

United States Senate

WASHINGTON, DC 20510

February 29, 2016

The Honorable Sarah Saldana
Director of Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th St., S.W.
Washington, D.C. 20536

Dear Director Saldana:

I would appreciate your help in understanding a recent decision by Immigration and Customs Enforcement (ICE) not to detain a man suspected both of living in the United States illegally and of killing a young woman, Sarah Root, in a drunk driving incident in Nebraska.

On January 31, Eswin Mejia, a 19-year old man, was reportedly street racing in Omaha, Nebraska when he violently crashed his pickup truck into the back of Ms. Root's parked vehicle with her inside. She was rushed to the hospital, where she died.

For the past month, Nebraskans have grieved the death of Ms. Root, who was killed just hours after graduating from college. It is unspeakably sad that this innocent young woman was robbed of her life just as it was set to begin. Adding to the grief, however, is the justifiable anger over the fact that the man accused of taking her life has vanished without a trace after posting bail. Over the course of the last month, authorities have searched in vain to find Mr. Mejia so he might be brought to justice.

I would like to know why Mr. Mejia was ever allowed to leave law enforcement custody in the first place. In addition to being a citizen of Honduras living in the U.S. illegally, the nature of the charges against Mr. Mejia are extremely serious. Prior to killing this young woman, Mr. Mejia was racing recklessly down a busy street with a blood alcohol level three times the legal limit.¹ This was not Mr. Mejia's first encounter with the law enforcement either. Police previously suspected him of drunk driving, but he skipped a court hearing and a warrant was issued for his arrest.²

¹ Doan, Chinh, "I-Team: Authorities search for fugitive; questions raised regarding immigration enforcement," KETV-7 (ABC), February 23, 2016, <http://www.ketv.com/news/iteam-authorities-search-for-fugitive-may-be-undocumented-immigrant/38132844#.Vsw7hLkDIM4.facebook>.

² "Teen driver facing motor vehicle homicide charge," WOWT.com, February 3, 2016, <http://www.wowt.com/home/headlines/Two-hurt-one-critically-in-crash-draped-in-questions-367136471.html>.

For these reasons, Omaha's Deputy Police Chief Dave Baker said his department repeatedly asked ICE to detain him.³ Unfortunately, that request was repeatedly denied.

The reason ICE gave to the news media said that detaining Mr. Mejia after he reportedly killed Ms. Root was not consistent with the Department of Homeland Security's immigration "enforcement priorities." The full statement from ICE is below.

At the time of his January 2016 arrest in Omaha on local criminal charges, Eswin Mejia, 19, of Honduras, did not meet ICE's enforcement priorities, as stated by the Nov. 20, 2014 civil enforcement memo issued by Secretary Johnson, because he had no prior significant misdemeanor or felony conviction record. As such, ICE did not lodge a detainer. Mejia is scheduled to go before an immigration judge on March 23, 2017, and it will be up to the immigration courts under the Department of Justice's Executive Office for Immigration Review (EOIR) to determine whether he has a legal basis to remain in the U.S.⁴

As you know, the enforcement priorities mentioned above were created as part of the President's immigration executive actions.⁵ The policy requires that ICE give its highest priority to removing illegal aliens who pose a threat "to national security, public safety, and border security." While this includes those who are convicted of serious crimes, DHS officials are given broad power to "exercise discretion" about whom to detain.

DHS has repeatedly said that the use of "prosecutorial discretion" is meant to ensure federal law enforcement officials judge the facts of each situation on a case-by-case basis, and determine threats to national security and public safety.⁶

If this man is not a threat to public safety, then who is?

To summarize: Mr. Mejia was suspected of living in the country illegally, of driving recklessly down a busy public road, of driving while highly intoxicated on several occasions, of killing a young woman, and of skipping a prior court hearing. Nebraskans look at these facts and wonder how ICE did not consider this man a threat to public safety.

Given Mr. Mejia's disappearance, ICE should explain clearly how it implemented its detention policy in this case. Please provide my office with answers to the following questions prior to Mr. Mejia's schedule immigration hearing on March 23.

³ Cooper, Todd and Bob Glissmann, "Systemic failures allowed man accused in motor vehicle homicide to vanish," *Omaha World Herald*, February 22, 2016, http://www.omaha.com/news/crime/systemic-failures-allowed-man-accused-in-motor-vehicle-homicide-to/article_7bb2a688-8bdb-554f-b795-4381b3e9d464.html.

⁴ Huston, Warner Todd, "Judge Lets Drunk Illegal Immigrant Go After Killing Nebraska Woman: Hearing Lasted Just Minutes," *Breitbart*, February 23, 2016, <http://www.breitbart.com/big-government/2016/02/23/more-info-on-how-courts-let-drunk-illegal-go-after-killing-nebraska-woman/>.

⁵ Memorandum from DHS Secretary Jeh Johnson, Released on November 20, 2014, titled, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf

⁶ Website of U.S. Customs and Immigration Enforcement, "Administration's Announcement Regarding a New Process to Further Focus Immigration Enforcement Resources on High Priority Cases," accessed February 29, 2016, <https://www.ice.gov/repatriation-faq>.

1. Who exactly at ICE was responsible for evaluating whether Mr. Mejia was a threat to public safety?
2. Why did ICE decline to detain Mr. Mejia, despite several requests to do so by the Douglas County Police Department? Were each of these requests denied on a case-by-case basis?
3. In its public statement, ICE referenced the November 20, 2014 immigration executive actions. Why does ICE believe that new policy required the agency not to detain Mr. Mejia?
4. Did anyone within ICE consider Mr. Mejia a flight risk? What steps were taken to ensure he did not flee the country?
5. What is ICE doing now to find Mr. Mejia?
6. Do you consider Mr. Mejia to be a threat to public safety?

It is deeply troubling that this was allowed to happen. Given the urgency of this situation, Nebraskans deserve answers. I look forward to a prompt reply.

Sincerely,

A handwritten signature in blue ink that reads "Ben Sasse". The signature is written in a cursive, flowing style.

Ben Sasse
U.S. Senator