

Office of the Director

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



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

The Honorable Ben Sasse
United States Senate
Washington, DC 20510

Dear Senator Sasse:

Thank you for your February 29, 2016 letter. The death of Sarah Root is heartbreaking and like you, I mourn her family's loss. I am committed to learning from this incident and ensuring that all of the men and women of U.S. Immigration and Customs Enforcement (ICE), myself included, make the best decisions we can.

While ICE would not have been able to prevent Sarah Root's tragic death, I believe we could have done things differently to help ensure Edwin Mejia faces justice. I am committed to ensuring he does so, and ICE continues to work with the Omaha Metro Fugitive Task Force to locate and apprehend him. We have also referred this matter to our Attaché in Tegucigalpa, Honduras who is working with the Honduran government in the event that Mr. Mejia is located there.

I have provided responses to each of your specific questions in the enclosure. Thank you again for your letter. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "S.R. Saldaña".

Sarah R. Saldaña
Director

Enclosure

**The Department of Homeland Security's Response to
Senator Sasse's February 29, 2016 Letter**

1. Who exactly at ICE was responsible for evaluating whether Mr. Mejia was a threat to public safety?

In May 2013, Edwin Mejia was encountered by the U.S. Customs and Border Protection, U.S. Border Patrol (USBP) near Nogales, Arizona, after entering the United States without inspection. At the time of this encounter, Mr. Mejia was 16 years old and determined to be an unaccompanied child. Shortly after the initiation of removal proceedings against him with the issuance of a Notice to Appear, he was transferred to Department of Health and Human Services' Office of Refugee Resettlement (ORR), as required by law.¹ Mr. Mejia had no recorded criminal history in the United States at this time.

In June 2013, consistent with applicable law, ORR released Mr. Mejia to his brother in Tennessee. In early 2014, Mr. Mejia relocated with his brother to the Omaha, Nebraska, area.

The Omaha Police Department arrested Mr. Mejia for driving under the influence in January 2016. During the incident giving rise to his arrest, Mr. Mejia crashed into the vehicle of 21-year-old Sarah Root, while allegedly street racing. As a result, Ms. Root was hospitalized and later passed away from her injuries. Thereafter, Mr. Mejia was charged with motor vehicle homicide – driving under the influence, but a Douglas County Court Judge set bond at \$50,000 with 10 percent allowed. If U.S. Immigration and Customs Enforcement (ICE) had taken custody of Mr. Mejia at that time, he would have been eligible for a bond hearing before an immigration judge regardless of the pending charges against him because he had no criminal conviction subjecting him to mandatory detention under the Immigration and Nationality Act. Notably, even if he were convicted of the offense, motor vehicle homicide – driving under the influence, the conviction would not constitute a crime of violence under the immigration laws, and consequently, would not constitute an aggravated felony.² The conviction would not render him subject to mandatory detention, nor would it significantly impact his eligibility to apply for relief or protection from removal.

According to our records, ICE personnel encountered Mr. Mejia just once, at the Douglas County Jail, in connection with the above-referenced arrest. Based on the facts and circumstances known to ICE at that time, no detainer was filed against Mr. Mejia.

Department of Homeland Security (DHS) personnel maintain the ability to detain an alien not otherwise identified as an enforcement priority, or subject to mandatory detention, provided the removal of such alien would serve an important federal interest. After further review, we believe that further enforcement action would have served an important federal interest in this case, as provided for in Secretary Johnson's November 20, 2014 civil immigration enforcement priorities memo.

¹ 8 U.S.C. § 1232(b)(3).

² See *Leocal v. Ashcroft*, 543 U.S. 1 (2004).

Accordingly, ICE Headquarters has re-emphasized its position to its field offices that the removal of similarly situated aliens would serve an important federal interest and should be subject to enforcement action even if such aliens do not otherwise fall within the delineated DHS enforcement priorities. ICE is actively working with local law enforcement and our international partners to locate this alien.

- 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?**

See the response to question one, above.

- 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?**

See the response to question one, above.

- 4. Did anyone within ICE consider Mr. Mejia a flight risk? What steps were taken to ensure he did not flee the county?**

As Mr. Mejia was never detained in ICE custody, he was never evaluated for flight risk by ICE. Mr. Mejia was originally placed into removal proceeding by USBP on May 14, 2013, and transferred to ORR because, at the time of his arrest, he was an unaccompanied child. Consistent with applicable law, ORR eventually released Mr. Mejia on June 28, 2013 to the custody of his brother. His next hearing before an immigration judge is not scheduled until April 19, 2016.

It is important to note that a criminal court judge conducted a bond hearing and a Douglas County Court Judge set Mr. Mejia's bond at \$50,000, with 10 percent allowed in connection with his local criminal case. Notably, had ICE taken Mr. Mejia into custody, he would again have been eligible for a bond hearing, this time before an immigration judge, regardless of the charges against him because he had no criminal conviction subjecting him to mandatory detention under the Immigration and Nationality Act.

- 5. What is ICE doing now to find Mr. Mejia?**

The Omaha Metro Area Fugitive Task Force is actively pursuing leads in order to locate Mr. Mejia. ICE deportation officers are participating in this task force, and the agency has informed its Attaché office in Honduras, as well as Honduran law enforcement officials, that Mr. Mejia is a fugitive at-large and requested immediate notification and assistance if Mr. Mejia is found in Honduras.

6. Do you consider Mr. Mejia to be a threat to public safety?

ICE does believe pursuing further enforcement action in Mr. Mejia's case, including detention, would serve an important federal interest. Upon locating this alien, ICE will work with local law enforcement to facilitate the safe transfer of Mr. Mejia to ICE custody at the conclusion of his local law enforcement obligations. ICE will then render an appropriate custody determination, taking into account the facts of his case with special consideration toward his history of flight and criminal history.