

November 14, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

On behalf of the law enforcement professionals of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) whom we are proud to represent, we write to express deep concern regarding the direction of our agency and the people who currently run it. ICE needs a change agent in the position of agency Director. The status quo can no longer be tolerated and we hope that you will work with us, the law enforcement professionals who make up ICE, to turn our agency around. The first step in that process is ensuring that ICE has the highest caliber of leadership at the position of agency Director.

As you are aware, our National ICE Council leadership has previously testified before the Committee resulting in commitments to conduct investigations into mismanagement and misconduct within our agency. To our knowledge, no investigations have been conducted to date. We have been deeply disappointed in the work by internal investigative groups like the ICE Office of Professional Responsibility (OPR), and the Department of Homeland Security (DHS) Office of Inspector General (OIG), who generally serve only to cover for management misconduct and incompetence, leaving no appropriate oversight of agency managers, no fair and just system for reporting misconduct and waste, and no effective means by which to investigate our agency. All manner of retaliation by ICE managers, to include whistleblower retaliation, are rampant within the agency. The lack of oversight within ICE and agencies like it, and the ability of agency managers to retaliate against those American citizens who report their mismanagement, stands in stark contradiction to the principals held by the American people and how the civil service was intended to function.

While the agency's long-standing and corrupt 'good old boy' network promotes the least suitable candidates into key leadership positions within ICE, our rank and file employees are among the finest in the nation. No one does more with less than the men and women of law enforcement serving within ICE. Calls to abolish ICE are motivated by those who don't support the enforcement of U.S. immigration law and have no nexus to the conduct of our rank and file employees. We are writing to you today to inform you that ICE is in desperate need of change and oversight with respect to internal mismanagement, incompetence, and misconduct by our managers. While the meaning of this letter will likely be manipulated for political purposes by members of the media and radical special interest groups, the changes we're demanding are not the same as those who wish to abolish ICE, nor do our concerns support their reasoning for doing so. With simple changes such as the appropriate oversight of agency management, and a trusted

system for reporting and investigating management misconduct, it is our opinion that ICE could quickly establish itself as one of our nation's premier law enforcement agencies. We hope to work with you to accomplish this type of real and meaningful change within our agency

We strongly encourage Members of the Committee to read the accounts of ICE employees who have shared their stories and experiences on the internet because they had nowhere else to effectively report the misconduct they witnessed and experienced. These accounts include some of the most reprehensible alleged misconduct by current and previous members of ICE leadership. The disturbing conduct alleged includes an incident where one senior agency official left his government-issued firearm in a strip club, and in a separate incident this same senior agency official exposed his genitals to other employees in the workplace. Additionally, in separate incidents, another manager allegedly lost his badge and credentials to a prostitute, and another allegedly sent nude pictures of himself to subordinate female employees using government equipment.

We also encourage Members of the Committee to review the November 15, 2016 internal ICE report in which ICE employees **and supervisors** describe their leadership as retaliatory, dishonest, untrustworthy, vindictive and petty.¹ Employees reported that female ICE employees feel pressure to engage in romantic and sexual relationships with senior male managers in order to get promoted, and managers discriminate against racial minorities, as well as military veterans.² Additionally, Members of this Committee should review a DHS OIG account of ICE's failure to properly manage its deportation operations and properly train its officers.³ These allegations and reports only begin to scratch the surface and shed a little bit of light on to the conduct of ICE management and the dysfunction within the agency. While each individual allegation or report is only specific to certain employees, locations or work functions, it is our opinion that each instance serves as a snapshot of misconduct and mismanagement that is pervasive throughout the agency.

As we stated earlier in this letter, ICE needs a change agent in the position of agency Director. We implore the Committee to take all necessary time and exercise all necessary due diligence prior to confirming any future ICE Director. We further implore the Committee to make every effort to ensure that our new Director is a person of honor and integrity, who leads by example, holds their managers to the highest standards, and is determined to end mismanagement, incompetence, and misconduct within our agency. The role of the Committee and its Members in determining the suitability and fitness of the leader of our agency is crucial to ultimately ensuring the safety of our law enforcement personnel in the field and the American public.

The nominee to be considered by the Committee, Mr. Ronald D. Vitiello, has only been with ICE for a short period of time, and while this letter neither supports nor opposes his nomination to be our Director, we are aware of several matters that give us serious concern about him and his

¹Scott F. Lanum, Assistant Director, Office of Diversity and Civil Rights, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, (November 15, 2016), *Final Organizational Climate Assessment Report for Enforcement and Removal Operations – Field Office Director Newark*.

² *Id.*

³ Office of Inspector General, U.S. Department of Homeland Security, (April 13, 2017), *ICE Deportation Operations: OIG-17-51*, available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-51-Apr17.pdf>.

ability to lead our agency. We ask that the Committee look in to these concerns and provide a finding on each prior to any vote on Mr. Vitiello's nomination.

Comparing the POTUS to Dennis the Menace on Social Media

It has been publicly reported in the media that on March 4, 2016, Mr. Vitiello shared images via Twitter that compared then Presidential-candidate Donald Trump to cartoon character Dennis the Menace.⁴ This news report shows the tweet coming from a Twitter account displaying a photograph of Mr. Vitiello in a U.S. Border Patrol dress uniform with the official U.S. Border Patrol flag positioned behind him.⁵ At the time of this post, it is our understanding that Mr. Vitiello held the positions of both Deputy Chief, as well as Acting Chief of the U.S. Border Patrol.

If this incident is true, we are deeply concerned with the prospect of a Director who at best has demonstrated extremely poor judgment by sending a Tweet of this nature. Furthermore, we are concerned with what appears to be a political statement against the now President and the possibility that this Tweet represents Mr. Vitiello's true feelings about the President and his plans for the agency. As ICE is one of our nation's largest and most politically charged federal law enforcement agencies, with a multi-billion-dollar budget, it is imperative for our Director to not only have impeccable decision making but also to behave in a fashion that is beyond reproach. In this instance, it appears that Mr. Vitiello violated the DHS and CBP Standards of Conduct, as well as the ICE Employee Code of Conduct, to which employees of each respective agency are held accountable.⁶

Working in any position in a federal law enforcement agency, with public safety and national security missions like ICE, requires that each and every employee hold themselves to the highest possible standards of conduct. This is perhaps most imperative for senior level agency leaders. If the incident described above is true, it appears that Mr. Vitiello failed to hold himself to this standard and failed to lead by example. Aside from this failure of leadership, the fact that this matter was reported publicly in the media, and the negative nature of the reporting itself, both indicate that the Tweet, if sent by Mr. Vitiello, brought public embarrassment to the U.S. Border Patrol and DHS, as well as to his agents and employees in the field. Had any rank and file employee in the field at ICE committed a similar act, that employee would be subject to discipline or removal under the ICE Employee Code of Conduct which, summarized in part, requires the following of all employees:

⁴ Matt Novak, Gizmodo, (February 4, 2017), *Trump's New Head of Border Patrol Might Want to Delete This Tweet*, available at <https://gizmodo.com/trumps-new-head-of-border-patrol-might-want-to-delete-t-1791995136>.

⁵ *Id.*

⁶ U.S. Department of Homeland Security, (March 1, 2003), *Management Directive Number: 0480.1: Ethics/Standards of Conduct*, available at https://www.dhs.gov/sites/default/files/publications/mgmt_directive_0480_1_ethics_standards_of_conduct.pdf; David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, U.S. Department of Homeland Security, (March 13, 2012), *CBP Directive No. 51735-013A: U.S. Customs and Border Protection: Standards of Conduct*, available at https://www.cbp.gov/sites/default/files/documents/std_of_conduct_3.pdf; John Morton, Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, (August 7, 2012), *Directive 1033.1: Employee Code of Conduct*, available at https://www.ice.gov/doclib/foia/dro_policy_memos/employee-code-of-conduct.pdf.

- Whether on- or off-duty, all ICE employees must conduct themselves in a manner that does **not cause embarrassment to the agency**; or cause the public or ICE to **question their judgement**.⁷
- All ICE employees must clearly understand that **they are not only representing themselves, but also their co-workers, ICE, and the Federal Government**, and that the highest standards of conduct and ethical behavior are required.⁸

Alleged Mismanagement of Portland Protests

On or about June 18, 2018, an angry mob, to include violent militant groups, took control of an ICE facility located in Portland, Oregon. All entry and exit points to the building were blocked, and ICE employees, to include unarmed, non-law enforcement personnel, were threatened with physical violence. While the unconstitutional acts of Portland Mayor Ted Wheeler – who directed the Portland Police Bureau not to provide assistance to ICE employees – are certainly responsible for creating the life and death situation for ICE employees in the facility in the first place, Portland ICE employees have reported in mass that ICE leadership failed them and the agency throughout the month-long ordeal. Portland ICE employees have unequivocally stated that once local and national level ICE leadership became tasked with dealing with the matter, these agency leaders froze, were unable to make decisions, and failed to adequately safeguard the facility and ICE employees.

On June 30, 2018, Mr. Vitiello was named the new Deputy Director and Acting Director of ICE. While Mr. Vitiello may not have been briefed on or engaged in ICE matters prior to June 30, the dangerous and unprecedented situation in Portland remained active through July 24, 2018 when protestors in Portland were forced to disperse by the Portland Police Bureau. Therefore, Mr. Vitiello oversaw agency operations for at least 24 days while the protests were ongoing.

On July 27, 2018, the National ICE Council conducted after action interviews with Portland employees. Nearly every employee who went through this experience was reportedly frustrated, angry and concerned with ICE's handling of the situation. At the time of the after-action interviews by the ICE Council, it was reported that ICE management had conducted no after-action reports or debriefs with employees involved. While we will not provide specific details in this letter due to security concerns, employees reported generally to the National ICE Council about the Portland incident that:

- *“Management was incapable of making decisions.”*
- *“Our management is awful and incompetent.”*
- *“Common law enforcement planning totally escapes our managers.”*
- *“We have politicians in charge, not law enforcement.”*
- *“We have no confidence in our management.”*

⁷ John Morton, Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, (August 7, 2012), *Directive 1033.1: Employee Code of Conduct*, available at https://www.ice.gov/doclib/foia/dro_policy_memos/employee-code-of-conduct.pdf.

⁸ *Id.*

Many of the perceived failures voiced by ICE law enforcement personnel in the field occurred during Mr. Vitiello's time as Deputy Director and Acting Director. We believe that an in-depth review of this incident and Mr. Vitiello's actions as the senior-most agency official in charge must be conducted prior to any Committee vote on his nomination. Concerns such as those voiced by our employees in the field are deeply troubling and must be explored further.

Prohibiting some Federal Employees from Performing Duties without Cause

Lastly, we wish to inform the Committee about Mr. Vitiello's order, as Deputy Director and Acting Director, to prohibit select ICE employees from going into their offices and performing their duties as law enforcement officers or law enforcement support staff. Any order by any agency official, such as this, which prohibits federal employees from performing their federal job duties, without due cause, is a matter we believe to be a serious red flag and request a thorough examination of the order by the Committee. We believe that Mr. Vitiello should be required, during this confirmation process, to give not just the U.S. Senate, but American taxpayers, a clear and detailed explanation as to why he is directly ordering these federal employees to never perform agency work.

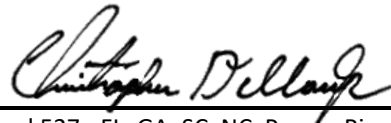
While we do not know why Mr. Vitiello has issued this order, Mr. Vitiello's actions appear to have no basis in the effective functioning of the agency, and the only outwardly obvious effect of Mr. Vitiello's order seems to be the loss of personnel hours in the field due to the restriction on performing work. Additionally, we can tell you that the select employees, who have been ordered not to perform their job duties, serve in positions on the National ICE Council. These individuals on the National ICE Council are not only law enforcement professionals and military veterans but have been frequent whistleblowers, reporting waste, fraud, abuse, and mismanagement throughout the agency over a period of many years. We point this out in light of the Committee's duty to and longstanding history of protecting whistleblowers, and urge the Committee to investigate this matter further to determine whether whistleblower retaliation might be a motivation for this order by Mr. Vitiello. Retaliation of any sort against those who are willing to speak up and tell the truth has no place in our agency and must be rooted out no matter where it exists.

In conclusion, our agency is in serious need of reform from the inside out. Our organization stands at the ready to work with all Members of the Committee and Congress, to clean up ICE and allow our law enforcement professionals to go out and do our jobs with the best possible organization behind us. This starts at the top. We need a change agent in the position of agency Director and it is unclear whether Mr. Vitiello can be that force for change. We again ask that the Committee look into our concerns as presented in this letter and provide a finding on each prior to any vote on Mr. Vitiello's nomination. Please do not hesitate to contact us if you have any questions or would like to discuss any of these matters in further detail. We greatly appreciate your time, attention, and consideration of our requests.

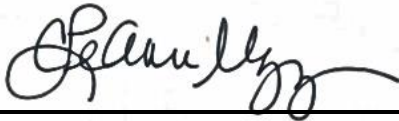
Very respectfully,



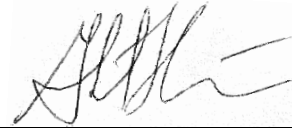
Local 2805 – San Diego, CA



Local 527 - FL, GA, SC, NC, Puerto Rico



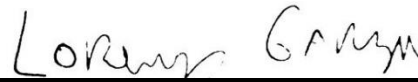
Local 2038 – LA, AR, TN, MS, AL



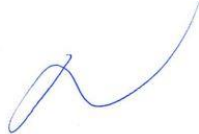
Local 2012 – PA, DE, WV



Local 1412 – Washington, DC; VA



Local 3377 – Dallas, TX; OK



Local 46 - MI



Local 1210 – El Paso, TX; NM



Local 2660 – IN, KY, OH



Local 2149 - NJ



Local 2859 - AZ, NV



Local 3928 - ND, SD, NE, KS, IA, MO



Local 2756 - MD



Local 2580 - NY

cc: Chris Crane, President, National ICE Council