

United States Senate

WASHINGTON, DC 20510

April 4, 2016

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

Immigration and Customs Enforcement (ICE) Director Sarah Saldana's response to my February 29 letter is bureaucratic nonsense. ICE's response does not attempt to answer why it did not detain an illegal alien who killed an innocent woman and is now on the run as one of ICE's most wanted.

Director Saldana's handling of this matter shows no regard for the Root family and continues to be an embarrassment to the hard-working men and women at the Department of Homeland Security. I am referring my questions to your office and look forward to a thorough response as soon as possible.

Sincerely,



Ben Sasse
U.S. Senator

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.

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 with a long horizontal stroke at the end.

Ben Sasse
U.S. Senator