

**U.S. Immigration and Customs Enforcement
Carlos Martinelly Montano Inquiry
November 24, 2010**

I. Executive Summary

This report provides the results of the inquiry into the case of Carlos Martinelly Montano, an illegal alien, who has been charged in Prince William County, Virginia with involuntary manslaughter. On August 1, 2010, Montano crashed into oncoming traffic, killing one passenger and critically injuring two others, all of whom were Catholic nuns. Since the incident, Montano has been detained pending resolution of his criminal case. In addition, ICE issued a detainer to prevent his release into the community once his criminal case and any sentence are completed.

This report reviews changes in programs and policies that ICE began instituting in 2009 in order to prevent the release of aliens who are criminals or otherwise pose a risk to public safety into the community, and to identify illegal aliens incarcerated by state and local law enforcement agencies. The report also includes recommendations to improve operations and focus immigration enforcement in a manner that best promotes public safety. ICE has fully implemented these recommendations.

Table of Contents

I. Executive Summary.....	2
II. Background and Chronology	4
III. Analysis.....	6
IV. Recommendations.....	8
V. Exhibits	8
A. October 18, 2004 memorandum	
B. August 1, 2007 memorandum	
C. April 2008 letter indicating completion of Intensive Alcohol Education	
D. Letters of support from families and friends	
E. June 30, 2010 memorandum	
F. USCIS's decision to administratively close the application to adjust status	

II. Background and Chronology

Montano is a 23-year-old native and citizen of Bolivia who, along with his family, entered the United States illegally and without inspection in 1996. At the time that he entered the United States, he was approximately nine years old. In 2007, Montano filed an application with U.S. Citizenship and Immigration Services (USCIS) to adjust his status to that of a lawful permanent resident based on his father's employment-based visa petition.¹

On December 7, 2007, Montano was convicted for driving under the influence (DUI) in Prince William County, Virginia and was sentenced to serve 30 days of incarceration. The judge in Prince William County, however, suspended all 30 days of the jail sentence with the result that Montano was not jailed for his offense. Local authorities did not seek to determine Montano's immigration status nor did they contact ICE. At the time of this DUI conviction, the Secure Communities program did not exist. The Secure Communities program deploys technology to allow ICE to identify illegal aliens processed by local law enforcement agencies based on their fingerprints. Under the Secure Communities program, when the arresting authority books and fingerprints someone, the person's fingerprints are sent electronically to be compared against criminal and immigration databases to reveal prior criminal or immigration contacts.

Almost one year later, on October 4, 2008, Montano was booked into jail in Prince William County and charged with another misdemeanor DUI. At the time of this arrest, the local authorities determined that Montano was an illegal alien. Thus, ICE lodged an immigration detainer against him. As a result of the immigration detainer, immigration officers took him into custody. On October 7, 2008, Prince William County officials released him from custody. On that same day, ICE officers instituted removal proceedings, serving Montano with a Notice to Appear (NTA) and charging him with removability because he had entered the United States unlawfully in 1996.

ICE agents determined that Montano was a candidate for the Alternatives to Detention (ATD) program and that they could ensure he would appear for immigration hearings if they monitored his whereabouts using GPS technology. GPS allows ICE to locate an alien who fails to appear as required for immigration proceedings.

ICE records indicate that ICE forwarded the NTA to DOJ's Executive Office for Immigration Review (EOIR) on November 7, 2008, approximately one month after ICE officers served Montano with the NTA. ICE again filed the NTA with EOIR on December 12, 2008, because EOIR did not have a record of the November 7, 2008 NTA that ICE sent. On April 20, 2009, EOIR mailed a notice scheduling a hearing for May 7, 2009. While EOIR had a hearing scheduled for April 21, 2009, EOIR failed to serve

¹ On October 14, 2010, USCIS administratively closed Montano's application to adjust status because he was in removal proceedings and jurisdiction over his immigration status resided with an immigration judge within the Department of Justice (DOJ).

Montano with notice of the hearing. This delayed the removal proceedings. On April 27, 2009, as a result of the October 2008 DUI arrest, the Circuit Court of Prince William County convicted Montano and sentenced him to serve 12 months and 3 days in jail. However, the judge in Prince William County suspended 11 months and 13 days of Montano's sentence. As a result of the judge's decision, Montano served less than two weeks in Prince William County for his second DUI conviction.

On April 29, 2009, ICE officers lodged an immigration detainer for Montano with the Prince William County Jail to ensure that local authorities would turn Montano over to their custody after he had served his sentence. On May 7, 2009, after Montano served the portion of his sentence that had not been suspended, ICE took him into custody. Based on Montano's compliance during his prior participation in the ATD program, ICE officers released Montano on the prior order of supervision (dating back to 2008) with the condition that he report to ICE on a regular basis. ICE did not impose the highest form of ATD. As required by ICE, Montano reported to ICE a total of five times and complied with the terms of his supervision.

On May 7, 2009, while Montano remained in criminal custody, Montano's attorney appeared on his behalf in immigration court before an immigration judge with DOJ's EOIR and requested termination of the case based on the application pending with USCIS. The immigration judge postponed Montano's case and selected an available hearing on EOIR's docket seven months later, on December 3, 2009.

In the course of ICE's review of the Montano case, it was discovered that Montano had two encounters with law enforcement at the county level during 2009-2010. County court records show that Montano was charged on March 5, 2009, in Fairfax County, Virginia, with misdemeanor failure to appear related to driving without a license. Local officials dismissed this charge against Montano on May 5, 2009. County officials did not contact ICE. On April 27, 2010, a Manassas Park police officer cited Montano for misdemeanor reckless driving. There is no record indicating that Montano was booked or fingerprinted or that Manassas Park officials contacted ICE. On June 1, 2010, Montano was convicted for reckless driving and fined \$500. Again, ICE was not contacted following the citation or conviction.

On December 3, 2009, Montano and his attorney appeared in immigration court. Montano's attorney again sought to terminate the removal proceedings before DOJ's EOIR. ICE opposed termination of the removal proceedings because of Montano's criminal record. Over ICE's objection, EOIR again postponed the case, this time until August 19, 2010.

On August 1, 2010, just 18 days before the date of the rescheduled hearing before EOIR, Montano crashed his car into another vehicle, killing one nun and critically injuring two others.

III. Analysis

The focus of the Montano inquiry is to examine the chain of events to ensure that (1) state and local authorities have the information they need to check the immigration status of offenders, and (2) offenders who threaten the community are not released. In this particular case, we examined ICE programs and policies and the options state and local enforcement had available at the time of these incidents and currently. One key area of inquiry was the decision by ICE in 2008 to place Montano in the ATD program instead of detaining him. Another area of inquiry was to pinpoint missed opportunities by state, local, and federal authorities.

In 2008, when the decision was made to release Montano, fewer beds were available in the Washington, D.C. metropolitan area. In addition, two policies in effect in 2008 supported the officers' decision to release Montano. The first was a memorandum issued on October 18, 2004, by then-Under Secretary Asa Hutchinson. That memorandum granted the Director of the Office of Detention and Removal Operations (DRO, now Enforcement and Removal Operations or ERO) discretionary authority with respect to the allocation of bed space for all aliens who were not subject to mandatory detention pursuant to statute.

The second was a memorandum issued on August 1, 2007, by the then-director of DRO. That memorandum directed the field to consider and utilize all appropriate alternatives to detention for aliens. That policy, along with the 2004 policy granting broad discretion to the field about how to use detention resources, left the officers relatively free to use discretion in the Montano case and release him in light of the pending application with USCIS, his young age at the time of entry, his strong family ties, letters from his family and Catholic Charities, and the fact that he had completed an alcohol rehabilitation program.

The officers exercised discretion to release Montano based on all of the factors above and based on the limited availability of bed space to detain Montano relative to the number of people charged with DUI and other offenses.

In 2008, the consideration of these factors and the relevant policies discussed above resulted in a decision to release Montano on ATD pending removal proceedings. Montano's appearance for his hearings while supervised reflects that ATD, and related forms of supervision, can address the flight risk but are less useful to protect public safety. As compared to 2008, the result today would almost certainly differ due to revisions to the agency's enforcement priorities and the availability of tools designed to ensure that available detention resources are used to best protect public safety.

Since January of 2009, ICE has shifted its priorities to place the greatest emphasis on the apprehension, detention, and removal of criminal aliens who pose a threat to public safety. On June 30, 2010, Director Morton clearly articulated agency policy and issued a memorandum formally outlining these immigration enforcement priorities. This memorandum prioritizes the apprehension, detention, and removal of criminal convicts

and places particular emphasis on repeat offenders and aliens who pose a risk to public safety. Under the priorities outlined in this memorandum, Montano likely would have been detained for three reasons, namely that he was: (1) a convict; (2) a repeat offender; and (3) a demonstrated danger to public safety.

ICE has tools at its disposal to ensure uniform detention decisions focused on public safety. For instance, ICE's continued expansion of the Secure Communities program will identify aliens booked for offenses like DUI. Once identified, ICE's priorities, as reflected in Director Morton's June 30, 2010 memorandum, will help to ensure that detention resources are used to prevent the return of criminals to our streets.

This case also demonstrates the importance of continuing ICE's efforts to decrease the amount of time a case remains on the non-detained docket of DOJ's EOIR. Unrelated to this tragic case, ICE and USCIS drafted joint guidance to expedite the adjudication of petitions pending with USCIS for aliens in proceedings. The guidance, issued on August 20, 2010, will reduce the number of continuances or postponements that an immigration judge in DOJ's EOIR will grant while waiting to see if an alien may be eligible for lawful permanent residence. This guidance also advises ICE attorneys to decline to move to dismiss cases if the alien has been convicted of crimes or poses a threat to public safety. Each Office of Chief Counsel has a standard operating procedure that discourages continuances/postponements unless good cause is shown. As a result, Montano's pending petition with USCIS would likely carry less weight than it did in 2008. ICE is also meeting regularly with DOJ to encourage EOIR to expedite the adjudication of detained cases and the cases of aliens supervised on ATD. In January 2010, ICE and DOJ started a pilot program in Baltimore and Miami to expedite the adjudication of cases in which the alien is on ATD.

Additionally, in 2010, ICE secured 500 additional beds within the jurisdiction of the Field Office Director for the Washington, D.C. area. Furthermore, ICE has directed additional funds to the field office covering the Washington, D.C. area so funding and bed space will less likely result in discretionary decisions to release aliens convicted of crimes, particularly repeat offenders and those who pose a threat to public safety.

Nationwide, however, ICE simply does not have the funding that would be required to detain all aliens charged with or convicted of DUI offenses. The most certain way to ensure detention today would be the addition of substantial detention beds and staff to manage an increase in the detained population. Doing so, of course, would also require DOJ's EOIR to add immigration judges to adjudicate the detained docket. Increasing the number of immigration judges would result in removal proceedings being adjudicated faster, and thus in removals taking place more quickly. This increased turnover in detainees would create additional detention space.

IV. Recommendations

Continue the rapid expansion of Secure Communities to identify removable aliens charged with and convicted of crimes. Seek funding for staff and detention beds to address all criminal aliens identified through the Secure Communities initiative.

Work with DOJ's EOIR to expedite the adjudication of cases involving criminal aliens, including by increasing the number of immigration judges to adjudicate the cases.

Work with DOJ's EOIR to expedite the adjudication of cases involving aliens supervised on ATD, including by increasing the number of immigration judges to adjudicate cases.

Implement a risk assessment tool nationwide. ICE has developed a risk assessment tool which will be built into the ENFORCE processing system. This tool will ensure that decisions regarding the detention and release of aliens will be completed more uniformly. The tool is weighted to ensure sound detention decisions for aggravated felons, felons, and serious misdemeanants, such as aliens convicted of misdemeanor DUI, misdemeanor assault, or domestic violence. Implementation hinges on negotiations with Council 118 of the American Federation of Government Employees.

Monitor and ensure compliance with Director Morton's June 30, 2010 Civil Enforcement Priorities memorandum so that detention space is used to detain criminal convicts, recidivists, and aliens who pose a threat to public safety.

Reallocate funding among field offices to allow detention of criminal aliens to the fullest extent possible, recognizing the limitations of the budget overall and the need to maintain the end of "catch and release" along the Southwest border.

Continue to prioritize the apprehension of aliens convicted of crimes (including driving under the influence) who are the subject of formal orders of removal or living at large in our communities.

Exhibit A



Homeland Security

OCT 18 2004

MEMORANDUM TO: Robert C. Bonner
Commissioner
U.S. Customs and Border Protection

Michael J. Garcia
Assistant Secretary
U.S. Immigration and Customs Enforcement

FROM: Asa Hutchinson
Under Secretary for Border and Transportation Security

A handwritten signature in black ink, appearing to read "Asa Hutchinson", with a stylized flourish at the end.

RE: Detention Prioritization and Notice to Appear Documentary
Requirements

This memorandum provides priorities for the detention of aliens and outlines documentary requirements that must be met when transferring custody of aliens to Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO). The guidance in this memo supercedes all outstanding guidance regarding priorities for the detention of aliens within Border and Transportation Security (BTS). All BTS personnel must adhere to legal authorities and the procedures set forth below in making decisions regarding whether to detain an alien.¹

I. Detention Priorities

The following guidelines provide priority categories for the detention of aliens subject to detention. An alien being considered for detention should be placed in the highest numbered priority within the top category possible (i.e., an alien found to have a credible fear of persecution with an aggravated felony conviction would still meet the requirements of Mandatory, #2). In the case of mandatory detention, the Director of ICE DRO is to heed the guidelines strictly. In all other cases, the DRO Director retains the discretionary authority with respect to allocation of bed space and other detention-related resources. In all cases, the DRO Director is to heed these guidelines to the greatest extent possible when determining detention priorities.

¹ This policy does not supercede any requirement to release an alien under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and implementing guidance in 8 CFR §§ 241.4, 241.13 and § 241.14 nor does it apply to unaccompanied juveniles.

All such aliens must be detained unless they fall within one of the exceptions to mandatory detention. There are no priority designations among categories of cases subject to mandatory detention. Questions as to whether a given alien falls under one of these,¹ categories and must be detained should be directed to local legal counsel.

Mandatory

- Aliens subject to mandatory detention under INA 236A²
- Aliens in expedited removal (INA § 235) with limited exceptions³
- Aliens subject to mandatory detention in removal and deportation proceedings under INA 236(c)⁴
- Aliens who have final orders of removal subject to mandatory detention under INA 241(a)(2), whether ordered removed pursuant to INA 238 or 240 proceedings⁵

High Priority

1. National Security Interest aliens including aliens who are subject to an ongoing national security investigation or who, by virtue of specific information or intelligence specific to the alien in question raise a national security concern, as identified either by 1) the Joint Terrorism Task Force, 2) Immigration and Customs Enforcement, or 3) by U.S. Customs and Border Protection (CBP).⁶
2. Continued detention of aliens with final administrative orders past 180 days on account of special circumstances (i.e. 8 CFR 241.14).
3. Aliens who have been issued final removal orders over 90-days old, where removal is foreseeable.
4. Aliens who present an articulable danger to the community (claimant agency must be able to articulate the danger)
5. Aliens who exhibit specific, articulable intelligence-based risk factors for terrorism or national security concern not solely based on the alien's race, ethnicity, nationality or religion (as identified by either 1) the Joint Terrorism Task Force, 2) Immigration and Customs Enforcement, or 3) by U.S. Customs and Border Protection.
6. Aliens associated with ongoing significant criminal investigations;

² Prior approval of the ICE National Security Unit and the ICE Office of the Principal Legal Advisor is required before charges may be brought under either INA § 212(a)(3) or INA § 237(a)(4).

³ Not all aliens in expedited removal proceedings are subject to mandatory detention, however. See, for example 8 CFR § § 235.3(b)(2)(iii), 235.3(b)(4)(ii), and 235.3(b)(5)(i) allowing for parole in limited circumstances of medical emergency, or where necessary for a legitimate law enforcement objective.

⁴ Note that INA 236(c)(2) authorizes release to provide for protection of a witness, etc., where the alien does not pose a danger to the safety of others or to property and is likely to appear for any scheduled proceedings.

⁵ This includes aliens ordered removed under INA 240 and criminal aliens ordered removed under INA 238. These aliens may not be released under any circumstances during the 90-day removal period set forth in INA 241(a)(2). Following the 90-day period, the continued detention of such aliens should be determined pursuant to criteria in *Zadvvydas, supra* and implementing guidance in 8 CFR §§ 241.4, 241.13, and 241.14.

⁶ ICE and CBP shall track all cases where the two bureaus disagree on whether a particular alien poses a national security threat CBP and ICE shall review these cases on a quarterly basis.

7. Remaining criminal aliens not subject to 236(c);
8. Aliens whose detention is essential to national border enforcement initiatives;

Medium Priority

1. Suspected alien and narcotics smugglers
2. Aliens who committed fraud
3. Inadmissible, non-criminal aliens (other than expedited removal cases)

Lower Priority

1. Worksite enforcement arrests
2. Final orders (beyond 179 days-not likely to remove)
3. Aliens placed in expedited removal found to have a credible fear and referred for full 240 proceedings.
4. Other aliens not subject to required detention

II. Documentary requirements.

Each component must ensure apprehended aliens are processed efficiently and placed in the appropriate and most expedient removal process, (e.g. stipulated, reinstatement, administrative, expedited) At a minimum, the following documents must be completed by the apprehending entity and presented to DRO to ensure each case moves swiftly through the removal process:

- Original charging documents;
- Completed Form 1-213 (Record of Deportable/Inadmissible Alien) or approved equivalent;
- 2 completed Forms FD-249 (fingerprint cards);
- R-84 Form with prints and biographical information completed;
- Print out of results, including negative responses, of name search in IBIS "SQ11" function.
- IAFIS printout relating to criminal history; if IAFIS is not available, print out of results, including negative responses, based on name search in either NCIC or NLETS.
- Record of Fingerprint Identification Number (FIN) generated by the Automated Biometric Identification System (IDENT);
- 4 photographs;
- Completed Form 1-217 (Information for Travel Document or Passport if required);
- Documentation of Consular Notification;
- Certified conviction records, when applicable. In the event that conviction records are not immediately available, the arresting officer must provide written notification to the file that a Certified Copy of the Conviction Document has been requested, and include in the administrative file the following information: the exact date and jurisdiction where the alien was convicted, the name and telephone number of the referring officer and the supervisor, the name and contact

information of the agency official responsible for procuring the conviction record. Furthermore, the arresting agency must produce the actual conviction record within 30 days of issuance of the NTA,

- Documentation reflecting that appropriate record checks (Central Index System (CIS), Non-Immigrant Information System (NIIS), National Crime Information Center (NCIC), IDENT, Interagency Border Inspection System (IBIS), etc.) have been completed;
- Completed Form 1-203 or I-203A [Order to Detain or Release Alien(s)] bearing the appropriate official's signature must accompany each detainee presented for detention;
- Notice of Custody Determination (Form 1-286), indicating date and time custody decision was made and probable charges against alien;
- And any other relevant documents pertaining to the detainee.

To ensure maximum efficiency in the use of the Department's finite detention bed resources, it is imperative that this documentation is prepared and presented. Custody responsibility will not be transferred to ICE/Detention and Removal Operations (DRO) until ICE/DRO verifies that all of the above required documentation has either been provided or has been waived by an ICE/DRO authorizing official at the detention site. The arresting or delivering officer will ensure that detainees turned over to the custody of ICE/DRO are accompanied by any personal items, identity documents, baggage and/or prescription medications in that detainee's possession at the time of arrest.

The requirements I issued in my memorandum of March 30, 2004, *Guidance on ICE Implementation of Policy and Practice Changes Recommended by the Department of Justice Inspector General*, remain in effect. You are responsible for ensuring implementation of these requirements.

⁷ CBP shall establish within 30 days of this memorandum points of contact in each field office to coordinate obtaining conviction records for cases where the conviction record is not timely produced. Contact information shall be provided to the DRO Field Office Directors and the ICE Chief Counsels.

Exhibit B



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

MEMORANDUM FOR: Field Office Directors

FROM: John P. Torres
Director

AUG 01 2007

A handwritten signature in blue ink, appearing to read "John P. Torres", with a stylized flourish at the end.

SUBJECT: Bed Space Management

Purpose

This memorandum reiterates the need to continue the effective management of our funded and available bed space in furtherance of the DRQ mission.

Background

In 2005, the Department of Homeland Security and ICE re-engineered the detention and removal process to end the practice of "catch and release" along the Southern border. Between FY 2005 and FY 2007 the number of funded beds increased from 18,500 to 27,500. The FY 2008 budget will likely include another increase and we will be seeking additional beds in 2009 as well. As our detention capacity continues to grow, so does our responsibility to manage those beds as efficiently as possible. We must ensure that we are considering and utilizing all appropriate alternatives to detention and that we are doing everything possible to minimize the average length of stay.

Discussion

We continue to be successful in maximizing the use of funded bed space resources, while at the same time providing unprecedented support for the law enforcement missions of the Department and fulfilling the ultimate end game of the immigration enforcement process, the removal of all removable aliens.

We are proud of our ability to adhere to priorities in managing all aliens in immigration proceedings, especially the detained population. We must continue to apply this framework while improving our management to ensure we remain within available resources. Our initiatives have resulted in efficiencies that allowed us to increase our detained population to historical levels.

Even with the anticipated increases in detention space, we must redouble our efforts to manage that space as efficiently as we can. Accordingly, each of you must:

- Expand the use of Stipulated Orders of Removal. OP LA has drafted a uniform document to be used by all Chief Counsels in cases where the government and the alien jointly request the immigration judge to enter an order of removal based on stipulated facts.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

- When appropriate, process Mexican nationals as voluntary returns.
- Review final order cases by the 90-day removal period and forward Section 8 CFR 241.13 cases to HQDRO CDU timely and pursuant to regulations.
- Consider alternatives to detention (ATD) (ISAP, Electronic Monitoring, Telephonic Supervision) for cases recommended for release.
- Non-criminal aliens who claimed credible fear and have been placed in removal proceedings are eligible for a bond hearing before the Immigration Judge. Consider parole for this class of aliens.
- Increase focus of fugitive operations teams on the apprehension of fugitives and where collateral arrests are made, consider releasing non-criminals or non-mandatory aliens on a case-by-case basis.
- Work with local detention facilities to begin telephonic hearings or Video Telephonic Conferencing (VTC) hearings for aliens in state and local custody prior to their release to ICE custody.

**Headquarters will be reviewing compliance in these areas.*

As you increase your bed space management activities, it is important to communicate with your local contacts in other divisions of ICE and U.S. Customs and Border Protection (CBP) regarding the detained population management procedures. Accordingly, please continue meetings with your local CBP and ICE leadership to convey the necessary adjustments, discuss the current DRO bed space availability, and ascertain whether there will be any increased operational need for bed space for the remainder of the fiscal year.

Again, we take pride in successfully increasing our available bed space within existing resources and more importantly, for exceeding the number of removals compared to last year. We will continue to explore additional options to ensure DRO's continued success in meeting the Department's law enforcement missions.

Exhibit C

9108-D Manassas Drive
Manassas Park, Virginia 20111
703-369-7979
FAX 703-369-5011



9 Loudoun Street, S.E.
Leesburg, Virginia 20175
703-771-4702
FAX 703-771-4713

April 28, 2008

Mr. CARLOS MARTINELLY

(b)(6), (b)(7)c

SUCCESSFUL COMPLETION/ CASE REVIEW

Mr. CARLOS MARTINELLY

(b)(6), (b)(7)c

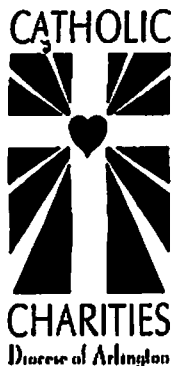
(b)(6), (b)(7)c

Mr. CARLOS MARTINELLY has successfully completed the requirement of Intensive Education Alcohol Classes. The file is being placed in case review until end of probation (12/06/08).

Sincerely,

JANETT ROBEY
Case Manager

Exhibit D



May 7, 2009

U.S. Citizenship and Immigration Services
Attn: DRO
2675 Prosperity Ave.
Fairfax, Virginia 22031

RE: Carlos MARTINELLY MONTANO

Application Number: (b)(6), (b)(7)c

A# (b)(6), (b)(7)c

Request for Bond/ Alternative Detention

Dear Sir/Madame:

We are requesting bond or alternative detention in the form of an ankle bracelet for Mr. Carlos MARTINELLY MONTANO. Mr. MARTINELLY MONTANO is currently detained at the Prince William Regional Adult Detention Center based on an Immigration Detainer. *See Exhibit D, pg. 18.* Enclosed in this request please find my G-28, letters of support, and documentation supporting the release of Mr. MARTINELLY MONTANO.

Mr. MARTINELLY MONTANO is the father of one young child with another child due in October. *See Exhibit A, pp. 2-3.* His young family, including his Lawful Permanent Resident wife, is financially dependent on him and the salary he earns through his lawful work as a customer service representative. *See Exhibit A, pg. 1.* Mr. MARTINELLY MONTANO currently has an application for adjustment of status pending with USCIS (*see Exhibit E*), and was detained solely for a second DUI arrest. *See Exhibit D.* The arrest does not affect Mr. MARTINELLY MONTANO's application for adjustment of status, and he has already served the mandatory jail sentence imposed by the Commonwealth of Virginia. Mr. MARTINELLY MONTANO's entire family, all of whom are lawfully here in the United States or have legitimate applications for relief pending with USCIS, understands the gravity of his situation and will endeavor to help him as he seeks to provide for his young family. *See Exhibit B.*

Please accept these materials and offer Mr. MARTINELLY MONTANO a bond or some form of alternative detention so that he may continue to provide for his family. Should there be any questions, please do not hesitate to contact me at (703) (b)(6), (b)(7)c or (b)(6), (b)(7)c

Sincerely,

(b)(6), (b)(7)c

Hogar Hispano Catholic Charities

ADOPTION • FOSTER CARE
CRISIS PREGNANCY
COUNSELING

CHRIST HOUSE
SHELTER
SOUP KITCHEN

EMERGENCY
ASSISTANCE

FAMILY • INDIVIDUAL
MARITAL COUNSELING

ST. MARTIN DE PORRES
SERVICES TO
THE ELDERLY

HOGAR HISPANO
ASSISTANCE TO
IMMIGRANTS

PARISH OUTREACH

SERVICES TO PERSONS
WITH DISABILITIES

PRISON MINISTRY



A United Way Member Agency
8055

May 6th, 2009

(b)(6), (b)(7)c

Carlos Martinelly's wife

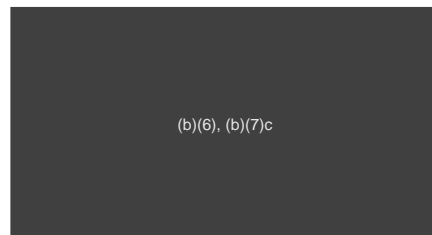
To whom it may concern,

I write this letter to you in concern of the situation that has fallen upon my family due to the incarceration of Carlos Martinelly, my husband. I am a legal alien resident since 07/2006. I have know carlos since we were both in the 8th grade in the year 2003. We have a baby girl together. Her name is (b)(6), (b)(7)c Martinelly. We now have the second baby on the way. I need you to please consider all of these things before you make a decision on Carlos. He is a great father and partner to me. Even though we are both very young he has taken care of his responsibilities like any other grown man. He got us an apartment so we would live on our own, bought

me a car to drive to school. I am training to be a medical assistante. We are both doing all we can to provide the best for both of our children. He was raised here in America and if he is sent to his country he might not survive in such a strange place to him. His entire family is here and we are all greatly affected by this devastating situation. I completely understand the law punishes the offense he committed, but he is the only support that I and his children have. We completely depend on him. He was just hired as a Costumer Service Representative in a great company. They said they would wait for him but I am sure they wont for long. I am here with his entire family willing to support him in seeking any help he might need due to alcohol. We would both be devastated if our family was separated. I will not be able to handle seeing him suffer behind bars in a cell or deported. I know he has the potential to do so much better in life than that. And

I know he would not know how to bare seeing me struggle alone with our two kids. My daughter is 1 year and 3 months old, and our second baby is due the 1st of July this year. I need him there with me when I deliver and to be there for his children. Please consider my plead and give our whole family a second chance. Please allow his release with a bond or under monitoration with the ankle bracelet. Have mercy on this family and give him another chance to do the right thing for his family, and most important his two babies.

Sincerely,



County/City of Prince William Maryland Carlos Martinelly's Wife
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 12 day of May,
2012.
(b)(6), (b)(7)c
(name of person seeking acknowledgment)
Tamara J. Richardson
Notary Public
My commission expires: 03/31/2012

May 05, 2009

(b)(6), (b)(7)c

(b)(6), (b)(7)c

Re: Carlos Abraham Martinelly

To Whom it May Concern:

Please find the following letter to Carlos Abraham Martinelly. My name is (b)(6), (b)(7)c (b)(6), (b)(7)c. I was born on (b)(6), (b)(7)c in Bolivia. We are the fathers of Carlos Abraham. We write this letter to ask you mercy for our son Carlos and you can give him a second opportunity and be out of jail.

We came to this Country 13 years ago, when Carlos was 8 years old, we always fight and work very hard to give a good education to our four sons that one of them was born on the United States.

We always give a good example to our sons, Carlos he was a very easy going child, he use to have a lot of friends as he was very attach to our family.

Now as a adult he is a responsible man. At age of 19 years old he became a father, and he never let his daughter, wife and new comer to be short of anything.

They as a family have a lot of plans for the future, as to have a nice wedding and make a nice family, he has a god job that we wouldn't like he miss anymore as being in jail.

We know that driving while intoxicated is not a good example of good moral character, as we know that people can make mistakes on life, he knows that was wrong what he did and we can assure you that if he needs to see a psychologist we will provide him as soon as he gets out of jail.

For all this human reasons we beg you from deep on my heart to consider my son a second opportunity to demonstrate to our family and the entire United States that he can proudly could leave behind any wrong doing and look forward to have a happy family with his daughter and wife waiting home for him to rejoin with love.

We thank you very much with anticipation for the good judgment you will have.

Warm regards,



(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

COUNTY OF Prince William
COMMONWEALTH OF Virginia
The foregoing instrument was acknowledged
before me this 6 day of May 2009
by (b)(6), (b)(7)c
(Name of person making acknowledgment)
Donna L. Tatum
Notary Public
My Commission Expires Feb 29, 2012

May 05, 2009

(b)(6), (b)(7)c

Re: Carlos A. Martinelly

To Whom it May Concern:

Please find the following letter in reference to Carlos A. Martinelly. My name is (b)(6), (b)(7)c. I was Born on (b)(6), (b)(7)c. My family and I are relatives of Carlos A. Martinelly. I have know Carlos since he was born on (b)(6), (b)(7)c in Bolivia. My entire family is very concern of what Carlos is going trough, we would be terrible affected if Carlos doesn't come back to his house and to be part of my family again. The main reason is that Carlos is such sensible person, more since he got his first child and the new child is on the way. More than twenty five years ago I came to this country and I never had a wrong conduct, with tree children and be close as we are with my sister's family (Carlos Mother)

The very close relationship we have as a family will be horrible and we hope that Carlos can be home soon and finish his Immigrant Status for the well being of his wife, daughter and his newcomer. On the past two years Carlos was very responsible with his personal life and the relationship as part of the family. We appeal to your heart to return Carlos to our family and enjoy his good sense of humor and the love to his wife and daughter. With all the difficult experience that being on jail for weeks, can change to a lot of people, and I'm sure he learn that he doesn't have to drive while he is intoxicated for how dangerous it is to him and other people. It would be very smart of him after this experience to go and look professional. help if he doesn't stop drinking that I'm sure he would not do that again; I can assure this for how well I know my nephew. I will thank you very much on the name of my family and Carlos Martinelly's home.

Thank you to consider this letter to grant a good ending to this nightmare.

(b)(6), (b)(7)c

JANEA MARIE BARBEAU-AGOSTINI
Notary Public
Commonwealth of Virginia
7145676

My Commission Expires May 31, 2011

County/City of Prince William / Manassas
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn before
me this 6th day of May, 2009

by (b)(6), (b)(7)c
Jane Marie Barbeau-Agostini Notary Public
My commission expires 5/31/2011

(b)(6), (b)(7)c

Re: Carlos Martinelly

To whom it may concern:

Please Find the following letter in reference to Carlos Martinelly.

My name is (b)(6), (b)(7)c I was born in Bolivia on (b)(6), (b)(7)c (b)(6), (b)(7)c Carlos and I are cousins, and we both been in the same Elementary School in Bolivia, our mothers are sisters and I always been together as a big family. Carlos came to United States in 1996, and he lived with his family in New Jersey,

We always keep in touch and send me letters about his new life. I missed him a lot , he always told me that we going to be together again and keep my faith strong .

I came to United States in 2003 and finally we been together as we were kids , Carlos help me a lot with everything, I didn't speak English and he always is teaching me . He thought me how to drive, and get my drivers license.

Carlos is a good person, and always takes cares of his family, he is going to be a Father in July of his second child and that is a very important moment for the whole family.

I believe that Carlos only needs a second chance to be better person, and I 'm sure he think over about to drink intoxicated, and he learn his lesson.

He is always there for me when I need help, I love my cousin and I always be there for him when he needs me , that is why I ask you humbly to reconsider his case.

Warm Regards,

(b)(6), (b)(7)c


Exhibit E

JUN 30 2010



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Assistant Secretary 

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens
Page 2

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.¹

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.²

- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act,³ or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.⁴

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

¹ This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

² The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

³ As the definition of “aggravated felony” includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

⁴ Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens
Page 3

- fugitive aliens, in descending priority as follows:⁵
 - fugitive aliens who pose a danger to national security;
 - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - fugitive aliens with criminal convictions other than a violent crime;
 - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
 - previously removed aliens who pose a danger to national security;
 - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - previously removed aliens with criminal convictions other than a violent crime;
 - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.⁶

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are

⁵ Some fugitives may fall into both this priority and priority 1.

⁶ ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. See Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens
Page 4

primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then-Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

Exhibit F



**U.S. Citizenship
and Immigration
Services**

A (b)(6), (b)(7)c

OCT 1 2010

Carlos Abraham Martinelly Montano

(b)(6), (b)(7)c

Dear Mr. Martinelly Montano:

DECISION TO ADMINISTRATIVELY CLOSE APPLICATION TO ADJUST STATUS

Upon consideration, it is ordered that your Application to Register Permanent Residence or Adjust Status, Form I-485 that you filed on September 29, 2007, under section 245 of the Immigration and Nationality Act (Act) be administratively closed for the following reason.

A complete review of the records of this Service indicates that you are in removal proceedings pending before the immigration judge, therefore jurisdiction remains with the immigration judge.

Title 8 Code of Federal Regulation, Part 245.2(a) (1) states:

General—

Jurisdiction. USCIS has jurisdiction to adjudicate an application for adjustment of status filed by any alien, unless the immigration judge has jurisdiction to adjudicate the application under 8 CFR 1245.2(a)(1).

Title 8 Code of Federal Regulation, Part 1245.2(a) (1) (i) states:

General—

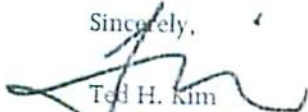
Jurisdiction. (i) In General. In the case of any alien who has been placed in deportation proceedings or in removal proceedings (other than as an arriving alien), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.

Page 2

Since the immigration court has sole jurisdiction over your case, the Application to Register Permanent Residence or Adjust Status filed on September 29, 2007, is considered administratively closed. No further action was taken on the application.

There is no appeal to this decision. Furthermore, this decision is without prejudice to future applications filed with the appropriate US Citizenship & Immigration Services office.

Sincerely,



Ted H. Kim
Field Office Director

Cc: Daniel M. MacGuire

DENIAL	
RECOMMENDED BY:	<i>J. Mull</i>
REVIEWED BY:	<i>[Signature]</i>
APPROVED BY:	<i>[Signature]</i>

