



July 14, 2016

Recalcitrant Countries: Denying Visas to Countries that Refuse to Take Back Their Deported Nationals

Committee on Oversight and Government Reform , United States House of
Representatives, One Hundred Fourteenth Congress, Second Session

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DEPARTMENT OF STATE

WRITTEN STATEMENT

OF

MICHELE THOREN BOND

ASSISTANT SECRETARY FOR CONSULAR AFFAIRS

DEPARTMENT OF STATE

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HEARING

ON

REPATRIATION OF CONVICTED CRIMINAL ALIENS

JULY 14, 2016

Chairman Chaffetz, Ranking Member Cummings, distinguished Members of the Committee, thank you for this opportunity to testify on the topic of repatriating aliens who are subject to final orders of removal. My testimony will cover the Department of State's most recent efforts, our overall strategy, and a country-by-country breakdown of some of our engagement on this important issue.

We in the Department of State have no higher priority than the protection of U.S. citizens abroad. The Department takes very seriously our obligation to assist U.S. Immigration and Customs Enforcement (ICE) to effect the removal of aliens, especially those who pose a threat to public safety and security within the United States. My team in the Bureau of Consular Affairs and other colleagues at State work closely and cooperatively with ICE, in Washington and through our diplomatic missions overseas, to ensure that foreign governments comply with their responsibility to document and accept the return of their nationals swiftly.

My staff and I regularly meet with officials from recalcitrant countries in Washington and in foreign capitals. Today, a delegation of senior State and Department of Homeland Security (DHS) officials is, once again, raising this issue with the Cuban government in Havana. In March 2015, I mandated that my staff raise the issue of removals during every formal interaction with officials from countries that are recalcitrant in accepting their nationals ordered removed from the United States. The Deputy Secretary of State tasked all Chiefs of Mission to engage with host-government officials on repatriations, stressing that the swift documentation and removal of all aliens who are subject to final orders of removal, particularly those who pose a risk to national security or public safety, is a top priority for the U.S. government.

I personally have raised the issue on numerous occasions, including at the U.S.-India Consular Dialogue in November 2015; in separate meetings with the foreign ministers of Guinea and Liberia in March 2016; and in bilateral discussions with China in April 2016. State's Deputy Assistant Secretary for Visa Services, Edward Ramotowski, and ICE Enforcement and Removal Operations Assistant Director Marlen Piñeiro, have met to discuss coordination on many occasions. Together they have met several times with the governments of Iraq and Cabo Verde to push for progress on repatriations.

At a meeting in February 2016, ICE Director Sarah Saldaña and I agreed that Consular Affairs and ICE would work on specific plans of action for each recalcitrant country based on the current Memorandum of Understanding between our organizations. The Department works closely with DHS to engage with all countries for which removals are of concern, especially those deemed to be recalcitrant or uncooperative. My team coordinates with ICE, the regional bureaus within State, and our missions abroad to engage on specific areas of concern related to removals.

This effort is not limited to the Bureau of Consular Affairs. Regional bureau assistant secretaries also have engaged on repatriations, as has the Secretary of State, most recently during the Strategic and Economic Dialogue with China in June 2016. State's regional bureaus have met with a number of foreign ambassadors to the United States on this issue, and in no uncertain terms identified clear and achievable goals which they must meet in order to avoid immediate

escalation of pressure, to include visa sanctions as appropriate. In these meetings, the Department and DHS have been clear that we must see swift and tangible progress on this issue.

The majority of the world's nations understand their legal and moral obligations to accept the return of their citizens who are not eligible to remain in the United States or any other country, including those who have been convicted of crimes and served sentences. Mexico, Guatemala, South Africa, and Nigeria, for example, cooperate well with the United States on repatriations. Unfortunately, at any given time a number of countries, totaling 23 on ICE's current list, fail to issue travel documents for and accept the return of their citizens in a consistent and timely manner. These countries vary considerably with regard to capacity, political circumstances, and history. Each has different reasons for delays in repatriations, including limited law enforcement capacity, inadequate records, inefficient bureaucracy, and in a few cases, intentional policy. Some countries, though willing to cooperate in principle, are beset with internal problems so severe that repatriations become a low priority.

The measures we apply to persuade recalcitrant countries to cooperate are equally varied and part of our comprehensive diplomatic engagement with each. Although visa sanctions are an option, they are not the only, and in many cases are not the most effective, option. Some recalcitrant countries, such as China and Cuba, control the foreign travel of their citizens and may be unmoved by our imposition of visa sanctions. Sanctioned countries also could retaliate in ways detrimental to wider U.S. economic or security concerns, such as trade, tourism, or law enforcement cooperation. Taking into consideration each country's specific situation and other important U.S. interests, we work with ICE to determine the course of action best suited to securing compliance from each government.

In April 2011, Consular Affairs and ICE agreed, in a Memorandum of Understanding Concerning Repatriation, on provisions to address recalcitrant countries. These include options such as diplomatic intervention overseas and high-level engagement in Washington, practical measures designed to address resource and capacity limitations, and halting the issuance of visas.

With most recalcitrant countries, we have been able to achieve significant improvements in compliance through diplomatic engagement in Washington and overseas. For example, because of our successful engagement with Bangladesh, Pakistan, and Laos in recent years, these countries are no longer considered recalcitrant by ICE. We also have made progress with countries on the current list, such as Guinea, Iraq, Cabo Verde, Somalia, and Zimbabwe.

In the case of Guinea, we expect a government delegation to come to the United States this month to interview detainees and negotiate a Memorandum of Understanding on repatriations between our countries.

Following a meeting in May 2016 between high-level State and DHS officials and the Iraqi Ambassador to the United States, Iraq agreed to interview detainees and issue travel documents.

Cabo Verde is issuing travel documents while we work on a formal agreement on repatriations with its government, and Somalia recently agreed to issue a number of travel documents. We will continue to build on this progress.

Of course, we do not limit our efforts to the 23 countries currently deemed recalcitrant by ICE. Our engagement with the approximately 60 other countries maintained on a separate ICE list of non-cooperative nations seeks to address shortcomings before a country is found to be recalcitrant. There are times where even countries generally considered compliant need specific reminders or engagement concerning repatriations. This may be to clarify a new process or procedure, to facilitate a particularly difficult case, or to highlight the importance of this issue following a change in government.

The range of coordinated action by the Department of State and ICE with recalcitrant countries is effective in securing the repatriation of many deportable aliens every year. State works closely with ICE and other DHS colleagues to identify the most effective path forward for each country. The brief summaries below outline our efforts to ensure compliance from the countries at the top of the current ICE list of recalcitrant countries.

Cuba:

Cuba is the most recalcitrant country on repatriation of its nationals, as determined by ICE, and also represents one of the U.S. government's most complex bilateral relationships. We continue to engage the Cuban government on this issue. State issued a demarche in advance of the round of U.S.-Cuba Migration Talks now underway, where we will emphasize the importance of this issue, as we have at previous Migration Talks. Cuba has stated repeatedly that it will only consider accepting its nationals with final orders of removal in the context of significant changes to U.S. policy regarding Cuban migration. Disagreements on migration-related issues have long been a source of friction between the United States and Cuba, and while "wet-foot, dry-foot" remains U.S. policy regarding Cuban migration, we are confident that as the process of normalization advances, we will have more and more opportunities to advance important U.S. interests such as repatriations. At this time, we believe the most effective strategy with Cuba is to continue to work through the normalization process. We have consistently reminded the Cuban government this issue needs to be resolved before we can consider relations between our countries to be completely normalized. Cuba has been uncooperative on a variety of immigration issues for more than 50 years. At this time, we do not believe visa sanctions would be an effective near-term strategy, since the Cuban government, for political reasons, controls the travel of its citizens and therefore is unlikely to view sanctions as a detriment. Additionally, we cannot ignore the possibility that elimination of a legal travel route could trigger a dangerous mass migration.

China:

The relationship with China is exceptionally diverse and complex. According to the Department of Commerce, in 2015, Chinese visitors ranked first in the world in tourism spending in the United States, contributing more than \$29 billion to our economy. Chinese visitors contribute \$74 million per day on average to the U.S. economy through travel and tourism across all 50 states, accounting for more than half of U.S. services exports to China.

Last year, more than 2,000 U.S. families adopted a child from China, the single biggest foreign country of adopted U.S. children, accounting for half of our annual total of international adoptions.

The diplomatic picture with China is complex and involves important interests affecting the lives of U.S. citizens, and we continue to work with China to improve its cooperation on repatriations; the level of cooperation has varied over time. China's government often links the issue of repatriations to other political issues of importance to it, such as the return of fugitives accused of criminal acts in China. President Obama and President Xi discussed removals in September 2015, and Secretary Kerry has raised the issue with the Chinese government several times, most recently at the Strategic and Economic Dialogue in Beijing in June 2016. I also emphasize the importance of this issue with my Chinese counterpart at our annual bilateral consular dialogues.

We continue to work closely with DHS on engagement and an effective strategy that ends with China's compliance on repatriations.

Somalia:

Somalia, which faces extraordinary challenges in governance, has improved its cooperation on repatriations. In August 2015, ICE informally notified State that Somalia was uncooperative. Since then, we have met with the Somali Director of Immigration and Naturalization to discuss and agree upon improved procedures to obtain Somali travel documents and repatriate Somali citizens. We also have engaged with other levels of the Somali government to ensure officials understand the importance of this issue and potential consequences if they do not cooperate. As a result of a coordinated U.S. approach, Somalia has issued travel documents in the majority of outstanding cases with final orders of removal, and continues to cooperate.

India:

As with China, the range of U.S. foreign policy interests and concerns in our relationship with India is diverse and complex. Indians comprise the second-largest population of foreign students in the United States, with more than 130,000 Indian nationals studying at institutions across the country. These and thousands of other Indian visitors bring billions of dollars into the U.S. economy, supporting thousands of jobs and establishing lasting people-to-people ties between our two countries. India's growing economy has made it our 11th largest trading partner, and its vibrant democracy supports the development and security of other emerging countries in South Asia.

While there has been some progress on removals since the November 2015 U.S.-India Consular Dialogue, during which State and DHS jointly highlighted the urgency of resolving this issue, it has not been enough. Following this and subsequent discussions, and many other interventions on this issue at different levels with the Government of India and with its diplomatic mission in the United States, India has improved its timeliness in issuing travel documents to its citizens under final orders of removal.

Fifty-four Indian citizens returned home on an ICE charter flight in April 2016, and the Government of India is scheduling a July 2016 charter as well. We are encouraged that India is on a positive trajectory, and intend to remain engaged on this issue with India through newly established quarterly meetings to address difficult cases and ensure processes are smooth and efficient. State and DHS will continue to work closely with the Indian government to maintain

and build on this progress. We will continue to raise this issue with Indian officials at appropriate levels, including at the upcoming U.S.-India Homeland Security Dialogue, which is scheduled to take place in Washington in late July 2016.

I will travel to New Delhi in August for our annual consular bilateral dialogue. As in past years, I will raise this issue with the Indians, and press for immediate action on the part of the Indian government to issue travel documents and accept the return of its citizens under final orders of removal.

Mr. Chairman, Ranking Member Cummings, and distinguished Members of the Committee, I want to assure you that the Department of State works cooperatively and creatively with ICE, using the full range of available tools, to see that every country accepts the lawful return of its citizens and residents. Where such engagement over time has not produced results, State is prepared to step up the pressure through all channels, including visa sanctions in appropriate circumstances and pursuant to notification by DHS.

We appreciate the support of Congress as we continuously work to safeguard our citizens overseas and keep all of us safe at home.



U.S. Immigration and Customs Enforcement

STATEMENT

OF

DANIEL H. RAGSDALE

DEPUTY DIRECTOR

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

**Regarding a Hearing on
*“Recalcitrant Countries”***

**U.S. HOUSE OF REPRESENTATIVES
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE**

**JULY 14, 2016
2141 Rayburn House Office Building
Washington, D.C.**

INTRODUCTION

Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee, thank you for the opportunity to appear before you today to discuss the ongoing challenge of uncooperative and recalcitrant countries as we carry out the critical mission of U.S. Immigration and Customs Enforcement (ICE). I look forward to discussing our operations and highlighting our continued efforts to bring such countries back into compliance, in partnership with the U.S. Department of State (DOS).

I am very proud to represent the dedicated men and women of ICE. ICE promotes homeland security and public safety through broad criminal and administrative enforcement of approximately 400 federal laws governing border control, customs, trade, and immigration. The agency carries out its mission through four principal components: Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), the Office of the Principal Legal Advisor (OPLA), and Management and Administration (M&A). Additionally, the Office of Professional Responsibility (OPR) investigates allegations of administrative and criminal misconduct at ICE, and performs important inspection and oversight functions across the agency. Today, ICE has approximately 20,000 law enforcement, attorney, and support personnel in all 50 states, the District of Columbia, three U.S. territories, and strategically stationed positions in 46 countries worldwide.

ENFORCING IMMIGRATION LAWS

The nearly 6,000 law enforcement officers of ERO identify removable aliens and make arrest, detention, and removal determinations in a manner designed to best promote national security, public safety, and border security while remaining consistent with the following Department of Homeland Security (DHS) enforcement priorities:

- Priority 1 includes those who pose a threat to national security, border security, or public safety (including those convicted of felonies or aggravated felonies);
- Priority 2 includes those who have been convicted of significant or multiple misdemeanors, those who have significantly abused the visa or visa waiver programs, and those apprehended who unlawfully entered the United States after January 1, 2014; and
- Priority 3 focuses on those individuals who have been issued a final order of removal on or after January 1, 2014.

ERO works to identify foreign nationals who may be subject to immigration enforcement actions in a number of ways, including working with our federal, state, and local law enforcement partners to identify, locate, arrest, and remove convicted criminal aliens who pose a threat to the public. Throughout the process, ERO works closely with ICE OPLA, which represents the Department in removal proceedings in the immigration court system, administered by the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR). Once individuals are ordered removed by EOIR immigration judges, it is ICE's responsibility to execute those orders, which includes obtaining the necessary travel documents from the countries to which they are being returned.

The revised priorities noted above have intensified ICE's focus on removing aliens convicted of serious crimes as well as public safety and national security threats, and recent border entrants. ICE's Fiscal Year (FY) 2015 removal statistics illustrate our commitment to ensuring that individuals who pose a threat to public safety are not released from ICE custody, and our review processes demonstrate ICE's commitment to public safety.

In FY 2015, ICE conducted 235,413 removals: 59 percent of all ICE removals, or 139,368, involved individuals who were previously convicted of a crime. Of the 96,045 individuals removed who had no criminal conviction, 94 percent, or 90,106, were apprehended at or near U.S. borders or ports of entry. The leading countries of origin for removals were Mexico, Guatemala, Honduras, and El Salvador.

ICE continued to prioritize its removals in FY 2015 by focusing on serious public safety and national security threats, increasing by 3 percent over FY 2014 the percentage of removals that involved convicted criminals. More specifically, of the total ICE removals, 86 percent (202,152) fell into Priority 1, which includes national security and public safety threats; 8 percent (18,536) fell into Priority 2, which includes individuals convicted of serious or multiple misdemeanors; and 4 percent (9,960) fell into Priority 3, or those who received a final order of removal on or after January 1, 2014. Thus, 98 percent of all ICE removals met one or more of ICE's stated immigration enforcement priorities.

While ICE remains firmly committed to enforcing the immigration laws effectively and sensibly, ICE does face significant challenges in obtaining travel documents from some of its foreign partners, which are necessary to effectuate the removal of individuals ordered removed from the United States.

DEALING WITH RECALCITRANT AND UNCOOPERATIVE COUNTRIES

The removal process is impacted by the level of cooperation offered by our foreign partners. As the Committee is aware, in order for ICE to effectuate a removal, two things are generally required: (1) an administratively final order of removal and (2) a travel document issued by a foreign government. Although the majority of countries adhere to their international obligation to accept the return of their citizens who are not eligible to remain in the United States, ICE faces unique challenges with those countries that systematically refuse or delay the repatriation of their nationals. Such countries are considered to be uncooperative or recalcitrant, and they significantly exacerbate the challenges ICE faces in light of the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In *Zadvydas*, the Court effectively held that aliens subject to final orders of removal may generally not be detained beyond a presumptively reasonable period of 180 days, unless there is a significant likelihood of removal in the reasonably foreseeable future. Regulations were issued in the wake of *Zadvydas* to allow for detention beyond that period in a narrow category of cases involving special circumstances, including certain terrorist and dangerous individuals with violent criminal histories. Those regulations have faced significant legal challenges in federal court. Consequently, ICE has been compelled to release thousands of individuals, including many with criminal convictions, some of whom have gone on to commit additional crimes.

Determining Whether a Country is Uncooperative or Recalcitrant

Countries are assessed based on a series of tailored criteria to determine their level of cooperativeness with ICE's repatriation efforts. Some of the criteria used to determine cooperativeness include: hindering ICE's removal efforts by refusing to allow charter flights into the country; country conditions and/or the political environment, such as civil unrest; and denials or delays in issuing travel documents. This process remains fluid as countries become more or less cooperative. ICE's assessment of a country's cooperativeness can be revisited at any time as conditions in that country or relations with that country evolve; however, ICE's current standard protocol is to reassess bi-annually. As of May 2, 2016, ICE has found that there were 23 countries considered recalcitrant, including: Afghanistan, Algeria, the People's Republic of China, Cuba, Iran, Iraq, Libya, Somalia, and Zimbabwe. As a result of their lack of cooperation, ICE has experienced a significant hindrance in our ability to remove aliens from these countries. In addition, ICE is also closely monitoring an additional 62 countries with strained cooperation, but which are not deemed recalcitrant at this time.

Negative Impact on ICE Resources and Public Safety

DHS as a whole, and ICE specifically, takes very seriously its mission to remove foreign nationals in a timely and efficient manner and any challenges associated with limitations on the ability to do so. As a result, DHS works both directly with foreign governments and through DOS to improve cooperation with countries that systematically refuse or delay the repatriation of their nationals.

Resource Implications

Whether a foreign government wholly refuses to take back one of its nationals or simply refuses to take back its nationals in a timely manner, there are significant resource implications for ICE.

ICE begins the removal process with requests for travel documents to the appropriate foreign government. If a travel document is not issued and reasonable efforts to secure the issuance of such a document are not fruitful, then ICE can take action pursuant to its own authorities, such as recommending non-inclusion of recalcitrant countries on the H-2 Eligible Countries List as well as, in appropriate circumstances, sending a letter to the nation's Embassy in the United States seeking cooperation with the removal process. Such letters, referred to as "Annex 9 letters," are issued to countries that are International Civil Aviation Organization (ICAO) Member States. Pursuant to Article 37 of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944, in order to facilitate and improve air navigation, ICAO promulgates international standards and recommended practices addressing, *inter alia*, customs and immigration procedures. ICE has sent 125 such letters as of July 7 of this fiscal year, which is more than any other year on record.

Another possible tool is ICE requesting the issuance of a Demarche to the recalcitrant country by DOS. If that does not achieve results, a joint meeting between ICE, DOS Consular Affairs, and the Ambassador of the uncooperative nation can occur. Within the last two fiscal

years ICE has worked with DOS to issue 17 Demarches to Iraq, Algeria, Bangladesh, Cape Verde, Ivory Coast, Eritrea, The Gambia, Ghana, Guinea, Liberia, Mali, Mauritania, Niger, Sierra Leone, Senega, Cuba and St. Lucia. Although Algeria remains on the list of recalcitrant countries, the Algerian government committed to address the issue and has issued a handful—but not all—or the required travel documents since then.

Responses to a country's recalcitrance are, in part, guided by a Memorandum of Understanding (MOU) between ICE and DOS Consular Affairs, signed in April 2011. Pursuant to this MOU, ICE continues to work through U.S. diplomatic channels to ensure that other countries accept the timely return of their nationals in accordance with international law by pursuing a graduated series of steps to gain compliance with the Departments' shared expectations. The measures that may be taken when dealing with countries that refuse to accept the return of their nationals, as outlined in the 2011 MOU, include:

- issue a demarche or series of demarches;
- hold a joint meeting with the Ambassador to the United States, Assistant Secretary for Consular Affairs, and Director of ICE;
- consider whether to provide notice of the U.S. Government's intent to formally determine that the subject country is not accepting the return of its nationals and that the U.S. Government intends to exercise authority under section 243(d) of the Immigration and Nationality Act (INA) to encourage compliance;
- consider visa sanctions under section 243(d) of the INA; and
- call for an interagency meeting to pursue withholding of aid or other funding.

While this process sets forth a general protocol, specific steps—including the invocation of visa sanctions under INA section 243(d)—are considered by the DHS Secretary in consultation with DOS. Section 243(d) states that, upon notification from the Secretary of Homeland Security, the Secretary of State shall direct consular officers to stop issuing visas to immigrants, nonimmigrants, or both, from countries that unreasonably delay or fail entirely to repatriate their nationals. As such, use of this authority must be considered in light of both the potential impact it could have on U.S. foreign and domestic policy interests, particularly with respect to adverse effects on bilateral relations with a foreign partner, and whether visa restrictions will be an effective tool in gaining the country's compliance. In addition to the ICE and DOS MOU-guided process outlined above, on occasion, Secretaries Johnson and Kerry have also personally engaged with their foreign counterparts to underscore the need for compliance with international repatriation obligations.

Public Safety

There is a clear public safety threat posed to the United States by the failure of uncooperative or recalcitrant countries to accept the timely return of their nationals who have committed crimes in this country. Such countries' unwillingness to comply with their international obligations to promptly facilitate repatriation of their nationals, coupled with ICE's obligation to comply with the Supreme Court's *Zadvydas* decision, has required ICE to release thousands of dangerous individuals, including criminal aliens. Many with criminal convictions for serious crimes like arson, assault, property damage, extortion, forgery or fraud, homicide, kidnapping, weapons offenses, embezzlement, controlled substance offenses, and sexual

offenses. Sadly, ICE records indicate a number of these aliens have gone on to commit additional crimes while in the United States.

Recognizing this public safety threat, in recent years, ICE has worked aggressively to secure some progress in removing aliens to recalcitrant countries, albeit slow and with significant costs in terms of time and resources. In FY 2015, ICE was able to remove convicted criminals to ten countries, including Uganda and Sudan, which did not previously permit ICE to conduct removals by charter flight. Through negotiations, ICE was able to remove individuals to those countries via ICE Air Operations charters for the first time. This effort allowed ICE to remove an individual to Uganda convicted of selling drugs, resisting arrest, driving under the influence, and criminal trespassing, and another individual to Sudan who had been convicted of an attempted bombing. ICE remains firmly resolved to engage all foreign counterparts that deny or unreasonably delay the acceptance of their nationals. We continue to address foreign government representatives, both in Washington, D.C. and abroad, along with interagency partners, in an effort to improve cooperation with ICE removals.

However, despite ICE's continued efforts, there are a number of factors that constrain ICE's ability to improve the number and timeliness of repatriations to recalcitrant or uncooperative nations. Such factors include limited diplomatic relations with some countries; the countries' own internal bureaucratic processes, which foreign governments at times utilize to delay the repatriation process; and the views of some foreign governments that repatriation is simply not a priority.

CONCLUSION

ICE will continue to play a critical role in fulfilling DHS's national security, border security, and public safety mission. Thank you again for the opportunity to testify today and for your continued support of ICE and its critical mission. I look forward to answering your questions.