



**National Immigration and Customs
Enforcement Council
of the
American Federation of Government Employees
Affiliated with the AFL-CIO**



February 12, 2019

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 Gary C. Peters
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 Peters:

Thank you for your efforts to date to work with the National Immigration and Customs Enforcement (ICE) Council regarding the nomination of Mr. Ronald D. Vitiello. On behalf of the law enforcement professionals of ICE Enforcement and Removal Operations (ERO) and ICE support staff we represent, I write to express our strong opposition to the nomination of Mr. Ronald D. Vitiello to be the Director of ICE. **This is the first time in the history of the National ICE Council that our organization has officially opposed the nomination of a presidentially-appointed federal official** and it is a decision that we do not take lightly.

Mr. Vitiello's job performance record, judgment, character, and credibility, as well as his obstruction, and the false and misleading statements he has provided to the Committee, make him unfit and unqualified to hold the position of ICE Director. **Never before have we seen so many warning signs with respect to a nominee prior to confirmation and we believe him to be unfit to serve as Director.** Based on the following facts and circumstances, **we have no confidence in Mr. Vitiello or his ability to lead our agency** and we strongly urge Committee Members to oppose Mr. Vitiello's nomination.

- **Vitiello Made a False Statement to the Committee Regarding Whistleblower Retaliation Allegations, According to an ICE Management Official:** As the Committee is aware, on November 29, 2018, an ICE management official, acting as a whistleblower, stated unequivocally to the Committee that Mr. Vitiello provided a false statement to the Committee in response to allegations of whistleblower retaliation in the November 27, 2018 Supplemental Questionnaire that Mr. Vitiello signed and submitted to the Committee. Specifically, the ICE management official testified to the Committee that the second sentence of Response 1 in the November 27 questionnaire is false. We believe it is worth pointing out that **rank and file federal employees who**

provide false or misleading statements are typically promptly terminated for this type of misconduct.

- **Vitiello Refused to Directly Answer Questions During His Confirmation Hearing from Chairman Johnson Regarding Whistleblower Retaliation Allegations Against Him:** We encourage Members to go back and review the hearing and watch as Mr. Vitiello was extremely evasive in his responses to the Chairman regarding allegations of whistleblower retaliation. We submit to the Committee that evasion of this sort is only required when there is a need to conceal the truth. Mr. Vitiello's evasiveness during testimony should be weighed heavily in conjunction with testimony from the aforementioned ICE management official who stated to the Committee that Mr. Vitiello made a false statement to the Committee in his Supplemental Questionnaire, also related to allegations of whistleblower retaliation.
- **Vitiello Has Prohibited Whistleblowers from Going to Work:** As the Committee is aware, the National ICE Council has presented evidence to the Committee to show that in early July 2018, as the Acting Director of ICE, Mr. Vitiello ordered that certain federal employees not be permitted to report to work and perform their official duties as federal employees. We are not aware of any reason – including any law, regulation or policy, or any allegation of misconduct against any of these employees – that would require these employees to be banned from the workplace. Following preliminary discussions, some in the Senate have expressed deep concern about this prohibition and have highlighted the key indicators of whistleblower retaliation that appear to be rooted in this prohibition.
- **Vitiello Continues the Practice of Whistleblower Retaliation:** As the Committee is aware, based on the aforementioned testimony by the ICE management official, as well as information provided by the ICE Council, and the fact that Mr. Vitiello dodged basic questions about retaliation at his confirmation hearing, the evidence suggests that the prohibition by Mr. Vitiello of not letting employees perform their official duties is clearly a form of whistleblower retaliation. This retaliation is still ongoing today and will most likely escalate if Mr. Vitiello is confirmed as Director.
- **Vitiello's Self-Described KKK Humor on Social Media is Unacceptable and Cannot be Tolerated:** As was discussed at his confirmation hearing, Mr. Vitiello publicly disseminated, via social media, a statement suggesting that the Democratic Party be renamed as the "NeoKlanist" party. In response to a question by Ranking Member Peters as to what he meant by the Tweet, Mr. Vitiello stated that he, "was trying to make a joke," and, "thought it was a direct message." We are horrified at the notion that the potential next leader of our agency would ever find it appropriate, under any circumstance, to "joke" about the Ku Klux Klan. Furthermore, to try and excuse or downplay the significance of the Tweet because it was supposed to be sent as a private "direct message" and not disseminated publicly is highly concerning. Not only does the KKK posting by Mr. Vitiello demonstrate an absence of sound judgment, but it is also an act that would not be tolerated by the agency if committed by rank and file officers.

- **Vitiello's Trump-Dennis the Menace Tweet Shows a Lack of Sound Judgment and Credibility:** Mr. Vitiello has also publicly disseminated via Twitter content comparing then Presidential-candidate Donald Trump to Dennis the Menace. Once again, this kind of action is unacceptable. Not only did Mr. Vitiello choose to post this kind of content but he did so from a social media account that displayed a picture of himself in a Border Patrol dress uniform while positioned in front of a Border Patrol flag. As a thirty-year veteran of the U.S. Border Patrol and top official at that agency, Mr. Vitiello should have understood that this type of behavior is highly inappropriate. The fact that he did not is a red flag that he lacks the judgment and professionalism to effectively lead a federal agency.
- **Vitiello Has Violated the ICE Employee Code of Conduct, as well as DHS and CBP Standards of Conduct, and Has Already Publicly Embarrassed the Agency:** As you are aware, we have provided the Committee with the DHS and CBP Standards of Conduct, as well as the ICE Employee Code of Conduct, showing that Mr. Vitiello's Tweets violate all three standards. This type of conduct would result in a rank and file ICE employee being disciplined, if not possibly removed from employment with the federal government. We are not aware that Mr. Vitiello was ever disciplined for his actions and instead of being demoted or fired, if confirmed as ICE Director, he will be promoted to the highest position in one of the nation's largest law enforcement agencies. These instances of extremely poor judgment, decision-making, and character are unacceptable for even the most inexperienced junior officers or staff, and should be disqualifying for an individual who could be charged with leading a law enforcement agency with 20,000 employees and a \$7.5 billion budget.
- **Vitiello Does Not Meet the Basic Credibility Standard Required of Law Enforcement Officers:** As you are aware, in a December 5, 2018 letter to the Committee, the ICE Council provided evidence to the Committee from a rare Merit Systems Protection Board (MSPB) case in which an ICE Officer posted racially charged comments on social media, as Mr. Vitiello did. We believe that this case is significant and highly relevant to Mr. Vitiello's pending nomination before the Committee and that similarities in the cases are noteworthy. In addition to both social media posts involving racially inappropriate comments, both the ICE Officer and Mr. Vitiello described their comments as attempts at humor, not misconduct. In addition to these similarities, the case demonstrates how making racially inappropriate statements seriously impact the credibility of a rank and file law enforcement officer.

As was provided in the letter, documents from the case show that both an Assistant U.S. Attorney and an ICE Attorney stated legal concerns about this racially inappropriate social media post being used against the Officer, and thus the U.S. Government, as potential impeachment material in future court proceedings (*Giglio v. United States*, 405 U.S. 150, 1972). Both the ICE and DOJ attorneys separately reached conclusions in the case of the ICE Officer that his post amounts to, "impeachment material," and according to the Assistant U.S. Attorney, "it is now something we will have to provide to defense attorneys any time you appear to testify because of how it suggests a prejudice."

- **Vitiello's Appearance of Hypocrisy and Wrongdoing Will Only Serve to Further Destroy the Already Low Morale of the ICE Workforce:** Mr. Vitiello's demonstrated inability (or unwillingness) to follow and adhere to the DHS and CBP Standards of Conduct, as well as the ICE Employee Code of Conduct, the elevated standards for law enforcement officers regarding credibility and bias under *Giglio*, his willingness to evade questions and provide a false statement before Congress, his mistreatment of whistleblowers, and his overall poor judgment in sending out racially insensitive comments on social media as humor, all serve as a devastating blow to the morale of employees serving below him. As just one example of the hypocrisy that has already occurred, after Mr. Vitiello sent out the racially charged joke about the KKK on social media, he was nominated to be the Director of the agency, while the behavior of an officer serving under Mr. Vitiello who also posted a racially charged comment on social media was determined by ICE and the DOJ to be impeachable material under *Giglio*, suggestive of prejudice, detrimental to litigation involving the agency, and demonstrative of an overall loss of credibility for the officer. Double standards such as this one destroy morale among all employees. As the senior most ICE official, Directors must lead by example and be held to a higher standard than the employees serving under them. This is especially critical in law enforcement organizations.

As a federal law enforcement agency entrusted by the American people to enforce laws passed by our elected representatives, and to do so in an honorable, humane, and respectable fashion, we must meet the highest standards of trust and excellence, and our leader must be beyond reproach. Sadly, there is no doubt in our minds' that Mr. Vitiello lacks the credibility necessary to lead our agency.

To echo the sentiments of our ICE officers serving as Local Presidents in their November 14, 2018 letter to the Committee, ICE needs a change agent in the position of agency Director. ICE employees are deeply concerned about the direction of our agency and the people who currently run it. The 'good old boy' culture that currently exists within our agency needs to end and our next Director must be 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 people.

This status quo can no longer be tolerated and sadly, Mr. Vitiello embodies the status quo. We hope that you will continue to 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 our next ICE Director is an individual of the highest caliber of leadership. That individual is not Ronald Vitiello and we strongly urge the Committee and its Members to oppose this nomination.

We again thank the Committee, Members, and staff, for all that you have already done to work with us throughout this difficult process and greatly appreciate you taking the time to hear and understand our concerns. We stand at the ready to assist the Committee in any way we can.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Crane". The signature is fluid and cursive, with the first name "Chris" and the last name "Crane" clearly distinguishable.

Chris Crane
President

cc: Members, Committee on Homeland Security and Governmental Affairs