

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALABAMA & GOVERNOR
ROBERT J. BENTLEY,

Defendants.

Civil Action No.

DECLARATION OF DANIEL H. RAGSDALE

Pursuant to 28 U.S.C. § 1746, I, Daniel H. Ragsdale, declare and state as follows:

1. I am the Executive Associate Director for Management and Administration at U.S. Immigration and Customs Enforcement (ICE) within the U.S. Department of Homeland Security (DHS). I have served in this position in an acting capacity from October 2009 until January 2010. In January 2010, I was selected for this position permanently. Before that, I served as a Senior Counselor to ICE's Assistant Secretary from November 2008 until October 2009, and, prior to that, as the Chief of the ICE Enforcement Law Division from October 2006 until November 2008. From September 1999 until September 2006, I served in several positions in ICE's Office of the Chief Counsel in Phoenix, Arizona. I also was designated as a Special Assistant U.S. Attorney (SAUSA), which allowed me to prosecute immigration crimes.

2. Under the supervision of ICE's Director, I have direct managerial and supervisory authority over the management and administration of ICE, an agency with more than 20,000 employees assigned to over 400 offices worldwide and an annual budget of almost \$6 billion. I

am closely involved in the management of ICE's human and financial resources, matters of significance to the agency, and the day-to-day operations of the agency. I am responsible for ensuring that ICE's resources and budget are managed and administered efficiently consistent with the agency's priorities. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties.

Overview of ICE Programs

3. ICE consists of two core operational programs, Enforcement and Removal Operations (ERO), which focuses on civil immigration enforcement and Homeland Security Investigations (HSI), which handles criminal investigations. I am generally aware of the operational activities of all offices at ICE, and I am specifically aware of their activities as they affect and interface with the programs I directly supervise.

4. HSI houses the special agents who investigate criminal violations of the federal customs and immigration laws. HSI also primarily handles responses to calls from local and state law enforcement officers requesting assistance, including calls requesting that ICE transfer aliens into ICE detention. However, because the federal government prioritizes its investigative resources towards the apprehension of criminal aliens, the responsibility of responding to state and local law enforcement is shared with, and is increasingly transitioning to, ERO to allow HSI Special Agents to focus more heavily on criminal investigations. On an average day in Fiscal Year (FY) 2010, HSI Special Agents nationwide arrested 53 people for administrative immigration violations, 25 people for criminal immigration offenses, and 40 people for criminal customs offenses.

5. ERO is responsible for detaining and removing aliens who are subject to removal under the federal immigration laws. This includes both aliens who have entered the United

States without authorization, as well as those who entered lawfully but have overstayed their period of authorized admission or have committed crimes that subject them to one of the various removal procedures provided under the federal immigration laws. On an average day in 2011, ERO officers nationwide arrest approximately 775 aliens for administrative immigration violations and remove approximately 1,049 aliens, including 537 criminal aliens, from the United States to countries around the globe. As of July 11, 2011, ICE had approximately 32,942 aliens in custody pending their removal proceedings or removal from the United States, which includes not only aliens arrested by ERO but also those arrested by other agencies.

6. In addition to HSI and ERO, ICE has an Office of State, Local, and Tribal Coordination (OSLTC) which focuses on outreach to state, local, and tribal law enforcement agencies to build positive relationships with ICE.

ICE Enforcement Priorities

7. DHS is the federal department with primary responsibility for the enforcement of federal immigration law. Within DHS, ICE plays a key role in this enforcement by, among other functions, serving as the agency responsible for the investigation of immigration-related crimes, the apprehension and removal of individuals from the interior United States, and the representation of the United States in removal proceedings before the Executive Office for Immigration Review within the Department of Justice. As the department with primary responsibility for enforcement of federal immigration laws, DHS exercises a large degree of discretion in determining how best to carry out its enforcement responsibilities given the limited resources it receives for enforcement. Pursuant to this discretion, ICE may forego removal proceedings or seeking criminal prosecution in individual cases, where such forbearance will further federal immigration priorities.

8. ICE's priorities at a national level have been refined to reflect Secretary Napolitano's commitment to the "smart and tough enforcement of immigration laws." Currently, ICE's highest enforcement priorities—meaning, the most important classes of aliens for apprehension and removal efforts—are aliens who pose a danger to national security or a risk to public safety, including: aliens engaged in or suspected of terrorism or espionage; aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders; certain gang members; and aliens subject to outstanding criminal warrants.

9. Other high priorities include aliens who are recent illegal entrants and "fugitive aliens" (*i.e.*, aliens who have failed to comply with final orders of removal). The attention to fugitive aliens, especially those with criminal records, recognizes that the government expends significant resources providing procedural due process in immigration proceedings, and that the efficacy of removal proceedings is undermined if final orders of removal are not enforced. The attention to aliens who are recent illegal entrants is intended to help maintain control at the border. Aliens who have been present in the U.S. without authorization for a prolonged period of time, but who have not been convicted of criminal conduct, present a lower enforcement priority. Finally, aliens who meet certain humanitarian criteria may not be an "enforcement" priority at all—in such humanitarian cases, federal immigration priorities may recommend forbearance in pursuing removal. Examples of such humanitarian cases may include those where the alien or spouse is pregnant or nursing, where the alien is the primary caretaker of children or an infirm person, where the alien has strong and longstanding ties to the community, where the alien is a minor or is elderly, where the alien has served in the military or where the alien has significant health problems.

10. ICE bases its current priorities on a number of different factors. One factor is the differential between the number of people present in the United States illegally—approximately 10.8 million aliens—and the number of people ICE is resourced to remove each year—approximately 400,000, including those who are lawfully present but removable based on criminal convictions and other grounds. This differential necessitates prioritization to ensure that ICE expends resources most efficiently to advance the goals of protecting national security and public safety and securing the border. Another factor is ICE’s consideration of humanitarian interests in enforcing federal immigration laws, and the desire to ensure that aliens in the system are treated fairly and with appropriate respect given their individual circumstances. Humanitarian interests may, in appropriate cases, support a conclusion that an alien should not be detained during the removal process or removed at all. Another factor is ICE’s recognition that immigration detainees are not held as punishment, but are held for a civil purpose—removal. Although federal law provides for criminal punishment for the act of entering or reentering the United States without permission or failing to cooperate with ICE during the removal process, the fact of being present in the United States without authorization is not itself a crime. ICE prioritizes its enforcement to distinguish between aliens who commit civil immigration violations and those who commit or who have been convicted of a crime.

11. It is ICE policy and practice to ensure that the use of agency enforcement personnel, detention space, and removal resources are focused on advancing the Department’s civil immigration enforcement priorities. For example, ICE has two programs within ERO designed to identify and arrest convicted criminal aliens and alien fugitives. These are the Criminal Alien Program (CAP) and the National Fugitive Operations Program (fugitive operations). ICE officers assigned to CAP identify criminal aliens who are incarcerated within

federal, state, and local prisons and jails, as well as aliens who have been charged or arrested and remain in the custody of the law enforcement agency. ICE officers assigned to fugitive operations teams seek to locate, arrest, and remove aliens with final orders of removal who are convicted criminal aliens living at large in communities and aliens who previously have been deported but have returned unlawfully to the United States. They also present to the U.S. Attorney Offices illegal reentry cases for prosecution in federal courts to deter such recidivist conduct.

12. Likewise, in keeping with the Secretary's policy determination that immigration enforcement should be "smart and tough" by focusing on specific priorities, in April 2009, ICE issued a new strategy regarding worksite enforcement. This strategy shift prioritized the criminal investigation and prosecution of employers and de-emphasized the apprehension and removal of unauthorized aliens working in the United States without authorization. Although Federal law does not make it a distinct civil or criminal offense for unauthorized aliens to seek employment in the United States, such aliens may be removed for being in the United States illegally or for violating the terms of a nonimmigrant visa which does not permit the visa holder to work while in the United States. ICE's new strategy acknowledges that many enter the United States illegally because of the opportunity to work. Thus, the strategy seeks to address the root causes of illegal immigration and to do the following: (i) penalize employers who knowingly hire illegal workers; (ii) deter employers who are tempted to hire illegal workers; and (iii) encourage all employers to take advantage of well-crafted compliance tools. At the same time, the policy recognizes humanitarian concerns and discourages focusing enforcement efforts on unauthorized workers. The new worksite enforcement strategy permits agents to exercise discretion and work

with the prosecuting attorney to assess how to best proceed with respect to unlawfully present alien witnesses.

13. ICE's enforcement priorities are also reflected in the administration of its "287(g) Program." The 287(g) Program is a partnership initiative through which ICE enters into agreements with state, local, and tribal law enforcement agencies to give those agencies delegated authority to perform certain federal immigration enforcement functions under the supervision of federal officials. Specifically, Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g), provides the capability for DHS to delegate to state and local law enforcement officers the authority to enforce federal immigration law, in either a detention model or a task force model, under a written Memorandum of Agreement (MOA) between DHS and the law enforcement agency. The MOA defines the delegated authorities, the training requirements, the required ICE supervision, and the length of the agreement. ICE has recently refocused the 287(g) program to ensure that state and local jurisdictions with which ICE has entered into agreements to exercise delegated federal immigration authority under ICE supervision do so in a manner consistent with ICE's priorities. The mechanism for this refocusing has been a new MOA with revised terms and conditions. Jurisdictions that already had agreements were required to enter into this revised MOA in October of 2009. The MOA outlines ICE's priorities and the purpose of the 287(g) program, which is to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community. Even outside of the context of a formal 287(g) partnership that is based on a written agreement, ICE routinely communicates with local law enforcement officers on an informal basis, and through this ongoing cooperative

process, over time, ICE is generally able to relay its enforcement priorities to individual local law enforcement officers.

14. Consistent with its policy of focusing enforcement efforts on criminal aliens, and in response to directives from Congress to focus on such aliens, ICE also created the Secure Communities program to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens and other ICE enforcement priorities from the United States. Through the program, ICE has leveraged biometric information-sharing between the Federal Bureau of Investigation (FBI) and DHS to ensure accurate and timely identification of criminal aliens in law enforcement custody. When state and local authorities arrest and book someone into jail for a criminal offense, they routinely submit fingerprints to the FBI biometric system for criminal history records. The FBI then automatically shares these fingerprints with DHS to check against its biometric system for immigration and law enforcement records. If the person has been previously encountered and fingerprinted by an immigration official and there is a digitized record, then the immigration database will register a "match." For jurisdictions where Secure Communities is deployed, ICE is automatically notified of the match. ICE then reviews other databases to determine whether the person is here illegally or is otherwise removable. In cases where the person appears from these checks to be removable, ICE takes appropriate enforcement action—making the highest priority the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors. ICE has the discretion to decide whether lodging a detainer and/or pursuing removal reflects ICE's enforcement priorities and does not lodge detainers or otherwise pursue removal for every alien in state or local custody. The decision whether to pursue immigration enforcement action against an individual identified through information-sharing between DHS

and the FBI is made solely by ICE. State and local law enforcement officers do not play any role in deciding whether to take enforcement action against such individuals. Moreover, state and local law enforcement officers do not take any additional steps beyond their usual law enforcement duties to trigger the information-sharing at the heart of the Secure Communities program.

15. ICE communicates its enforcement priorities to state and local law enforcement officials in a number of ways. With respect to the 287(g) program, the standard MOA describes the focus on criminal aliens, with the highest priority on the most serious offenders. In addition, local jurisdictions where Secure Communities is deployed are advised of ICE's priorities in outreach materials. DHS's Office of Civil Rights and Civil Liberties (CRCL), working with ICE, has developed a training program for state and local law enforcement agencies to further educate them about ICE's priorities and the proper use of Secure Communities.

16. In addition to the dissemination of guidelines on national civil enforcement priorities to the field and other efforts to perform immigration enforcement in a manner that most efficiently protects the border and public safety and maintains the integrity of the immigration system, the Director and his senior staff routinely remind field locations that they have the authority to exercise discretion in individual cases. This includes the decision to issue charging documents, institute removal proceedings, release or detain aliens, place aliens on alternatives to detention (*e.g.*, electronic monitoring), concede an alien's eligibility for relief from removal, move to terminate cases where the alien may have some other avenue for relief, stay deportations, or defer an alien's departure.

17. The Director has communicated to ICE personnel that discretion is particularly important when dealing with long-time lawful permanent residents, juveniles, the elderly,

individuals present in the U.S. since childhood, the immediate family members of U.S. citizens, veterans, members of the armed forces and their families, pregnant or nursing women, victims of domestic violence, trafficking, or other serious crimes, and others with illnesses or special circumstances.

18. ICE exercises prosecutorial discretion throughout all the stages of the removal process—investigations, initiating and pursuing administrative removal proceedings, deciding which removability charges to lodge, seeking termination of proceedings, administrative closing of cases, releasing from detention, declining to appeal the decision of an immigration judge, and/or declining to execute a removal order. The decision on whether and how to exercise prosecutorial discretion in a given case is largely informed by ICE’s enforcement priorities. I am aware of many cases where ICE has exercised prosecutorial discretion for an alien who was not within the stated priorities of the agency or because of humanitarian factors. Such examples include the release of an individual with medical issues from detention, terminating removal proceedings to allow an alien to regularize her immigration status, and terminating proceedings for a long-term legal permanent resident who served in the military, among numerous other examples.

19. ICE’s exercise of discretion in enforcement decisions has been the subject of several internal agency communications that affirm that ICE does not seek to arrest, detain, remove, or refer for prosecution all aliens who may be present in the United States illegally, which would be an impossible task given the limitations on ICE’s resources. Rather, ICE focuses its enforcement efforts in a manner that is intended to most effectively further national security, public safety, security of the border, and the integrity of the immigration system, and affirmatively declines to seek removal or prosecution of certain aliens.

20. These communications include a November 7, 2007 memorandum from ICE Assistant Secretary Julie Myers to ICE Field Office Directors (FODs) and ICE Special Agents in Charge (SACs) advising ICE agents and officers to exercise prosecutorial discretion when making administrative arrests and custody determinations for aliens who are nursing mothers in the absence of any factors that would mandate statutory detention, such as national security or threats to public safety. Another example is an October 24, 2005, memorandum from ICE Principal Legal Advisor William J. Howard to the Office of the Principal Legal Advisor (OPLA) Chief Counsels concerning the manner in which prosecutorial discretion is exercised in removal proceedings. Yet another example is a November 17, 2000 memorandum from Immigration and Naturalization Service (INS) Commissioner Doris Meissner to various INS personnel.

21. In furtherance of the goal to focus ICE's limited resources on its highest enforcement priorities, ICE Director John Morton has issued several memoranda on issues related to immigration enforcement, including, "Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions" (August 20, 2010); "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (March 2, 2011); "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs" (June 17, 2011); and "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (June 17, 2011).

22. However, although the priorities discussed above reflect ICE's current focus, enforcement priorities can evolve over time based on numerous factors, such as the current threat environment and changes in resources, among numerous other considerations. As a result, ICE also requires the flexibility and discretion to adjust its efforts as enforcement priorities shift.

International Cooperation with ICE Enforcement

23. Immigration enforcement also relies heavily upon constructive relationships with and cooperation from foreign governments. ICE cooperates with foreign governments to advance our criminal investigations of transnational criminal organizations (such as drug cartels, major gangs, and organized alien smugglers) and to repatriate their citizens and nationals who are facing removal. With respect to our criminal investigations, ICE's Office of International Affairs has 70 offices in 47 countries staffed with special agents who, among other things, investigate crime. In addition, they work with foreign governments to secure travel documents and clearance for ICE to remove aliens from the United States. ICE negotiates with foreign governments to expedite the removal process, including negotiating electronic travel document arrangements. International cooperation for ICE is critical.

24. ICE is consistently looking for new ways to work with foreign governments to advance our criminal investigations of transnational criminal organizations. ICE's Illicit Pathways Attack Strategy (IPAS) is a comprehensive approach designed to attack transnational crime at all points along illicit pathways and networks. IPAS complements the President's Strategy to Combat Transnational Organized Crime by leveraging ICE's authorities and resources as well as those of our law enforcement partners, both domestically and abroad. Because much of the illicit traffic destined for the United States passes through other countries in the Western Hemisphere, the first phase of IPAS will focus specifically on high-risk human smuggling networks operating throughout the Western Hemisphere.

25. Also, to improve border security and combat cross-border crime, ICE is engaged in initiatives with the foreign governments. For example, ICE has enlisted Mexican and Canadian federal police officers to participate in the ICE-led Border Enforcement Security Task

Forces (BESTs). The BEST platform brings together multiple law enforcement agencies at every level to combat cross-border crime. Sharing information and agents promotes more efficient and effective investigations. ICE has benefited from the increased cooperation of foreign governments. In addition to the importance of cooperation from foreign governments in criminal investigations, ICE also benefits from good relationships with foreign governments in effecting removals of foreign nationals. Negotiating removals, including country clearance, approvals and securing travel documents, is a federal matter and often one that requires the cooperation of the country that is accepting the removed alien. Not all countries are equally willing to repatriate their nationals and delays in repatriating nationals of foreign countries causes ICE financial and operational challenges, particularly when the aliens are detained pending removal. Difficulties in persuading a foreign country to accept a removed alien runs the risk of extending the length of time that a potentially dangerous or criminal alien remains in the United States. Thus, the efficient operation of the immigration system relies on cooperation from foreign governments.

Reliance on Unlawfully Present Aliens in Enforcement and Prosecution

26. ICE agents routinely rely on foreign nationals, including aliens unlawfully in the United States, to build criminal cases, including cases against other aliens in the United States illegally. Aliens who are unlawfully in the United States, like any other persons, may have important information about criminals they encounter—from narcotics smugglers to alien smugglers and beyond—and routinely support ICE’s enforcement activities by serving as confidential informants or witnesses. When ICE’s witnesses or informants are unlawfully present aliens who are subject to removal, ICE can exercise discretion and ensure the alien is able to remain in the country to assist in an investigation, prosecution, or both. The blanket removal or incarceration of all aliens who are unlawfully present would interfere with ICE’s

ability to pursue the prosecution or removal of aliens who pose particularly significant threats to public safety or national security. Likewise, ICE can provide temporary or long-term relief or benefits to permit victims of illegal activity to remain in the United States.

27. The tools that ICE and other agencies including FBI, Drug Enforcement and Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) rely on to ensure the cooperation of informants and witnesses include deferred action, continued presence, stays of removal, U visas for crime victims, T visas for victims of human trafficking, and S visas for significant cooperators against criminals and others who support investigations. These tools allow aliens who otherwise would face removal to remain in the United States either temporarily or permanently, and to work in the United States in order to support themselves while here. Many of these tools are employed in situations where not pursuing an alien's removal or prosecution actually benefits federal interests. Utilization of these tools is a complicated process between ICE and the alien, which may play out over time. An alien who ultimately may receive a particular benefit—for example, an S visa—may not immediately receive that visa upon initially coming forward to ICE or other authorities, and thus at a given time may not have documentation or evidence of the fact that ICE is permitting that alien to remain in the United States.

28. Although ICE may rely on an unlawfully present alien as an informant in any type of immigration or customs violation it investigates, this is particularly likely in alien smuggling and illegal employment cases. Aliens who lack lawful status in the United States are routinely witnesses in criminal cases against alien smugglers. For example, in an alien smuggling case, the smuggled aliens are in a position to provide important information about their journey to the United States, including how they entered, who provided them assistance, and who they may

have paid. If these aliens were not available to ICE, special agents would not be positioned to build criminal cases against the smuggler. ICE may use a case against the smuggler to then build a larger case against others in the smuggling organization that assisted the aliens in crossing the border.

29. ICE also relies heavily on alien informants and witnesses in illegal employment cases. In worksite cases, the unauthorized alien workers likewise have important insight and information about the persons involved in the hiring and employment process, including who may be amenable to a criminal charge.

30. ICE also relies heavily on alien informants and in cooperation with other law enforcement agencies such as the FBI, DEA, and ATF in investigations of transnational gangs, including violent street gangs with membership and leadership in the United States and abroad. Informants and cooperating witnesses help ICE identify gang members in the United States and provide information to support investigations into crimes the gang may be committing. In some cases, this includes violent crime in aid of racketeering, narcotics trafficking, or other crimes.

Potential Adverse Impact of H.B. 56 on ICE's Priorities and Enforcement Activities

31. I am aware that the State of Alabama has enacted new immigration legislation, known as H.B. 56. I have reviewed H.B. 56, and I am generally familiar with the purpose and provisions of that legislation. H.B. 56 could adversely impact ICE's operational activities with respect to federal immigration enforcement in a number of ways.

Alabama's Verification Requirements May Unduly Burden ICE Resources

32. H.B. 56 imposes requirements for verification of aliens' immigration status in a variety of contexts. Although many requests for verification from state and local law enforcement officers about a subject's immigration status could be routed to the Law

Enforcement Support Center (LESC), LESC has limited, static resources and handles a rapidly increasing volume of inquiries in alignment with ICE's public safety and national security missions. This increase in queries from Alabama could delay response times and risks exceeding the capacity of the LESC to respond to higher priority requests for criminal alien status determinations from law enforcement partners nationwide. The potential increase in queries by Alabama, along with the possibility of other states adopting similar legislation, could overwhelm the system.

33. The LESC performs a significant role in supporting the ICE Secure Communities Program by producing alien status determinations based on biometric (fingerprint) booking information. The LESC reviews other databases to determine whether the person is here illegally or is otherwise removable. ICE first deployed this biometric technology in October of 2008, and ICE plans to deploy the technology nationwide to more than 3,000 jurisdictions by the end of FY 2013. The LESC has already experienced an increase in processing times since the establishment of the Secure Communities program, largely because the LESC is receiving many more biometric and biographic queries, or Immigration Alien Queries (IAQs), and many of these IAQs involve serious criminal aliens. Due to the fact that they are often complex, these IAQs can take longer to process than other IAQs. As information-sharing through the Secure Communities program continues to grow, we anticipate an increased workload due to the need for more complex queries that will further increase LESC response times.

34. Many other requests for verification will also be handled by ICE field offices, such as SAC New Orleans (the local HSI office), or the FOD New Orleans (the local ERO office). Both offices currently have broad portfolios of responsibility. Notably, SAC New Orleans is responsible for investigating crimes throughout a five state area of responsibility

(AOR), which includes Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. ERO New Orleans is responsible for fourteen detention locations throughout a five-state AOR, has five fugitive operations teams, including one in Birmingham, Alabama, has a robust criminal alien program, and manages two 287(g) programs located in Davidson County, Tennessee and Etowah County, Alabama. Additionally, the Secure Communities program has been activated in 37 of 67 counties in Alabama (55% of the state).¹ Similarly, the New Orleans Office of the Chief Counsel (ICE's Office of the Chief Counsel with responsibility for Alabama) encompasses the same five-state area, with offices in New Orleans and Oakdale, Louisiana, and Memphis, Tennessee, and a wide range of responsibilities, including legal sufficiency review of charging documents prepared to initiate removal of aliens, supporting the Department of Justice with federal criminal prosecutions and representing the Department in administrative removal proceedings before immigration judges.

35. These ICE resources are currently engaged in investigating criminal violations and managing the federal government's enforcement priorities and existing enforcement efforts. Neither the SAC nor FOD New Orleans, nor their Alabama sub-offices, are staffed to assume additional duties or are scheduled for a significant increase in resources to accommodate additional calls from state and local law enforcement.

Immigration Referrals by Alabama May Interfere with ICE's Allocation of Resources to High-Priority Enforcement Efforts

36. The anticipated increase in referrals generated by H.B. 56 and similar state laws may also interfere with allocation of ICE's existing resources to high-priority enforcement efforts. The FOD and SAC sub-offices in Alabama are not equipped to respond to any

¹ The following counties are activated: Autauga, Baldwin, Blount, Calhoun, Cherokee, Chilton, Choctaw, Clay, Colbert, Conecuh, Coosa, Cullman, Dallas, DeKalb, Elmore, Escambia, Etowah, Franklin, Hale, Jackson, Jefferson, Lamar, Lawrence, Lee, Limestone, Marshall, Marengo, Marion, Mobile, Monroe, Morgan, Perry, Shelby, Talladega, Tallapoosa, Tuscaloosa, and Washington.

appreciable increase in requests to take custody of aliens apprehended by the state. Moreover, the activities of state and local law enforcement officials under state immigration enforcement laws are likely to have a significant impact on ICE.

37. ICE's detention capacity is limited. Congress appropriates annual funds for ICE to maintain 33,400 beds for detention nationwide. ICE determines the number and location of beds for each field office—thus, the number of beds will vary from region to region. For example, in FY 2011, FOD New Orleans maintained a maximum detention capacity of no more than approximately 3,491 beds. FOD New Orleans uses that available bed space not only for aliens arrested in the New Orleans Field Office but also for aliens transferred from locations throughout the United States. Notably, the President's budget for FY 2012 does not request an increase in money to acquire any additional detention space. In accordance with ICE's civil enforcement priorities, an increasing proportion of criminal aliens in ICE custody and no increase in appropriated funds for detention beds mean that ICE's detention resources will be focused on those aliens who present a danger to the community or the greatest risk of flight. ICE's limited detention capacity could not accommodate all the aliens referred to ICE by state immigration laws like H.B. 56.

38. Responding to the number of referrals likely to be generated by enforcement of H.B. 56 and similar state laws could require ICE to divert existing resources from other duties, resulting in fewer resources being available to dedicate to cases and aliens within ICE's priorities. This outcome is especially problematic because ICE's priorities are focused on national security, public safety, security of the border, and maintaining the integrity of the immigration system. Diverting resources to cover the influx of referrals from Alabama (and other states, to the extent they adopt similar laws) could, therefore, mean decreasing ICE's ability

to focus on priorities such as protecting national security or public safety in order to pursue aliens who are in the United States illegally but pose no immediate or known danger or threat to the safety and security of the public.

39. An alternative to responding to the referrals from any one particular state or local law enforcement agency (LEA), which would divert resources from ICE priorities, would be to simply disregard referrals submitted on an individual basis from state or local LEAs. However, this too would have adverse consequences in that it could jeopardize ICE's relationships with state and local LEAs. For example, LEAs often request ICE assistance when individuals are encountered who are believed to be in the United States illegally. Since ICE is not always available to immediately respond to LEA calls, potentially removable aliens are often released back into the community. Historically, this caused some LEAs to complain that ICE was unresponsive.

Alabama's Wide-Ranging Enforcement Provisions May Undermine ICE's Discretionary Enforcement Determinations

40. Inquiries generated by H.B. 56 and similar state immigration enforcement laws may result in the dilution of ICE's ability to focus its efforts on aliens who are within the government's enforcement priorities and deprioritize those who pose no danger to public safety or national security. For example, I understand that Section 12 of H.B. 56 generally requires Alabama law enforcement personnel to make a "reasonable attempt upon any lawful stop, detention, or arrest by a state, county, or municipal law enforcement officer," to determine, when practicable, the citizenship and immigration status of the person, except if the determination would hinder or obstruct an investigation, where "reasonable suspicion" exists that the person is an alien who is unlawfully present in the United States. Section 12 is not in alignment with federal guidance on use of discretionary authority and finite enforcement resources, because an

alien in Alabama may be unlawfully present in the United States but may be an individual for whom ICE would decide or already has decided, subject to its internal policies, to afford some case-specific exercise of prosecutorial discretion. None of these criteria are taken into account under the Alabama law.

41. H.B. 56 may interfere with federal authorities' decisions about enforcement. The absence of a federal prosecution does not necessarily indicate a lack of federal resources; rather, the federal government often has affirmative reasons for not bringing immigration charges against an alien. H.B. 56 fails to make any distinctions based on the circumstances of the individual aliens or to take account of the Executive Branch's determination with respect to individual aliens, such as to not pursue removal proceedings. For example, ICE may exercise its discretionary authority to grant deferred action to an alien parent in order to care for a sick child. ICE's humanitarian interests would be undermined if that alien was then detained or arrested by Alabama authorities for being illegally present in the United States. Thus, an alien for whom ICE deliberately decided for humanitarian or discretionary reasons not to pursue removal proceedings or not to refer for criminal prosecution, despite the fact that the alien may be in the United States illegally, may still be prosecuted pursuant to the state law.

42. Certain aliens who meet statutory requirements may seek to apply for protection from removal based on their having been persecuted in the past or because of a threat of future persecution. The asylum statute recognizes a policy, grounded in U.S. treaty obligations, to provide refuge to persecuted aliens and the United States government generally does not criminally prosecute aliens for entering a country of refuge without authorization. In many cases, these aliens are not detained while they pursue protection, and they do not have the necessary immigration documents that would provide them lawful status within the United States

during that period. Under H.B. 56, these aliens could be subjected to detention or arrest, despite the fact that DHS has determined not to detain or prosecute the alien. Additionally, some aliens who do not qualify for asylum may qualify instead for withholding of removal or protection under the Convention Against Torture. These forms of relief provide protection in the United States for aliens who seek to escape persecution or torture. Alabama's detention or arrest of these aliens would not be consistent with the Government's desire to ensure their humanitarian treatment.

43. I understand that Section 28 of H.B. 56 requires every public elementary and secondary school in the state of Alabama to determine, at the time of enrollment, whether students were born outside the United States or are a child of an unlawfully present alien, and that the child's original birth certificate or certified copy is required for this determination. If the birth certificate is unavailable, the child's parent, guardian or legal custodian is required to notify the school within 30 days of enrollment of the child's citizenship or immigration status "under federal law." If no such documentation or declaration is presented, "the school official shall presume for the purposes of reporting under this section that the student is an alien unlawfully present in the United States."

44. Determining a child's citizenship or immigration status under federal law may involve a complex analysis, and may require information beyond that contained in a birth certificate, or even information contained in a passport or visa. By way of illustration, ICE frequently encounters individuals who were born abroad but who, by operation of law, either acquired or derived U.S. citizenship through one or both parents based upon the specific facts of their case and an ever-changing legal framework. Indeed, in some cases, an individual was unaware that he or she was a United States citizen until closely examining the relevant facts and

law. In addition, the Alabama law fails to recognize that “unaccompanied alien children” who are present in the United States are eligible for special benefits and treatment under federal law. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044. Such complexities necessitate considerable case-specific inquiry, and H.B. 56 does not appear to provide either school officials or parents with the means to make such determinations accurately.

45. Because of these complexities, the requirements in Section 28 of H.B. 56 may lead school officials and parents to make immigration status inquiries about enrolled students. Although such inquiries may ensure accurate determinations of immigration status, that approach would require ICE to expend its limited resources to determine the immigration status of elementary and secondary school students. Moreover, it is agency policy to refrain from conducting enforcement actions or investigative activities at or near sensitive community locations such as schools. Thus, such a use of limited ICE resources would not further the agency’s enforcement priorities.

Alabama’s Enforcement Efforts May Interfere with ICE’s Ability to Rely on Unlawfully Present Aliens to Assist in Investigations and Prosecutions

46. Application of state immigration enforcement laws generally and H.B. 56 specifically could undermine ICE’s efforts to secure the cooperation of confidential informants, witnesses, and victims who are present in the United States without legal status in connection with prosecution of criminal activity. During my years at ICE, many state and local law enforcement and immigration advocacy groups have indicated that victims and witnesses of crime hesitate to come forward to speak to law enforcement officials if they lack lawful status because they are concerned that, rather than finding redress for crime, they will face detention and removal from the United States. To ensure that unlawfully present aliens who are the

victims of crimes or have witnessed crimes come forward to law enforcement, ICE has a robust outreach program, particularly in the context of human trafficking, to assure victims and witnesses that they can safely come forward against traffickers without fearing immediate immigration custody, extended detention, or removal. If crime victims became reluctant to come forward, ICE would have a more difficult time apprehending, prosecuting, and removing particularly dangerous aliens. ICE also has policies on domestic violence victims to prevent a chilling effect and encourage victims to report crimes.

47. Public knowledge about H.B. 56, particularly when coupled with its enforcement against aliens, is likely to lead unlawfully present aliens to believe that they will be subject to immigration detention and removal, not to mention the possibility that they may expose themselves to sanctions under Alabama law, if they choose to cooperate with authorities. Consequently, H.B. 56 is likely to chill the willingness of certain aliens to cooperate with ICE, thereby undercutting ICE's investigation and prosecution of criminal activity, such as illegal employment, the smuggling of contraband or people, and human trafficking.

48. Moreover, just as ICE offices in Alabama are not staffed to respond to a significant increase in additional inquiries about the immigration status of individuals encountered in Alabama, or to arrest or detain appreciably more aliens not within ICE's current priorities, ICE offices are not staffed to provide personnel to testify in Alabama state criminal proceedings related to a defendant's immigration status. In some federal criminal immigration cases, Assistant United States Attorneys call ICE special agents to testify to provide such information as a person's immigration history or status. If ICE agents are asked to testify in a considerable number of state criminal proceedings, they will be forced either to divert resources from federal priorities, or to refuse to testify in those proceedings, thus damaging their

relationships with the state and local officials whose cooperation is often of critical importance in carrying out federal enforcement priorities.

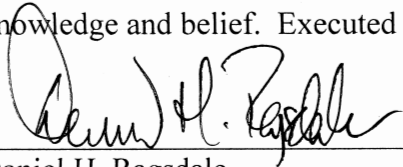
Alabama's Enforcement Activities May Adversely Affect ICE's Partnerships with Foreign Governments

49. Enforcement of H.B. 56 and similar state immigration enforcement laws threaten ICE's relationships with and cooperation from foreign governments. The Government of Mexico, a partner to ICE in many law enforcement efforts and in repatriation of Mexican nationals, has already expressed strong concern about SB 1070, a state immigration enforcement law passed in Arizona that is very similar to H.B. 56. The Government of Mexico is not the only foreign nation that has expressed concern about state immigration enforcement laws.

50. The potential for H.B. 56 and similar state immigration enforcement laws to result in the harassment, detention or prosecution of lawful permanent residents, as well as unlawfully present aliens who may be cooperating with the United States in criminal investigations or for whom the federal government has otherwise determined not to pursue removal proceedings, is likely to strain ICE's partnerships with foreign governments in a number of ways. Among other things, state immigration enforcement is likely to interfere with ICE's cross-border criminal investigations that develop out of cooperative efforts such as BEST and with efforts to repatriate or expedite removal of foreign nationals. Any decrease in participation and support from the Government of Mexico or other foreign governments in ICE's enforcement activities will hinder ICE efforts to prioritize and combat cross-border crime.

51. For the foregoing reasons, I believe that state immigration laws such as H.B. 56 could adversely impact ICE's operations, foreign partnerships, and execution of its enforcement priorities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 1st day of August 2011, in Washington, D.C.

A handwritten signature in black ink, appearing to read "Daniel H. Ragsdale", is written over a horizontal line.

Daniel H. Ragsdale
Executive Associate Director for Management and Administration
U.S. Immigration and Customs Enforcement