

Chicago AILA / ICE-ERO Committee Meeting – October 4, 2016

What follows are notes from the liaison meeting, taken by AILA members. These are not official minutes of the meeting and should not be used or cited as policy.

*At the outset, AILA would like to thank ICE for creating a bond-specialist position, and for the overall responsiveness of Officer Doss. Members report that she reliably responds to requests for bond cancellation, when requests are emailed with an IJ order administratively closing a case. Her hard work on behalf of the Agency is appreciated.*

*Attendees:*

- Glenn Trevline, DFOD
- Louie Zamora, DFOD
- Jim Bond, AFOD of detained unit & ATD/ISAP
- Sylvia Bonaccorsi-Manno, AFOD of non-detained unit
- Valencia Ahmad, AFOD of Broadview Staging, Criminal Alien, Priority Enforcement Program
- Amy Green, Representative from Office of Chief Counsel
- Elisabeth Carlson, AILA
- Keren Zwick, AILA
- Hena Mansori, AILA
- Kathleen Vannucci, AILA
- Erin Cobb, AILA
- Brian Sather, AILA
- Maria Baldini-Potermin, AILA

1. What is the current detainee population? Is this population at capacity?
  - a. How many Male? Female? Transgender?
  - b. How many at the respective detention facilities?

**Maximum funded capacity is 1,367. Currently at 1,321, 66 of whom are female and none of whom are transgender. Dodge has 217, 8 of whom are female. Boone 174, 10 female. Kenosha 184, 6 female; McHenry 248, 18 female; Pulaski 176, 15 female; Kansas City 216, 9 female; Clay 57, 0 female.**

ERO/Office Communication Questions

2. Can you provide us with updated docket sheets and contact information for the relevant officers? In addition, is there a more efficient manner for us to receive these documents, ideally on a more frequent basis? For example, a representative from OCC sends AILA a list, indicating which attorney is assigned to each judge on a monthly basis. Is it possible to create a similar arrangement or to designate a point person within ERO who is responsible for sharing updated docket sheets when they change, and to proactively communicate any other information that will be universally important to attorneys?

**ICE ERO believes quarterly distribution at liaison meetings is best. Please see attached updated docket sheets.**

**The nondetained docket "A, B" is currently vacant due to a recent retirement within the agency. The supervisor for that docket, SDDO Rathnow, can be contacted with any questions while a replacement is found.**

**The nondetained SDDOs are Crawford and Thompson, but ERO expects to have another SDDO join their office in the near future.**

3. Can you please clarify the preferred communication method with your office for instances where there are documents that need to be delivered to the ICE Officer? Is there a preferred hierarch between email, hand delivery, and fax?
  - a. If fax is acceptable, please clarify the purpose of the fax numbers listed on the different contact sheets. For example, the detained docket doesn't have any fax listed currently, but in the past 312-356-4518 was listed. The non-detained docket sheet lists an "administrative" fax (312-356-4709) and a second number (312-354-4707). What is the difference between them, and which ones should we use.

**Hand delivery of G28s is preferred but fax is also acceptable.**

**Nondetained docket sheet is updated to include only 1 fax number: 312- 356-4707.**

**The fax for the detained docket (sheet will include the fax number going forward): 312-356-4518.**

**Regardless of how ERO staff receives a G-28, they are to distribute it to the assigned officer.**

4. Can ICE share its procedure for processing a G-28 into a file? Attorneys indicate they have faxed over G-28s to the assigned officer and were told "that fax is never checked" or have communicated with ICE ERO in Chicago by filing a G-28 in person only to be told later that there is no record of the G-28 in the computer system.

**ICE ERO thanked us for bringing this to their attention. They have several new staff members and will remind our staff of the procedure to promptly enter G28s into the system so that the information is always accessible.**

5. When a G-28 has been filed to ERO, what are the internal procedures for responding to requests for information over the phone? Are there certain pieces of information that will not be given out over the phone?

**Due to security concerns, officers will not divulge non-publicly-available information over the phone if they doubt whether the caller claiming to be attorney of record actually is that attorney. Officers will use their discretion.**

**Certain information such as active investigations, national security issues, and the time/date of a removal will never be disclosed due to security concerns.**

6. Related to the previous question, open communication with counsel allows for effective representation, which is protected by 8 C.F.R. § 292.5. When Officers do not serve decisions on the attorney who has already filed an appearance and/or fail to return a

phone call to alert the attorney a removal is imminent, this right to counsel is prevented. Multiple AILA attorneys have reported intentionally evasive communication from deportation officers, particularly with respect to issues of stay requests and removals. To that end, can ICE share its policy of professionalism on which officers are trained, specifically in regards to open and timely communication with counsel?

**If there is a specific instance that needs to be addressed, please raise it with the appropriate SDDO or AFOD with unexaggerated details about the time, date, and officer involved.**

**They will remind officers to communicate with counsel who has a G28 on file as much as possible, including notifying about transfers outside of the Chicago Area of Responsibility (AOR).**

7. Attorneys have reported that ISAP does not allow attorneys to be present during ISAP interviews. Apparently, they can wait in the waiting room but cannot be present in the actual interaction. As with the question above, attorneys have concerns with the myriad of ways in which this interferes with access to counsel. (For example, how can an attorney make sure that his client understands what she is supposed to do under ISAP if she was not present in the meeting where those instructions were communicated?)
  - a. What is the basis for such a policy?
  - b. What steps should AILA members take to urge a change in this policy?

**The BI policy contract between ICE ERO and ISAP prevents attorneys from attending any of the face to face meetings at ISAP locations, but does allow for attorneys to be present in the ISAP waiting room as long as they are not soliciting business. An attorney should direct all questions to the assigned ATD (alternative to detention) docket officer.**

**Per ERO recommendation, we will raise this with the AILA national ERO liaison.**

8. Members continue to report frustration over the receptionist and check in process on the 4<sup>th</sup> floor. Previously, we have been advised to ask to speak with the supervisor of any ICE employee who may be conducting themselves in an unprofessional manner.
  - a. Who is the supervisor of the front desk reception staff on the 4<sup>th</sup> floor?**Front desk responsibilities are rotated among the Enforcement Removal Assistants (era) (ERA). For that reason, the supervising of eras is shared among several supervisors, but is primarily the responsibility of the nondetained docket. Please raise concerns over front desk behavior to AFOD for the nondetained docket, Sylvia Bonaccorsi-Manno, by sending her unexaggerated details about the time, date, and staff member involved.**
9. Given the large number of questions and concerns that we have received regarding communication with officers, we are wondering when it is appropriate for counsel to reach out to OCC? For example, is it appropriate when a detainee has a Motion to Reopen pending or a detainee has an appeal and/or stay of removal pending? (These

are main the sorts of scenarios where attorneys have expressed frustration about receiving no answer or evasive answers from ERO.)

**No, it is not appropriate for counsel to reach out to OCC to help with communication with ICE officers. Instead, please continue to contact the assigned docket officer regarding ERO issues. However, it is appropriate to contact the assigned OCC attorney for the ERO docket to find out if OCC will appeal on a detained case or if there is an emergency. The assigned OCC for ERO is now listed on the monthly OCC calendar.**

#### Detention Related Questions

10. Members report deteriorating conditions at Boone Detention Center in Burlington, Kentucky, specifically relating to overcrowding. Detainees have reported sleeping on mattresses on the floor in recreational spaces, and of sharing space designed for a maximum of 12 people with nearly double that number.
  - a. Is ICE aware of this overcrowding? What steps are being taken to correct it?
  - b. Public data that we have suggests that the maximum ICE population at Boone for any given day should not exceed 200. Is that still the correct maximum capacity number?
  - c. In addition to the daily population number for Boone provided in response to question 1, can you please provide the following: what has been the highest population at Boone has been over the past 3 months. How many days has it been within 20 people of that number over the past three months?

**ICE ERO is aware of crowding concerns that are not limited to Boone. They continue to address these issues by removing and releasing detainees as quickly as possible. They believe the reports of inmates sleeping on floors is unsubstantiated however.**

**Boone is funded for 200 beds, the facility has housed as many as 209 people. The number of overall beds in the facility (including non-ICE beds) is 424. There have been six days in which the population of the facility has been higher than 189 in the past 6 months.**

11. Detainees have also complained about the lack of non-English speaking staff at Boone, including no Spanish speakers during the majority of the times. As a result, detainees have had trouble requesting and receiving medical care, communicating with ICE, and with attorneys. Is there anything that can be done to improve the language capacity at the detention centers?

**ICE ERO recognizes that non-English speaking staff remain in demand at several facilities, not only Boone. However, hiring Spanish speakers to work in the detention facilities in remote locations can be difficult.**

**Detainees are able to use the language line to communicate with their ICE officer. (The cost is covered by ERO, at no cost to the detention facility or to the detainee). The medical request form is also available in Spanish.**

12. It is our understanding that, following the change in phone policies at Kenosha would be able to call their attorneys whenever they wanted, provided that the attorney had sent in a sheet authorizing the individual to call. We have since learned that this is not the case and that attorneys must still fax in a request in order for their client to have permission to speak to an attorney. Can you please clarify this policy?  
**Please see attached information from Kenosha about the new phone procedure that went into effect around August 2016. They will look into our concern, because their understanding is that the attorney's name, once added to the "free call list", remains on the list for the duration of the client's stay in Kenosha.**
13. In the past three months, at least two individuals who are openly gay men have been physically assaulted in ICE custody (i.e. punched by other detainees for being gay). We appreciate that these events have been taken seriously after the fact and investigated. That said, what steps are being taken to prevent such events in the first instance?  
**ICE ERO takes all allegations of violence, against and amongst, detainees seriously. Please report any issue to the assigned docket officer. It is not in their control to take preventative steps.**

Enforcement Priorities / Removal Procedures

14. Attorneys report an uptick for call in interviews for the sole purpose of reissuing NTAs when an individual already has an NTA issued that predates his/her 18<sup>th</sup> birthday. Does ICE have a policy of issuing NTAs for individuals who age out of being a minor? Can you please share with us the authority under which this is occurring?  
**No, there is no such policy. However, NTAs for unaccompanied minors may be rejected by OCC due to errors and therefore must be re-served with the corrections.**
15. Members report recent denials of extensions of stay of removal that had previously been approved without any negative intervening factors. What is the basis for such a denial when the same exact priorities existed and the same exact humanitarian concerns existed the last time the stay was approved?  
**ERO considers each I-246 stay application on its own merit and does not consider subsequent applications as "extensions." Each application is its own request. Apparent DAPA eligibility may have been a favorable discretionary factor in the past, but, because the litigation over DAPA has been concluded, it is no longer considered. Officers continue to use the November 2014 enforcement priority memorandums when making decisions on stays of removal.**  
**If you feel that a stay was denied even though an individual does not meet the enforcement priority criteria, you can raise the issue with the SDDO and/or AFOD for that officer, but note that all stay decisions are reviewed by a supervisor prior to issuance.**

16. We recognize that ICE takes individuals with DUI convictions seriously. That said, do officers have any ability to exercise their discretion when an individual fits the definition of a class 3 priority under the 11/20/2014 memorandum, but who merits a favorable exercise of discretion due to rehabilitation and family ties etc.? In particular, does ICE have any ability to exercise its discretion when the most recent DUI is more than 15 years old, for example.

**Officers do have the ability to use prosecutorial discretion even if a case falls within an enforcement priority category on a case by case basis.**

17. Are there any changes in policy with respect to removals to the recalcitrant countries? Specifically, Vietnam, Liberia, and Laos? What about with respect to Colombia given the recent peace deal there? For example, does ICE intend on filing motions to reopen deferral grants for Colombia?

**No changes as this time but removal operations are continually moving forward to coordinate with governments and increase charter flights for removals and each case is reviewed on an individual basis.**

**In regards to Colombia, the peace deal is no longer in place.**

**Nothing new on Vietnam, Liberia or Laos.**

18. What is the stay of removal policy for individuals with pending U Visas? Despite the memorandum issued Sept. 24, 2009, that states a FOD should favorably view a request for stay of removal for an alien who has established prima facie eligibility for a U Visa, members report recent experience of non-compliance with this policy.

**The policy memorandum cited is what officers use when reviewing stays of removal with a pending U visa. However, please be aware that the memo states stays of removal are not appropriate if serious adverse factors are present such as: 1) national security concerns, 2) evidence of human rights violations by the applicant, 3) evidence the applicant engaged in significant immigration fraud, 4) evidence of significant criminal history, or 5) significant public safety concerns.**

**As with number 15 above, if a detainee or attorney feels a stay decision was improperly made it can be raised with the assigned SDDO and/or AFOD.**

19. It seems that a large percentage of the detained population at present consists of individuals who have very minor or insignificant criminal histories, or none at all. This observation has been particularly acute with respect to detainees in Boone. Has there been a change in policies to account for this change in population? How does ICE ensure that detention is consistent with current priorities?

**ERO reviews for release and alternatives to detention on a case by case basis. If particular concerns are present in an area, please raise it with the appropriate SDDO. For Boone, that would be AFOD Beyers.**

20. How many people were taken into ICE custody from O'Hare in the past three months? In particular, we are concerned about individuals who have come in on valid tourist visas (including pregnant women) being detained at the airport.

**ERO does not track those numbers, but if an individual was detained, it may have been a concern over non-immigrant intent.**

21. When an individual passes credible fear, does an officer *automatically* consider the person for parole? If yes, how long does it generally take before that review occurs? Members have reported significant delays in this process (in excess of 45 days). And, it is NIJC's experience that there seems to be little chance of parole being granted without a formal request for it, something that is often impossible for a pro se individual. In cases involving pro se detainees, what does ICE do to fully consider parole?

**ERO internal procedure only allows for review of parole *after the applicant requests this review*. It is very important the applicant make a request for parole. ERO will remind officers to remind pro se asylum seekers of the requirement they submit a request for parole in this scenario.**

**To request a parole, submit a request in writing to the assigned detained officer with evidence: of the detainee's identification, of support system if released, and that the applicant is not a flight risk.**

**An I-864 Affidavit of Support is not required for the parole request, but evidence of income of the support system in the US does go to the merit of flight risk and likelihood of not violating immigration laws.**

#### Miscellaneous Question

22. At our June 2016 meeting, offices such as Indianapolis and Milwaukee were not yet accepting immigration bonds. Members report that Indianapolis is now accepting bonds (a welcomed change). When did the change go into effect? Can you please share the ICE ERO Indianapolis contact information and procedure with us? Any change in Milwaukee, and if so what is the appropriate contact information?

**Indianapolis ERO is now able to process bond payments. The contact information will be shared with AILA.**

**Milwaukee ERO is not yet accepting bonds, but the program may be in place this November. The contact information will be shared with AILA once it begins.**

23. Starting August 29, 2016, the I-601A provisional waiver program has been expanded to include individuals with final orders of removal, if the order of removal has been waived with an approved I-212 waiver. When appearing for an I-130 interview, can counsel expect that if the individual does not fall into any of the 3 priorities under the November 2014 memo that the applicant will not be taken into custody?

**ICE ERO relies on USCIS to notify their office if an interview is being scheduled that may require their attention, but unless an applicant meets the enforcement priority criteria laid out in the November 2014 memorandum, ICE ERO will not take anyone**

**into custody unless there is a federal interest at stake, which requires special authorization.**

24. To whom should we direct our request make an application for Humanitarian Parole [under INA 212(d)(5)], where the applicant is a Cuban National, in removal proceedings, detained, and wishes to be eligible to file for residency with USCIS, under the Cuban Adjustment Act? Do we need to file the Form I-131 to request parole? If a fee is required, where do we pay the fee?

**Parole can be granted by CIS, ICE and/or CBP. Please follow up with AFOD Bond.**

25. What is the current removal schedule? Are flights occurring on Tuesday and Friday mornings or just Fridays? How many removals or transfers to the staging areas do you do every week? When someone gets staged for removal at a facility (for example, Oakdale) who is the assigned ICE officer? Does it stay under Chicago area of responsibility or is it a local ICE officer at the facility?

**The Chicago ERO office's only removal flight is from Gary at 11 on Friday mornings (and no longer on Tuesdays). They are staging 45 to 70 removals each week.**

**There have been recent changes as to the docket control after a detainee is transferred. I.e., despite being transferred to Oakdale (staging for CART countries) or Otero (staging for interior Mexican states) information can still be given from the Chicago assigned docket officer once the removal is effectuated.**