*Ms. Saldana. I have made it very clear to all almost 20,000 employees that I expect them to uphold the highest standards, and, quite frankly, we have an employee manual that is quite extensive, where people know that if they do not represent the agency well or they commit, themselves, crimes, there will be consequences. So, quite frankly, I think it is an important thing to communicate clearly to employees what the expectations are.

*Mr. Russell. Well, I appreciate that and I understand that people that try to uphold the law can face consequences. I hope those that are illegally here and are breaking the law and are dangerous, as we have heard in testimony, even some losing members of their family to these criminals, I would hope that they would be the ones that would have the consequence.

I yield back my time. Thank you.

*Mr. Mulvaney. I thank the gentleman. I apologize for being a little quick with the gavel, but I will let the members know that votes have been called. We have 14 minutes left and two members in the queue, so we hope to move through and wrap up the meeting.

Recognize now for five minutes the gentleman from North Carolina, Mr. Walker.

*Mr. Walker. Thank you, Mr. Chairman. I will try to take maybe half my time.

Thank you for your patience. I know sometimes the questions seem repetitive. I am going to go in a different direction today.

Last month, the secretaries of State from Kansas and Ohio testified right there about their concern about illegal aliens having access to vote; the Social Security numbers gathered from the President's referendum. But the bigger concern was they wanted to keep the rolls very pure and very clean for the people who are actually citizens that are voting.

My question is do you believe the States should have access to the DHS's immigration records so that they can reconcile these voting rolls? I would like to hear your thoughts on that.

*Ms. Saldana. I really have not given that thought, sir. That is not something within the jurisdiction of Immigration and Customs Enforcement, and I have not really studied the question. I would like to give you an informed opinion, and I just don't have the facts.

*Mr. Walker. So you have no opinion today on whether the States should have the information based on some of these Social Security numbers that have been distributed out? You feel like the States, you just don't have an opinion on that?

*Ms. Saldana. It sounds like a reasonable proposition but, again, I like to give informed opinions, and I just don't know the facts.

*Mr. Walker. Well, then let me ask it this way. Do you believe that illegals should have any opportunity to vote in an election, whether it is local or whether it is a national election?

*Ms. Saldana. I am not an expert on the benefits that are provided to some people who are in the Country and who are undocumented, but I don't think they have the right to vote,

sir. I don't think that is provided by law.

*Mr. Walker. Even with a Social Security number, even before they become a citizen or go through the process, you are telling me -- I want to make sure I have this on the record-- that you believe those people should not have an opportunity to vote?

*Ms. Saldana. I do not know that they do. I don't believe they have the right, illegal, undocumented aliens --

*Mr. Walker. And how would we know that unless the information is shared from the DHS to the States?

*Ms. Saldana. I wish I had time to consider that and work on that, but I have so many issues to deal with at ICE that I haven't really focused on it.

*Mr. Walker. All right. Well, then let me move in a different direction real quick, since that is fair. Hopefully, at one point you will have a chance to look at that, because that is very important, some of the States, that they are having accurate elections.

The number that we have talked about several times, 167,527 number of convicted criminal aliens that have not been deported. That is a big number, isn't it? That is a huge number.

*Ms. Saldana. Yes.

*Mr. Walker. One of the numbers, though, that really concerned me, as well as the 167,000, is the 30,558 that currently are unlawfully here in the United States. I think I did the math a second ago. There is an average of 400 cities per State. Times 50 is 20,000 cities. So if you look at the average, that is 1.5 criminals that are here right now in our Country. Does that number alarm you?

*Ms. Saldana. One alarms me. I would like to see them all out of the Country.

*Mr. Walker. Okay.

Well, because of time constraints, we are going to let my fellow member, Ken Buck, share his time, so I am going to yield back to the chairman.

*Mr. Mulvaney. Thank the gentleman.

We will recognize Mr. Buck for the final five minutes, and some more, if he wants it.

*Mr. Buck. At the risk of missing votes, I will be brief.

I actually didn't come here to argue or to ask any questions; I just wanted to pass a message to you. I am dating myself, but as a Federal prosecutor I worked with INS agents, not ICE agents. Then as a district attorney I worked with ICE agents.

And I have to tell you that some of the very best people I worked with were from INS and ICE, and the folks that you have on the ground are absolutely passionate about the mission that

you have with your agency; and, as a prosecutor, I am sure you probably share my view of I don't want to call them the old INS agents, but INS agents.

The problem I have, and I think the challenge that you have and the message that I wanted to deliver to you today is that the sense of mission is becoming frayed. I think they are getting a lot of mixed messages from DC. While their heart is in public safety and while they are doing their very best to protect the public and work with local law enforcement and work with prosecutors and sheriffs offices and police departments, I think they are getting a mixed message. I would just encourage you to try to work with those folks who are on the ground that I have seen really struggling.

And I don't say this in a partisan way, but really having a morale issue as a result of the various messages being sent out there, both by mayors and city councils and county commissions and others, as well as folks in DC. We were doing much better in 2005, 2006, 2007 in terms of being able to hold people in the local jail and move them through the process. There was a much clearer sense of really what the priorities should be than there is now.

So I just wanted to present that to you in as neutral a way as possible and just encourage you to work with those people because if we lose them, it is a loss to the Federal Government, it is a loss to the public safety.

That is really all I wanted to say. If you would like to comment, I open this for dialogue.

*Ms. Saldana. I hadn't been on the job six hours when I met with all the senior staff and recognized that principle in particular, and that is we can't do our jobs without the women and men of the agency knowing what their job is, doing it well. We owe them the training and the tools necessary to do their job well.

Part of that is very clear communication. I have started that; I intend to improve on it. I have asked for a professional development plan giving our people the tools and the training they need to do their job; having their questions answered. It is very much, very much at the top of my list, and I appreciate you sending that message along; I couldn't agree more.

*Mr. Buck. And if there is anything I can do to help, but if there is anything we can do in terms of legislation to help in that way, I certainly would welcome the opportunity to work with you on this.

*Ms. Saldana. I look forward to taking you up on that. You may regret having made that offer. I will see you to talk about that, and any member here. Thank you.

*Mr. Buck. Thank you.

*Mr. Mulvaney. I thank the gentleman and remind our members we have about seven minutes remaining on vote, so for now I will recognize the ranking member for his closing comments.

*Mr. Cummings. Madam Secretary, I want to thank you very much for your testimony. It is clear that you have a very, very difficult job and calls for a lot of balancing; and the people who work with you, they have very difficult jobs, and I am sure they quite often come under criticism and it is not easy sometimes. But I just want to take a moment to thank you and to thank them for what they do every day.

As I sat here and I keep listening to you, I can't help but just keep in mind, and I hope all members understand the significance of a former U.S. attorney. That is serious business. And you have sworn to uphold the law. As a matter of fact, I am sure you put a lot of people in prison as a U.S. attorney. So I think we need to keep in mind that people are doing the best they can with the tools that they have.

Sadly, there will be folks who will fall through the cracks, people who should not be on the street. It happens, unfortunately. And like I told you, when I think about the pain of the witnesses that testified in our last hearing, talking about their loved ones, I can relate big time. The idea of having a young person's life snuffed out and then mourning for the rest of your life of what could have been for them. So, again, you have our support.

I want to remind you to get back to us with regard to the information we requested and thank you.

*Ms. Saldana. Thank you.

*Mr. Mulvaney. I thank the gentleman.

Ms. Saldana, on behalf of the committee, I thank you. Congratulations on your first hearing. My guess is part of it met your expectations and part of it was probably a little bit different than you expected. But we do appreciate your time. We especially appreciate you making yourself available so that all the members could ask questions. Too many members of the Administration will come in and limit their time, and we do appreciate you making yourself available, and it is very appreciated. So thank you very much.

We thank the witnesses and, if there is no further business, without objection, the committee stands adjourned.

[Whereupon, at 11:51 p.m., the committee was adjourned.]