



**U.S. Immigration
and Customs
Enforcement**

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

We, the Homeland Security Investigations, Special Agents in Charge write this letter to propose a more efficient and effective alignment of the Department of Homeland Security's (DHS) law enforcement assets. This proposal would better position DHS to support the requirements set forth in Executive Order 13773, "Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking." The mission of the department is to secure the United States against nefarious actions perpetrated by terrorists and transnational criminal organizations, while creating an atmosphere of resiliency in response to other hazards. As vital as the DHS missions are, executing these missions can be controversial and confusing, and limited by finite operational budgets and resources. As responsible DHS executives, we know we must remain vigilant for opportunities to improve organizational and process efficiencies to make the most of those limited resources. It is in this spirit that we communicate the following observations, analysis, and recommendations. We are communicating directly to you because these recommendations have impacts and opportunities for which are best understood, and eventually implemented, at the Department level.

In 2003, Congress and the 9/11 Commission determined that it was necessary to address inefficiencies in the national security systems of the U.S. Government that might have contributed to the 9/11 terror attacks. The result, in part, was the creation of DHS and subsequently U.S. Immigration and Customs Enforcement (ICE) from components of the U.S. Customs Service and the Immigration and Naturalization Service. During its early stages, ICE was created as the investigative arm of DHS. The ICE Office of Investigations had oversight of programs that supported ICE's investigative and enforcement priorities including the Air and Marine Operations Branch, the Federal Protective Service, the Federal Air Marshals and Deportation and Removal Operations (DRO). As better efficiencies were sought and ICE continued to evolve during its initial years, many of these former components of ICE were realigned under other agencies.

For over a decade, ICE has provided an umbrella, under which the immigration enforcement systems could be redesigned and strengthened by ICE's two remaining components, now independent from each other—Enforcement and Removal Operations (ERO), formerly DRO and Homeland Security Investigations (HSI). ERO reorganized civil immigration enforcement

priorities, developed detention and removal efficiencies, and improved relationships with humanitarian groups and associations. HSI developed a platform that would support the full homeland security enterprise and operations to counter the exploitation of international trade, travel, and finance by terrorists and international criminals. Thus, as ICE continued to evolve, while achieving a reengineered immigration enforcement program, two very effective but disparate sub-agencies emerged.

ERO has become very effective and efficient at detaining and removing illegal aliens. HSI, now the second largest federal investigative agency, has become the U.S. Government's 'Transnational Investigative' agency, plugging the gap between more domestically-focused federal law enforcement and the international sources and methods of crime that significantly impact the U.S. The two ICE sub-agencies have become so specialized and independent that ICE's mission can no longer be described as a singular synergistic mission; it can only be described as a combination of the two distinct missions (i.e., 'Enforcement/Removal and Transnational Investigations'). Considering E.O. 13773 and the fact that we believe that ICE has reached a point of final maturation in its continued evolution, we propose to restructure ICE into the two separate, independent entities of HSI and ERO.

While separating HSI and ERO will have some administrative challenges, the establishment of two separate and independent agencies, will improve transparency, efficiency and effectiveness. HSI arrests more criminal violators than any other federal investigative agency and is significantly resourced at strategic locations inside the U.S., as well as internationally; thus, positioning itself as a key agency under DHS in the implementation of E.O. 13773. For example, HSI focuses on the TCO's that import high levels of narcotics, including the extraordinary amounts of opioids flooding into the U.S.; utilizes its authorities to combat trade fraud; tracks and arrests those that seek to exploit children; identifies and seizes the illicit funds of traffickers; and detects and arrests those who exploit other humans via trafficking and/or smuggling. Given that true border security starts outside of the U.S., HSI's extraordinary global reach, with offices in 65 locations overseas, positions HSI to push the borders out and enhance the national security of the U.S. In addition, with its vast authorities and footprint, HSI is recognized by international partners as the leaders in combatting transnational crime in the U.S. HSI continues to strategically utilize its civil immigration authority and border search authorities to enhance its transnational investigations, while also working with ERO and U.S. Customs and Border Protection (CBP) respectively. Thus, HSI is primed to be your transnational criminal investigative agency and aggressively attack TCO's as directed by E.O. 13773, while also supporting terrorism investigations.

There are numerous reasons the establishment of two separate agencies will improve both agencies. Both agencies have suffered low approval ratings in recent DHS Federal Viewpoint surveys. The establishment of two separate agencies will allow employees to develop a strong agency pride. The current structure does not allow for each agency's distinctive missions to develop; rather, it results in each agency lacking the ability to find a direction and seemingly competing for budget, resources and an identity. Regarding identity, there are both internal and external aspects. ICE has two organizational missions of equal significance – Detention and Removal and Transnational Investigations. Every other Federal law enforcement agency is organized with just one primary mission to improve focus and effectiveness. CBP, as one

enforcement agency example, focuses only on patrol/inspection/interdiction. As for investigative examples, the FBI, ATF, DEA, and, in DHS, USSS all are singular agencies focused on their individual investigative portfolio. No U.S. Department of Justice law enforcement agency is paired with another disparate entity, i.e., the FBI is not paired with the Bureau of Prisons or DEA.

The issues with agency identity are manifested as federal, state and local law enforcement agencies, as well as communities, try to build working relationships with ICE, but are unable to find a single point of contact. Instead, they have built two points of contact, one with ERO and one with HSI because functionally the two are recognized externally as separate. ERO partners more closely with state, local and municipal law enforcement agencies, as well as correctional facilities across the U.S., specifically on immigration enforcement for detention and removal purposes. ERO works closely with CBP when aliens are encountered at the ports of entry or between the ports of entry. In the U.S., HSI partners with all federal and state, local and municipal law enforcement agencies, as well as the Intelligence Community pertaining to public safety and national security efforts that fall within HSI's broad investigative portfolio; additionally, HSI partners with foreign law enforcement agencies across the globe, where it has established Transnational Criminal Investigative Units in 14 countries. HSI is the second largest federal agency contributor to Joint Terrorism Task Forces across the country and participates on numerous other task forces led by other federal and state agencies. HSI leads numerous task forces in the U.S. focused on dismantling and disrupting transnational criminal organizations, i.e., the Border Enforcement Security Task Forces (BEST), Document Benefit Fraud Task Forces (DBFTF), Human Trafficking Task Forces, Public Safety/Gang Task Forces, Financial Crimes Task Forces, and Trade Enforcement Coordination Centers. HSI leads the U.S. efforts against intellectual property crimes at the Intellectual Property Rights Coordination Center and export enforcement of controlled commodities at the Export Enforcement Coordination Center, both located in national capital region.


The differences are not just seen in the type of work, but also the workforce. The workforces that comprise ERO and HSI are distinct by the nature of their work and by the management policies associated with that work. As a result, ICE has considerable challenges creating singular policies, programs, training plans, staffing templates or budget prospectus that meet both HSI and ERO needs. For instance, ERO law enforcement and support personnel (non-management) are a bargaining workforce operating on Administratively Uncontrollable Overtime and shift work. All of HSI is a non-bargaining workforce, and its special agents receive Law Enforcement Availability Pay and are subject to callouts at any hour. This difference in bargaining status, the policies that govern union and nonunion-based operations, and the occupational specialization and training, make it difficult for ERO and HSI staff to supplement each other if needed. In terms of budget, although Congress, OMB, and DHS apportion initial budgets to ERO and HSI functions, those budgets transform as immigration priorities change. In this environment, ERO and HSI cannot build sustainable and long-term structures and processes. ERO cannot continue to develop detention and removal efficiencies while having to share resources with HSI. Similarly, HSI's fluctuating budget hinders its primary mission of conducting a high volume of complex, large-scale transnational investigations. For example, the ebbs and flows of ERO detention priorities have directly impacted HSI operations and infrastructure, including the reprogramming of HSI funds to ERO (specifically \$5M in FY11, \$10M in FY13, and \$34.5M in

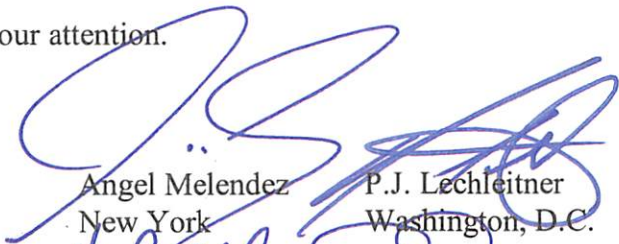
FY16), the hiring and resourcing of HSI personnel, unplanned reductions in operational funds, and an inability to invest in tactical communications, purchase of information/evidence, travel, training, Title III funding, and procurement of technical equipment, all of which are crucial to effectively conduct complex transnational criminal investigations.

The disparate functions performed by ERO and HSI often cause confusion among the public, the press, other law enforcement agencies and lawmakers because the two missions are not well understood and are erroneously combined. ERO's administrative actions have been mistaken for illegal investigations and warrantless searches. HSI's investigations have been perceived as targeting undocumented aliens, instead of the transnational criminal organizations that facilitate cross border crimes impacting our communities and national security. Furthermore, the perception of HSI's investigative independence is unnecessarily impacted by the political nature of ERO's civil immigration enforcement. Many jurisdictions continue to refuse to work with HSI because of a perceived linkage to the politics of civil immigration. Other jurisdictions agree to partner with HSI as long as the "ICE" name is excluded from any public facing information. HSI is constantly expending resources to explain the organizational differences to state and local partners, as well as to Congressional staff, and even within our own department—DHS.


The development of two new effective agencies is a positive step for the Department, as part of the progression that ICE has experienced since its inception fifteen years ago. As modern government organizations succeed through dynamic, not static, missions and organizational structures, so should ERO and HSI continue to succeed by unlocking each agency's potential.

Thank you for your attention.

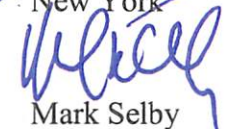

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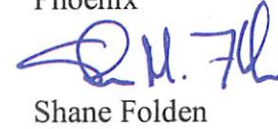

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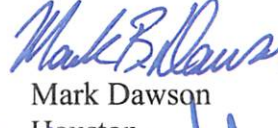

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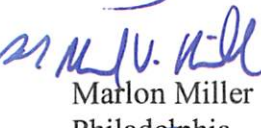

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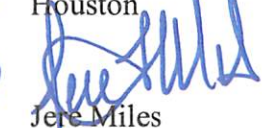

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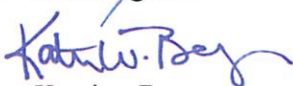

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