



U.S. Immigration  
and Customs  
Enforcement

The Honorable Jefferson B. Sessions III  
United States Senate  
Washington, D.C. 20515

AUG 15 2012

Dear Senator Sessions:

Thank you for your August 3, 2012 letter to John Morton, Director, U.S. Immigration and Customs Enforcement (ICE), regarding a proposed disciplinary action in our Philadelphia Field Office. Typically, the Privacy Act of 1974, 5 U.S.C. § 552a (2012), would preclude the agency from disclosing information about an employee disciplinary matter unless ICE receives a privacy waiver from the employee or a formal request from the head of a congressional committee or subcommittee. See *id.* § 552a(b). However, as ICE has not identified the employee, ICE is able to describe the circumstances that led to the proposed disciplinary action without violating the employee's privacy rights.

First, let me clarify that ICE did not base the proposed disciplinary action on an interpretation of immigration enforcement policy, but rather because of a law enforcement officer's failure to follow the direct order of a superior. As a law enforcement agency dealing in sensitive matters of public safety, it is critical to the execution of our mission that chain of command be respected, and that orders be carried out professionally and as directed by an employee's chain of command.

As you may know, the facts that led to the proposed disciplinary action occurred during our "Operation Cross Check III," which commenced in March of 2012. Cross Check operations are target-driven operations that focus ICE resources on the apprehension of at-large criminal aliens who pose the most serious threats to community safety. The targets lists, which are developed by each of 24 regional ICE field offices nationwide and are carefully pre-vetted, consist of aliens who have been convicted of felonies and serious misdemeanors involving acts of violence, sex offenses, drugs, and any other crimes that pose an immediate danger to our neighborhoods. During this particular operation, you will be pleased to know that more than 3,100 criminal aliens were arrested nationwide.

During these short, intense operations, our officers and agents are directed to focus their activity on the apprehension of those criminal aliens who have been pre-identified as targets. However, our officers and agents are also instructed to conduct the necessary records checks of any other alien they encounter, to determine if the alien has been convicted of crimes that would bring him or her within the focus of the Cross Check operations. Aliens who do not fit the Cross Check objectives and are not among ICE's other enforcement priorities, including recent border entrants, fugitives, aliens removed previously or who pose a threat to public safety or national security, are generally released. ICE makes these resource decisions so that officers can continue

to focus their time on locating the pre-determined targets. It is important to note that of the more than 3,100 serious criminal aliens apprehended during Cross Check III, approximately 30 percent were not pre-existing targets but were encountered and apprehended as a result of this process.

Our review of the facts contained in your letter revealed that the individual encountered by the officer claimed to be a citizen of Mexico and to have entered the United States at an unknown location in Arizona without admission or parole on September 22, 2002. Although this individual was not on the target list for the operation, the officer acted in a manner consistent with the guidance provided to the officers and agents assigned to Cross Check III. The officer took the alien into custody and transported him to the field office to conduct database queries regarding his immigration status and criminal history.

In this case, however, those queries revealed that the apprehended individual had not previously been encountered by an immigration officer and that he had only been cited for minor traffic violations. These traffic citations did not lead to any incarceration. Rather, he was assessed monetary fines as penalties. None of the individual's traffic citations were for offenses that would reasonably be assumed to pose a threat to the community, such as driving under the influence, reckless driving, or hit and run. Immigration checks also did not indicate that the subject was an ICE fugitive, illegal re-entrant, or recent border crosser. The individual also reported having four U.S. citizen children.

As this individual did not fit the Cross Check criteria or any other ICE priority, and many other targets remained at large, the officer was instructed by both his first and second-level supervisors to cease processing this individual and instead return to the field to search for other targets. Unfortunately, the officer disobeyed a direct order and, contrary to his supervisors' instructions, continued to process the individual for removal proceedings. Accordingly, consistent with federal personnel rules and regulations, ICE took steps to propose disciplinary action for failure to follow a supervisory instruction.

As of this writing, no disciplinary decision has been made. Please know that this officer, like any ICE employee, will be afforded full due process rights to respond the proposed disciplinary action.

Thank you once again for contacting ICE. Please feel free to call me if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elliot Williams".

Elliot Williams  
Assistant Director for  
Congressional Relations