

IN THE SUPREME COURT OF FLORIDA

IN RE:

STATEWIDE GRAND JURY

CASE NO: SC22-_____

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**Attachment A: October 20, 2021 letter from
U.S. Immigration and Customs Enforcement**

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Federal
Imm-gr
Exec Staff MRN

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

October 20, 2021

The Honorable Ron DeSantis
Governor of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399

Dear Governor DeSantis:

Thank you for your August 26, 2021, letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

DHS and U.S. Immigration and Customs Enforcement (ICE) are committed to a safe, orderly, and humane immigration system. This includes guaranteeing that the rights of all individuals, including noncitizens, are protected in accordance with U.S. laws and regulations while protecting the national and border security of the United States and the safety of American communities.

When enforcing U.S. immigration laws in the interior of the United States, including the removal of noncitizens unlawfully present in the United States, ICE focuses its limited enforcement and removal resources on cases presumed to be national security, border security, or public safety priorities in accordance with the interim guidance I issued on February 18, 2021, entitled, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*. In determining whether to pursue an enforcement action, ICE officers and agents are required to adhere to the interim guidance, which applies to all civil immigration enforcement and removal actions, including when and under what circumstances ICE officers and agents should take enforcement action against a noncitizen. On September 30, 2021, DHS Secretary Mayorkas issued superseding *Guidelines for the Enforcement of Civil Immigration Law*. The interim guidance, which will remain in effect until November 29, 2021, and the superseding guidance, direct ICE officers and agents to focus enforcement and removal resources on threats to national security, border security, and public safety.

Please note that ICE evaluates all noncitizens on a case-by-case basis to determine whether they qualify as a priority. Under the interim guidance, for those cases that do not meet any criteria for the priority categories, the local ICE Field Office Director or Special Agent in Charge is required to pre-approve the proposed enforcement action to ensure that it is an appropriate use of ICE's limited resources. It is important to note, however, that the interim priorities do not require or prohibit enforcement actions against any noncitizen. Instead, ICE

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officers and agents are expected to exercise their discretion thoughtfully, consistent with ICE's important national security, border security, and public safety missions.

Your letter states that the aforementioned interim guidance has caused an influx at the Southwest Border (SWB). While we are seeing an increased number of migrants attempting to cross into the United States, the current surge of migrant families encountered at the SWB has been rising since April 2020, and is attributable in part, to such factors as violence, food insecurity, and poverty in the migrants' home country. DHS continues to prioritize and allocate critical, limited resources toward these border areas to process migrants consistent with applicable legal authorities. While the situation at the SWB is difficult, our goal is a safe, legal, and orderly immigration system that is based on our bedrock priorities to address a surge situation predating the enforcement priority policies.

Your letter also states that ICE, with the Department of Health and Human Services (HHS), has chartered flights transporting noncitizens to the State of Florida. With respect to unaccompanied children (UC), ICE's role is to transport UCs from U.S. Customs and Border Protection to the care and custody of the HHS Office of Refugee Resettlement (ORR). Since flights and travel are contingent upon ORR placements, ICE defers to ORR on any information surrounding placements in the State of Florida.

As for noncitizens ICE takes into custody, ICE has detention facilities throughout the United States, including Florida. However, for individuals not subject to mandatory detention by law, ICE makes custody decisions on a case-by-case basis and after considering the totality of circumstances. Primary considerations include a risk of flight, national security threat, and risk to public safety. ICE also takes other factors into consideration, including when a noncitizen has a serious medical condition, is the primary caregiver of minor children, and other humanitarian factors. ICE may also enroll a noncitizen in the Alternatives to Detention (ATD) program, a flight-mitigation tool that uses technology and case management to increase compliance with release conditions and facilitate compliance with court hearings and final orders of removal.

Noncitizens determined eligible for release by ICE are released through a mechanism such as bond, parole, order of release on recognizance, or order of supervision. Noncitizens are given the opportunity to remain in the community pending immigration proceedings and so long as they abide by the terms of their release. Typically, this would be a community where the noncitizen has a support network of friends, family, or non-government sponsors.

Your letter requests that DHS provide advance notice to the State of Florida before noncitizens apprehended at the SWB are resettled in Florida. Please note that ICE does not resettle noncitizens anywhere in the United States. However, individuals released by DHS at or near the border may choose to travel to other jurisdictions in which to reside during their immigration process. While coordination with state and local jurisdictions is not required, ICE maintains a cooperative partnership with local governments and coordinates with local governments on scheduled releases of noncitizens who were in its custody.

Your letter also requests that DHS provide assistance in the identification of noncitizens unlawfully present in the United States who are pending criminal prosecution in Florida. ICE

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recognizes the importance of its relationship with its law enforcement partners and will coordinate its efforts in a way that best serves national security, border security, and public safety in light of its limited enforcement resources. We defer this question to the prosecuting entity in question, such as the Department of Justice, for the current status of such cases.

I look forward to a continued dialogue on how best to safeguard American communities while creating an immigration system that is in line with America's core values.

Thank you again for your letter. Enclosed are responses to the specific questions raised in your letter. Should you wish to discuss this matter further, please do not hesitate to contact the ICE Office of Partnership and Engagement at iceope@ice.dhs.gov.

Sincerely,



Tae D. Johnson
Acting Director

Enclosure

**The Department of Homeland Security's Response to
Governor Ron DeSantis' August 26, 2021 Letter**

- 1. The number of aliens without lawful status, including unaccompanied minors, apprehended at the southwest border whom DHS knows has resettled in Florida since January 2021 until the date of this letter [August 26, 2021].**

U.S. Immigration and Customs Enforcement (ICE) is currently tracking 5,990 single adult noncitizens who entered the United States at the Southwest Border (SWB) and were processed under Prosecutorial Discretion (PD), placed onto the Dedicated Docket (DD), or paroled in as part of winding down the Migrant Protection Protocols (MPP) and then checked in at an ICE field office in Florida. While DHS does not resettle noncitizens, 2,266 noncitizens were processed at the SWB under PD between March 21, 2021, and August 20, 2021, who then checked-in with ICE in Florida. There have been 1,229 noncitizens who entered the United States and were enrolled on DD between May 28, 2021, and August 23, 2021, and who had an intended address or enrollment location in Florida and then checked-in with ICE in Florida. There have been 2,495 noncitizens who were paroled in through MPP between February 19, 2021, and August 23, 2021, who had a case on a docket in Florida and then checked-in with ICE in Florida.

Pursuant to the Homeland Security Act, the Department of Health and Human Services Office of Refugee Resettlement (ORR) is responsible for releasing unaccompanied children (UC) into the care of a sponsoring adult. UCs are not in Department of Homeland Security (DHS) custody; therefore, DHS defers to ORR for any information regarding UC being released within the state of Florida.

- 2. The names and destination addresses (or destination cities) of those persons, including the names and addresses (or cities) of their sponsors (if applicable), and the dates and locations of their removal proceedings.**

While ICE has information including names and intended addresses for noncitizens who provided that information, or who already checked-in in Florida, ICE is not able to release this information due to the privacy rights of the noncitizens and their sponsors. Noncitizens and their sponsors are entitled to Equal Protection under the 14th Amendment of the U.S. Constitution.

- 3. Of the aliens whom DHS knows has resettled in Florida, the number who were tested for the coronavirus, the number who were not tested for the coronavirus, the number who tested positive for the coronavirus, the number who received the vaccine, and the number who refused the vaccine.**

As noted above, DHS does not resettle noncitizens anywhere in the United States. In other words, DHS does not identify or pay for permanent housing for noncitizens apprehended at the SWB, nor does the Department employ contractors to do so. ICE is able to provide statistics for noncitizens tested and vaccinated while in ICE custody; that information is

regularly updated on the ICE website.¹ However, ICE does not track continued COVID vaccination status and is unable to provide statistics for noncitizens released from ICE custody.

- 4. Of the aliens whom DHS knows has resettled in Florida, the number and identity of those who have a criminal record (including the nature of their crimes) and those who have previously entered the United States illegally.**

U.S. Border Patrol conducts record checks on subjects in their custody prior to making a processing disposition. Upon encounter at the border, U.S. Customs and Border Protection (CBP) collects each migrant's biographical and biometric information (fingerprints, photographs, telephone numbers, and an address in the United States). A background check is always conducted and biometrics are collected and processed in all cases. When determining the appropriate processing pathway, agents assess whether the noncitizen poses a threat to national security, border security, or a heightened public safety risk. Those who do pose such risks are not processed using a pathway that leads to release.

- 5. Of the aliens whom DHS knows has resettled in Florida, the number and identity of those who have failed to appear for their removal proceedings;**

DHS defers this question to the Department of Justice's Executive Office for Immigration Review.

- 6. Going forward, the number, names, and destination addresses (or destination cities) of all aliens apprehended at the southwest border without lawful status whom DHS knows are resettling in Florida, including the anticipated dates and locations of their arrival (and the names and addresses (or cities) of their sponsors (if applicable)).**

Due to Constitutional, privacy, and safety considerations, DHS is unable to provide this information. Furthermore, please note that DHS does not resettle noncitizens anywhere in the United States.

- 7. If chartered aircraft or buses are employed to transport illegal aliens for resettlement in Florida, the anticipated arrival date, time, and location of each charter and the identity of the charter company.**

With respect to UC, ICE contracts with MVM, Inc. to transport UC to various ORR shelters across the nation, based on instructions provided by ORR. ICE does not designate the ultimate destination of any individual resettling anywhere, nor does it resettle noncitizens anywhere in the United States. ICE's transportation contractor is headquartered in McAllen, Texas, with sub-offices in San Antonio and El Paso, Texas, and Phoenix, Arizona. These offices provide nationwide long-distance commercial air transport and ground-based transports for UC. As there are limitations to the amount of information that can be shared about UC, ICE defers to ORR for any information regarding UC traveling into the State of Florida and whether they are in temporary shelters or long-term foster care. ICE also

¹ <https://www.ice.gov/coronavirus#detStat>

transports family units to ICE family staging centers along the SWB, but those facilities are not in the State of Florida.

- 8. The identity and role of all federal contractors, including any non-governmental organizations, that since January 2021 have assisted or are assisting DHS with the resettlement of aliens from the southwest border to Florida.**

DHS and its contractors do not resettle noncitizens anywhere in the United States.

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