



TESTIMONY OF

Daniel Bible
Deputy Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

For a Hearing

BEFORE

United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Government Operations and Border Management

ON

“After Apprehension: Tracing DHS Responsibilities after Title 42”

September 6, 2023
Washington, DC

Introduction

Chair Sinema, Ranking Member Lankford, and distinguished members of the Subcommittee, thank you for your continued support for the dedicated and hardworking women and men of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO). I am proud to serve beside them and I am grateful for the opportunity to appear before you today.

As one of ICE's three operational directorates, ERO's mission is to protect the homeland through the arrest and removal of noncitizens who undermine the safety of U.S. communities and the integrity of U.S. immigration laws. ERO primarily focuses its law enforcement activities within the interior of the United States, including conducting interior immigration enforcement operations, managing the agency's detained and non-detained populations, and repatriating noncitizens with final orders of removal. In recent years, increased focus on border enforcement efforts has stretched ERO's resources, including interior enforcement, detained and non-detained docket case management, available bedspace, and removal operations. As a result, ERO must carefully balance its resources, to continue to uphold its mission in the face of changing operational conditions and new demands, including the significant shifts the agency has experienced in the post-Title 42 environment.

The Impact of Title 42 on ICE Operations

During implementation of the Title 42 public health Order, ERO worked closely with U.S. Customs and Border Protection (CBP) at the Southwest Border to support border operations. For example, while CBP determined which noncitizens were subject to expulsion under the Title 42 public health Order and conducted expulsions at the border, ERO conducted Title 42 expulsion flights while continuing to remove amenable noncitizens under longstanding Title 8 immigration authority. From March 2020 – when the Centers for Disease Control and Prevention (CDC) implemented the Title 42 public health order– until May 11, 2023, ERO has assisted in more than 184,000 Title 42 expulsions.

ICE resources and operations shifted to expulsions of noncitizens under Title 42, resulting in a marked decrease in traditional removals¹ between Fiscal Year (FY) 2020 and FY 2021. However, the number of ICE removals increased in FY 2022, and continues to rise during FY 2023. For example, ICE removed 185,884 noncitizens in FY 2020 and 59,011 noncitizens in FY 2021. However, ICE removed 72,177 noncitizens in FY 2022, a 22% increase compared to FY 2021. Moreover, ICE has removed over 110,000 noncitizens thus far in FY 2023 as of August 19th, already higher than the total removed in the previous fiscal year.

Additionally, this trend has continued with the number of removal flights being conducted: the number of international flights conducted by ICE Air Operations has increased

¹ ICE Removals include Returns. Returns include Voluntary Returns, Voluntary Departures and Withdrawals Under Docket Control. ICE Removals include noncitizens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ERO for detention. Noncitizens processed for ER and not detained by ERO or VR after June 1st, 2013, and not detained by ERO are primarily processed by Border Patrol. CBP should be contacted for those statistics.

more than two-fold in the latter half of FY 2023 as compared to the first half of the fiscal year. Removals via commercial airlines have increased in the post-Title 42 environment as well. As of August 12, 2023, ICE Air Operations had completed 4,282 commercial airline removals, an 85% increase from the same period in FY 2022. Additionally, the number of family units removed by ICE has been increasing, compared to 2,123 family unit members removed in FY 2021. For example, in FY 2022, ICE removed 7,094 family unit members, a 234% increase, based on historic ICE data. Similarly, in FY 2023, as of August 30, ICE had removed over 11,000 family unit members.

Throughout the implementation of Title 42, ICE provided sustained and direct support for Department of Homeland Security (DHS) efforts to decompress border facilities. In FY 2022, approximately 1,000 ERO employees were detailed to the Southwest Border to process cases and offer air and ground transportation for noncitizens apprehended by CBP at the border to Alternatives to Detention (ATD) locations, along the Southwest Border and ICE facilities, as appropriate. Additionally, ICE personnel now serve alongside other DHS staff in the Southwest Border Coordination Center (SBCC), which leads planning and coordination for managing the safe and orderly processing of noncitizens, encountered along the Southwest Border. As ERO's support for DHS border management activities has increased, its resource challenges have grown, particularly as the agency faces limited resources, static staffing levels, and a growing national docket.

The Post-Title 42 Environment

On May 11, 2023, the CDC's Title 42 public health Order officially ended, resulting in all noncitizens being processed once again under Title 8 immigration authorities. As part of our whole-of-government approach to address any anticipated surge in migration as a result, ICE collaborated with DHS and Department of Justice (DOJ) partners, as well as foreign governments, to prepare for the lifting of Title 42 in an efficient and effective manner. This comprehensive approach was outlined in the DHS Plan for Southwest Border Security and Preparedness issued in April 2022 and updated in December 2022.² ERO continues to work with its DHS and DOJ partners to deliver swift immigration consequences, including removals, in a safe, orderly, and humane manner, and ICE continues to improve on its efforts to fulfill its interior and border missions in the post-Title 42 environment.

Detention Beds

ICE's bedspace inventory is constrained by several factors, including an increase in detention facility closures, transportation challenges, pending litigation and court decisions, ongoing staffing shortages, newly enacted state laws that hinder ICE's use of contract detention facilities, and limitations related to detained noncitizen gender or risk classifications. ICE has taken several steps to align its detention capacity with operational needs in the post-Title 42 environment. These efforts – which continue today – include increasing resources to release noncitizens who receive positive credible fear determinations in a safe, humane, and timely manner; leveraging ATDs for appropriate populations; and focusing detention resources on

² See Fact Sheet: Update on DHS Planning for Southwest Border Security Measures as the Title 42 Public Health Order Ends. <https://www.dhs.gov/news/2023/05/01/fact-sheet-update-dhs-planning-southwest-border-security-measures-title-42-public>

noncitizens who are subject to mandatory detention, who pose risks to public safety or national security, or who may be flight risks. ERO continues to align its bedspace with operational needs at the Southwest Border while balancing the operational need to provide needed bedspace for noncitizens currently in ICE custody.

Decompression Flights

As part of the agency's routine transportation efforts, ERO operates several transportation mechanisms. Consistent with longstanding practice and judicial agreements, ERO's Juvenile and Family Management Division (JFMD), is responsible for escorting unaccompanied children and family units from CBP custody to HHS facilities using commercial air, charter air, and ground-based transportation. Additionally, ICE Air Operations, facilitates the transfer and removal of noncitizens via commercial airlines and chartered flights in support of ICE field offices and DHS initiatives. Moreover, ICE provides ground transportation for certain noncitizens, including transfers to or between detention facilities; medical transportation; staging for removal; or transporting noncitizens to a release point near the detention facility as ICE standards specify released noncitizens will be transported to the closest public transportation if there is no bus stop within one mile of a detention facility.

Specifically, as part of its support for DHS decompression efforts at the Southwest Border, ICE operates additional transportation mechanisms. In FY 2021, through an Inter-Agency Agreement (IAA) with ICE Air Operations, CBP began requesting lateral transfers of unprocessed single adults and family units between CBP stations to alleviate overcrowding. Through this IAA, ICE Air Operations has assisted CBP with 145 domestic movement flights as of August 12, 2023. Similarly, in FY 2022, through an IAA with CBP, ERO's JFMD began supporting CBP operations by conducting lateral transfer flights of unprocessed family units. Since then, ERO has been conducting lateral transfers in accordance with both IAAs, furthering the use of ERO's transportation resources to assist DHS efforts at the Southwest Border.

Family-Focused Programs

Over the past fiscal year, ICE began to operate several programs geared toward the fair, humane, and expedited processing of family units. For example, in May 2023, ICE announced the implementation of the Family Expedited Removal Management (FERM) initiative, for family units apprehended at the Southwest Border, who are processed for expedited removal in a non-detained setting, and who indicate an intent to apply for asylum or have expressed fear of persecution or torture if returned to their country of nationality. FERM is designed to ensure family units in the credible fear process participate in a timely credible fear interview with U.S. Citizenship and Immigration Services (USCIS) and any requested review by an immigration judge without being detained. Through FERM, certain family unit heads of household are placed on ATD technology – a GPS ankle monitor – and, as a condition of their parole, are closely supervised while the family awaits an interview to assess their credible fear of persecution or torture claim. By the end of the month, FERM will be operational in forty cities nationwide. Families who receive final negative credible fear determinations while enrolled in the FERM program, will generally be removed from the United States within 30 days or less.

Removal Efforts

In accordance with U.S. immigration law, the United States removes noncitizens who cannot establish a lawful basis to remain in the country. If noncitizens have final orders of removal issued by an immigration judge within the Department of Justice's Executive Office for Immigration Review or through other administrative means, ICE may remove those noncitizens to their countries of citizenship or alternative countries of removal via charter and commercial air transportation.

To more efficiently and effectively process the removal of noncitizens under Title 8, ICE is readily utilizing its Electronic Nationality Verification (ENV) program. In July 2019, ICE initiated ENV with the Central American countries of El Salvador, Honduras, and Guatemala to expedite the return of nationals from these countries by verifying nationality electronically instead of waiting for consular officers to issue the travel documents required for removal. ICE is in the process of expanding this program to other participating countries. Within 72 hours of these noncitizens receiving final orders of removal, ICE can manifest ENV-eligible noncitizens helping to ensure expeditious Title 8 removals in the post-Title 42 environment.

Over the past 18 months, as a result of a whole-of-DHS planning effort that included robust international engagement, ERO increased its removal flight capacity in the post-Title 42 environment. ICE Air Operations facilitates the transfer and removal of noncitizens via commercial airlines and chartered flights in support of ICE field offices and DHS initiatives. The number of international flights conducted by ICE Air Operations has increased more than two-fold in the latter half of FY 2023, as compared to the first half of the fiscal year. Additionally, removals via commercial airlines have increased in the post-Title 42 environment. In FY 2023³, ICE Air Operations has completed 4,282 commercial airline removals. This is an 85 % increase from the same period in FY 2022.

Since ERO removes foreign nationals to more than 150 countries each year, removal management is a complex process that requires careful planning and coordination with a wide range of domestic and foreign partners, such as local government authorities, contract commercial air and charter service providers, and foreign embassies. As of August 12, 2023, ERO's Removal Division has conducted over 2,400 diplomatic engagements with domestic and foreign partners to augment the increased number of removal flights. These increased efforts in removal management have allowed ICE to implement and conduct efficient removal operations in the post-Title 42 environment.

In recent years, DHS has seen increased encounters of nationals from countries that we have not traditionally seen in such volumes, including noncitizens from Cuba, Venezuela, Haiti, and Nicaragua crossing the Southwest Border. These numbers have decreased following the introduction of parole processes focused on these populations. In the post-Title 42 environment, ICE has expanded its capacity to remove noncitizens to these countries and decreased the timeframes needed to coordinate removal flights to accommodate these populations, while also increasing efficiency of removal flights to other countries. For example, in April 2023, Cuba

³ ICE removal data for FY 2023 is current as of August 12, 2023.

accepted the first charter flight since 2020, and has regularly accepted charter flights in the following months. Further, ICE negotiated with Venezuelan representatives to resume the issuance of travel documents to facilitate the repatriations for those nationals who otherwise could not be removed, while also partnering with a commercial airline to expand its capacity to remove Venezuelan nationals.

Recently, El Salvador agreed to waive the pre-removal COVID-19 testing requirements for all incoming repatriation flights. Similarly, Guatemala agreed to accept ad-hoc flights on Saturdays should ERO exhaust its current weekly allowance of 18 flights and identify the operation need. Lastly, Honduras expanded the ENV program to include two high-volume areas of responsibility and rescinded the COVID-19 vaccination and testing requirements. These efforts have allowed ICE to increase removal flights of noncitizens from these countries and reduce the time it traditionally takes to coordinate removal flights.

The Increased Use of Expedited Removal

DHS has increased use of expedited removal under its Title 8 authority. Section 235(b)(1) of the Immigration and Nationality Act (INA) allows DHS immigration officers to place noncitizens in expedited removal proceedings. Generally, CBP officers apprehend noncitizens at or between ports of entry and determine if these noncitizens are subject to expedited removal, while ICE officers may arrest noncitizens unlawfully present in the interior of the United States and determine they are subject to expedited removal as well. Overall, DHS officers may apply expedited removal, without a hearing before an immigration judge, to any noncitizens who are inadmissible under Section 212(a)(6)(C) – fraud of willful misrepresentation – or Section 212(a)(7) – lack of valid immigration documents. Once apprehended by CBP at the border or arrested by ICE in the interior of the United States, noncitizens subject to expedited removal – in accordance with the INA – may be detained by ICE.

If noncitizens who are subject to expedited removal indicate the intent to seek asylum or claim fear of persecution or torture if removed, these noncitizens are afforded credible fear interviews with USCIS asylum officers while in ICE custody. If USCIS determines that the noncitizen has failed to establish credible fear, ICE continues to prepare the noncitizen for expedited removal proceedings. On the other hand, if USCIS determines that the noncitizen has established a credible fear, the noncitizens are generally released from ICE custody. Noncitizens with positive credible fear determinations, may remain in ICE custody if serious criminal histories or other noted derogatory information render the noncitizens to be threats to public safety or national security. Nevertheless, by expediting the review of the asylum claims of noncitizens in expedited removal proceedings – no matter if positive credible fear findings exist or not – DHS is able to provide relief more quickly to those noncitizens who are eligible and to more quickly remove those noncitizens who are not.

In FY 2023, ICE realigned nine detention facilities across the United States to dedicate those facilities exclusively for housing noncitizens subject to expedited removal, who also have pending credible fear interviews with USCIS. This realignment was necessary to accommodate the increased case volume and has allowed for more streamlined expedited removal procedures.

Enforcement Priorities

ICE is refocusing its resources in the post-Title 42 environment by incorporating civil immigration enforcement priorities in a manner that allows ICE to prioritize the apprehension and removal of noncitizens who pose the greatest threats to the homeland. In September 2021, DHS issued the *Guidelines for the Enforcement of Civil Immigration Law* memorandum. This memorandum, which went into effect in November 2021, instructed DHS immigration officers to prioritize enforcement actions against noncitizens considered to be national security, public safety, and border security threats. Subsequently, on June 10, 2022, the U.S. District Court for the Southern District of Texas vacated the memorandum, and all ICE personnel ceased implementation of and reliance on the guidance it contained, while continuing to exercise prosecutorial discretion on a case-by-case basis, informed by their experience as law enforcement officers.

On June 23, 2023, the Supreme Court reversed the U.S. District Court for the Southern District of Texas's decision, paving the way for ICE to reinstitute the September 2021 memorandum. Following this decision, on July 28, 2023, ICE Acting Director Lechleitner and ERO Acting Executive Associate Director Price, directed ICE personnel to reinstitute the application of the September 2021 memorandum, ensuring that aggravating and mitigating factors for enforcement actions may be fully considered and assessed. As a result, ICE personnel once again, have the authority to exercise prosecutorial discretion in their enforcement actions, while prioritizing the apprehension and removal of noncitizens who pose threats to national security, public safety, and border security in line with this guidance. The reinstatement of the enforcement priorities allows ICE to focus on the apprehension and removal of noncitizens in a manner, that complements, both its critical interior and border security missions and best utilizes the agency's limited resources to secure the removal of noncitizens who pose the greatest threats to the homeland.

Conclusion

ERO remains committed to the protection of the United States through the arrest and removal of those noncitizens who undermine the safety of U.S. communities and the integrity of U.S. immigration laws. In preparation for the termination of Title 42 and changes in migration trends, ERO took several steps to ensure the agency could continue managing all aspects of the immigration enforcement process, including providing CBP with logistical support at the Southwest Border; increasing the agency's transportation capacities; developing and operating several family-focused programs geared toward the fair, humane, and expedited processing of family units; increasing the use of expedited removal under ICE's Title 8 authority; and re-instituting the civil immigration enforcement priorities. ERO's efforts allow the agency to ensure a fair and humane immigration system, while fulfilling its critical national security and public safety mission as well.

Thank you again for inviting me to testify today and I look forward to your questions.