

MAY 19 2016



**U.S. Immigration
and Customs
Enforcement**

The Honorable Jeff Flake
United States Senate
Washington, DC 20510

Dear Senator Flake:

Thank you for your February 12, 2016 letter to U.S. Immigration and Customs Enforcement (ICE) Director Saldaña regarding the negative impact the U.S. Ninth Circuit Court of Appeals decision in *Rodriguez v. Robbins* is having on ICE efforts to protect public safety.

As you know, the government is vigorously challenging the decision and has filed a petition for certiorari with the U.S. Supreme Court arguing that the Ninth Circuit's decisions in *Rodriguez* contravene Congressional intent and are inconsistent with Supreme Court precedent. As the Supreme Court recognized in upholding mandatory detention under section 236(c) of the *Immigration and Nationality Act*, 8 U.S.C. § 1226(c), a major reason Congress enacted this provision was because "deportable criminal aliens who remained in the United States often committed more crimes before being removed." See *Demore v. Kim*, 538 U.S. 510, 518 (2003). Indeed, of the 533 aliens released pursuant to *Rodriguez* in the ICE Los Angeles Area of Responsibility (LA AOR) from October 2012 through December 2013, ICE records indicate that 184 (approximately 35 percent) have been subsequently re-arrested by other law enforcement agencies as of May 15, 2016.

Regarding your request for the number of aliens released pursuant to *Rodriguez* and subsequently ordered removed *in absentia*, it is difficult to provide a comprehensive response due to the backlog of pending cases on the non-detained dockets. When aliens are released pursuant to *Rodriguez* and continue to contest their removal, such cases typically last many years. For instance, of the aliens released pursuant to *Rodriguez* in the LA AOR during the first 2 months of 2013, more than half were still pending resolution of their cases before the Immigration Court at the end of April 2016. With the majority of *Rodriguez* release cases still pending, any *in absentia* information would paint an incomplete picture at this point. However, ICE is working with the Executive Office for Immigration Review (EOIR) to further prioritize adjudication of such cases, going forward.

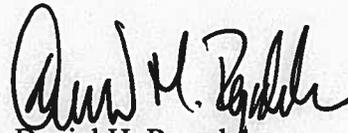
While comprehensive *Rodriguez*-specific data on aliens who fail to appear for immigration court hearings is not readily available, EOIR provides nationwide data on *in absentia* orders in its annual Statistical Yearbook. The nationwide number of *in absentia* orders for detained aliens released on bond or on their own recognizance has increased by 73 percent from Fiscal Year (FY) 2011 to FY 2015, and hit a record high rate of 41 percent in FY 15. See

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EOIR, FY 2015 Statistics Yearbook, Figure 25 at P3, available at
<https://www.justice.gov/sites/default/files/pages/attachments/2016/04/08/fy15syb.pdf>.

Thank you again for your letter, and please know that ICE shares your concerns on this very important public safety matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan H. Ragsdale". The signature is written in a cursive style with a large initial "D".

Daniel H. Ragsdale
Deputy Director