

Minutes for ICE/AILA Liaison Meeting on August 11, 2016

Location: 5441 Watson Dr., Albuquerque, NM 87106

FOD Corey Price, AFOD Tom Hernandez, Acting DFOD Glenn Shaleen, Deputy Chief Counsel Jose Tavarez, SDDO Patricia Bates, SDDO Bill Shaw, SDDO Edward Gober, and representatives from CBP were present in person. Numerous other DHS representatives joined via televideo, including Chief Counsel Elias Gastelo and DFOD Fred Fierro.

Leadership, Personnel, and Offices

1. Could you please provide an update regarding the date for the anticipated return of AFOD Bill Jepson as the AFOD in Albuquerque and leadership during his absence? In July, AFOD Bill Jepson provided an update that he is still on a temporary duty assignment at ICE headquarters until October 2016 and then plans to return to his assignment as the AFOD in Albuquerque. SDDO Edward Gober will be the Acting AFOD in Albuquerque until mid-September, and Mr. Glenn Shaleen will be the Acting DFOD for New Mexico. Mr. Shaleen will split his time between Albuquerque and El Paso from July through mid-October. If matters need to be escalated to El Paso leadership, we can reach out to the new Chief of Staff, AFOD Frederick (Tom) Hernandez. Could you please confirm whether that information remains correct and if there are any needed updates?

AFOD Bill Jepson is currently on a temporary duty assignment at ICE Headquarters and plans to return to his assignment as the AFOD in Albuquerque on October 1, 2016. SDDO Edward Gober will be the Acting AFOD in Albuquerque until the end of August 2016. SDDO Patricia Bates will be the Acting AFOD in Albuquerque in September 2016. A new DFOD has been selected for the ERO El Paso Field Office, and she will arrive in late summer or early fall of this year. Until then, AFOD Glenn Shaleen will continue to be the Acting DFOD overseeing ERO Operations in New Mexico. He will split his time between El Paso and New Mexico.

AFOD Frederick (Tom) Hernandez is the new Chief of Staff for the El Paso ERO Field Office and he can assist if any matters need to be escalated to El Paso. ERO has also opened up a new position for a Community Relations Officer (CRO), and a selection was made to fill the position.

2. Could you please provide an update regarding new AFODs and acting AFOD(s) in El Paso and their roles?

The ERO El Paso Field Operations Contact List that was distributed in June 2016 reflects the current leadership and contact information. With the exception of AFODs Greg Brawly and Bill Jepson, the AFODs are physically located in El Paso, TX vicinity. AFOD Sandra Marinelarena oversees the Otero Processing Center. AFOD Greg Brawley oversees the Midland and Pecos, Texas offices. AFOD Mary De Anda-Ybarra oversees the El Paso Processing Center. AFOD Jose A. Renteria oversees removals (non-detained/detained). AFOD Glenn Shaleen oversees Fugitive Operations. AFOD Gloria Martinez oversees the Criminal Alien Program in El Paso. AFOD Tom Hernandez oversees mission support as Chief of Staff.

ERO plans to provide quarterly updates to the contact list (if changes occur).

3. Could you please provide an update regarding where ICE offices are located throughout New Mexico and what their roles are (e.g. detained or non-detained case management, ATD, fugitive ops)? Could you provide an update regarding the role of the Roswell office? There is also a rumor that a new ICE office will be opening in Santa Fe. Is that true?

There is a new ICE office in Roswell responsible for the Criminal Alien Program as well as at large enforcement in Southeastern New Mexico. The office serves in identifying detained individuals and transferring persons to ICE for removal. The Roswell office does not have any detained or non-detained docket functions. There are 8-10 Officers total in that office.

The Las Cruces office is similar to the Roswell office. The office has fugitive operations, and Criminal Alien Program functions.

There are no discussions or plans regarding opening an ICE ERO office in Santa Fe at this time. That is strictly a rumor.

Acting DFOD Glenn Shaleen oversees the New Mexico ICE offices. Both the Roswell and Las Cruces offices are enforcement offices and ERO enforcement offices are not open to the public. Only the El Paso and Albuquerque ICE offices are open to the public.

I-246 Applications for a Stay of Deportation or Removal

4. I-246 applications for persons with pending U Visa applications were previously typically granted for a period of one year; however, more recently several practitioners have reported that stays have been granted for only 6 months for cases with a pending U Visa. Current USCIS Vermont Service Center processing times indicate that applications are taking about 2 years before granting deferred action while awaiting an available visa.

Would the FOD consider longer stay of removal periods to reflect the current processing times so that clients do not continually need to renew stays of deportation?

FOD Price indicated that a stay of deportation is a temporary form of relief from a deportation or removal order. It is not an application for a benefit. The maximum time for a grant of a stay of deportation is one year. He looks at every I-246 application case-by-case to determine the length of the stay of deportation, considering the totality of facts, criminal history, and the reason for the stay of deportation. ERO collaborates with OCC, and for U Visas, ERO also stays in close contact with USCIS at Vermont Service Center. FOD Price asked attorneys to include the U Visa receipt notice since they do call USCIS and inquire regarding the status.

Attorneys asked that FOD Price consider longer stay of removal periods to reflect the current U Visa processing time and asked that FOD Price consider a loose default of one year for stays of deportations based upon U Visas. FOD Price will take attorney suggestions back to Mr. Gastelo and engage with USCIS to look at the process and appropriate timeframes.

Chief Counsel Gastelo indicated that OCC may request expedited adjudication of a U Visa for detained individuals, but the same guidance does not mandate for requesting expedited adjudication of a U Visa for a non-detained person. Nonetheless, every U-visa case will be reviewed on a case by case basis.

Once USCIS has granted deferred action, ERO will honor that deferred action. No additional stay of deportation or removal is needed while the deferred action is still in effect, but ERO needs to be notified of the deferred action and given a copy of the deferred action notice.

5. Assume a person has been placed on monitoring by ICE through a granted Stay of Removal, but the person is not a removal priority under the Johnson November 2014 Memo. Is it appropriate for this person to continue to stay in the ICE monitoring system for a Stay of Removal, or will ICE simply inform the person they don't need to report anymore? Is there some other procedure for handling this situation?

Any ATD is an alternative to detention where a person is monitored through other means rather than being placed in physical custody. ERO considers telephonic reporting, GPS ankle monitors, and in-person reporting to determine what is appropriate on a case-by-case basis depending on the criminal history, flight risk, and priority of the person. A risk assessment is performed, and the form of ATD is determined by the case manager and supervisor. SDDO Adriana Guedel oversees the ATD program in Albuquerque.

FOD Price also noted that some persons whom attorneys have claimed are not enforcement priorities actually are priorities upon a careful reading of the Jeh Johnson memo.

6. Many practitioners have continued to report concerns regarding the large increase in denials of I-246 applications. Could you please provide an update regarding the number of approvals/denials? Have any denials been reconsidered and approved?

FOD Price indicated that ERO conducted a study regarding I-246 approvals and denials over the past year and found that there was no change. He said that roughly half of I-246 applications were granted.

Various attorneys indicated that there has been an increase in denials. One example is that even I-246 renewals are being denied. FOD Price indicated that for repeat I-246s, he looks at the reason for the initial stay in addition to changes in other factors since. If the stay application requested time to get affairs in order before leaving the United States, it is not consistent if the third stay is based upon the client building up his business, buying equipment, and showing no intention to leave, but rather intentions to remain.

Attorneys indicated that it would be helpful to indicate the reasons for denials in the denial letters. FOD Price indicated that when he previously specified reasons for denials, then there were complaints that not every factor was included in the letter. He indicated that it is too time consuming to list all the factors they considered and that he will continue the current practice as in every case; they are looked at in totality. Any specific questions or issues can be brought to the attention of the chain of command or FOD Price if necessary

A few I-246 denials have been reconsidered and approved, but those few reconsiderations generally were due to new evidence that was not provided with the original application. FOD Price indicated that it is rare for a denial decision to be overturned since I-246 requests are carefully reviewed the first time.

Attorneys requested better communication regarding denials since we often get denials after a client has already been deported. DFOD Fierro said that it would be helpful for attorneys to provide our cell phone numbers in addition to our office numbers because when they do call the office, they often cannot get through to attorneys or need to call before or after regular business hours. ERO and attorneys agreed that the best way to facilitate better communication would be if attorneys provided a contact list to ERO with cell phone numbers in addition to office numbers. The AILA-ICE Liaison will ask any attorneys who would like to be on that list to provide their contact information, and the list will then be provided to ERO.

7. What are the current adjudication times for I-246 applications for detained and non-detained clients?

Detained I-246 requests are prioritized over non-detained I-246 requests. However, the timing for adjudication is case-by-case. Some take hours, some could take a month. Some requests require more legwork than others. For example, if medical issues are the basis for the stay, ERO consults with its own medical staff.

8. Is there currently a policy in place for when ICE would like us to file I-246 applications for non-detained clients (stay renewals)? Given that I-246s are taking longer to adjudicate for non-detained clients, does ICE want us to file them early, and if so, what is the earliest ICE will accept them (i.e. 30 days before expiration of current Order of Supervision)?

File the stay of deportation whenever you want. Approximately 30 days before the expiration of the current stay is a good guideline for a strong stay request, but may continue to be filed up until the expiration of the current stay. If a stay request is filed over 30 days before the expiration, they will not reject it. For a brief time period, there were guidelines in place where some stay requests may have been rejected if filed too early. It is the applicant's decision when to spend that \$155, and ERO will accept I-246 requests regardless of when they are filed unless policy changes.

Alternative to Detention (ATD) Program

9. Could you please provide an update regarding how many persons are currently on ankle monitors as part of the ATD program, how many are reporting telephonically, and how many have in-person reporting and/or home visits? What guidelines are being used to determine what type of monitoring is appropriate?

The appropriate avenue for this information would be to submit a FOIA request for numbers of persons on ankle monitors or other ATD programs. Any ATD is an alternative to detention where a person is monitored through other means rather than being placed in physical custody. ERO considers telephonic reporting, GPS ankle monitors, and in-person reporting to determine what is appropriate on a case-by-case basis depending on the criminal history, flight risk, and priority of the person. A risk assessment is performed, and the form of ATD is determined by the case manager and supervisor. SDDO Adriana Guedel oversees the ATD program in Albuquerque.

10. Recently several of our clients on ankle bracelets have been switched to a new ATD program where they must report to ICE every other month and an ICE contractor will do a home visit every other month. We very much appreciate the reduction in use of ankle monitors for asylum seekers and other persons but have a few questions about this program:

- How much notice will ICE give before making a home visit? Many of these individuals have work authorization so they are working and will need notice to take time off and wait at home for a visit.
- What guidelines are being used to determine who is on this program?
- Is this a nationwide new program, or more of a pilot project?

- What types of situations might cause the contractor to call ICE?
- Will the contractor check the immigration status of other family members in the home who are not already on an order of supervision?

We were running out of time, so additional parts of the remaining questions that were not answered can be addressed at a future meeting. In addition to the responses to question 9 above, FOD Price indicated that ATD across the country has increased in order to better monitor the location of individuals. Although the form of ATD is determined by the case officer and supervisor, ERO does not tend to use GPS ankle monitors for pregnant females. Contractors are not immigration officers. They do not have the role or function to check the immigration status of other family members. Contractors do make sure that the person on ATD is complying with all conditions of the supervision and must notify ICE of any violations. For example, if the contractor detects tampering with an ankle monitor strap or if a person is not home in time for scheduled visit, the contractor must notify ICE. ICE then has internal guidelines and issues regarding how to proceed. If there are issues with certain forms of ATD and how it is affecting a person's job, communicate with the case officer and, if needed, SDDO Adriana Guedel.

Issuance of NTAs and Prosecutorial Discretion

11. For individuals who have been served with a Notice to Appear, but where the NTA has not yet been filed with the Court, what is the process for notifying ICE that there is a change of address? If a notice is sent to the local office, can there be a process for confirmation of the change of address?

Reserved for future discussion due to time limitations.

12. For individuals who have been served with a Notice to Appear but ICE has not filed the NTA after a long period of time, is there a process to determine whether the NTA will be filed with the court or whether ICE has exercised PD?

If OCC decided not to file an NTA, the general process is for OCC to notify ERO. There is no specific process to determine whether an NTA will be filed. Attorneys may contact OCC or ERO regarding specific cases.

Eligibility for Work Authorization or Relief

13. One practitioner reported: A number of clients have come to us telling us that they have been told by ICE officers that they are eligible for work authorization, when it appears that they are not. These are individuals who have check-ins but do not have parole, a final order, or pending application that otherwise entitles them to work authorization. If ICE would like to give these individuals parole or work authorization in some way, we would certainly welcome that. We also appreciate the efforts of ICE officers to be helpful to clients. However, could you please remind officers that to avoid confusion, it may be helpful to avoid indicating whether clients are eligible for work authorization and instead suggest that they may want to consult with an immigration

attorney or carefully review the Form I-765 instructions regarding whether they are eligible for work authorization?

ERO officers should not tell anyone that they will get an EAD. Rather, they inform the individual of their eligibility to file an application with CIS for an EAD. ERO only tells people that they may be eligible to apply, such as while under an order of supervision.

Bond

14. Could you please clarify the preferred method to submit supporting documentation for bond requests to ICE in Albuquerque? May supporting documents be submitted via email, or do they need to be submitted in person?

Reserved for future discussion due to time limitations.

Thank You

15. Multiple practitioners have expressed appreciation for the new ICE/ERO Contact List. Thank you!

ERO will continue to update the contact list on a quarterly basis (if changes occur).

16. One practitioner reported: Our office has noticed and appreciated that officers are being very responsive to inquiries. Just wanted to pass along a thank you.