

JOHN DRANE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

No. 1:12-cv-00301-M-DLM

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ADA MORALES,

Plaintiff

vs.

BRUCE CHADBOURNE, et al.,

Defendants  
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DEPOSITION OF JOHN DRANE

Tuesday, April 21, 2015 9:19 a.m.

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street, Boston, MA 02109

Reported by:

Janet Sambataro, RMR, CRR, CLR

JOB NO. 143375

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JOHN DRANE

April 21, 2015

9:19 a.m.

Deposition of JOHN DRANE, held at the  
offices of WilmerHale, 60 State Street, Boston,  
Massachusetts, pursuant to Agreement before Janet  
Sambataro, a Registered Merit Reporter, Certified  
Realtime Reporter, Certified LiveNote Reporter,  
and a Notary Public within and for the  
Commonwealth of Massachusetts.

1 JOHN DRANE

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JOHN DRANE

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JOHN DRANE

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1 JOHN DRANE

2 JOHN DRANE,

3 having been duly sworn, after presenting  
4 identification in the form of a driver's license,  
5 deposes and says as follows:

6 DIRECT EXAMINATION

7 BY MS. O'GRADY:

8 Q Mr. Drane, my name is Maggie O'Grady,  
9 and I'm from WilmerHale. I represent the  
10 plaintiff in this matter. Nice to meet you.

11 A Nice to meet you.

12 Q Can you state your name and address for  
13 the record, please.

14 A My home address?

15 Q Yeah.

16 A John Drane. It's 124 [REDACTED]  
17 Road in West Brookfield, Massachusetts.

18 Q Thank you. Have you ever been deposed  
19 before?

20 A Yes.

21 Q In what matter?

22 A For a lawsuit from a dog bite.

23 Q Any other depositions?

24 A No.

25 Q Okay. You've been through this once



1 JOHN DRANE

2 before. In any case, I'll give you a brief  
3 overview of what today will be like. As you  
4 know, question and answer format --

5 A Mm-hmm.

6 Q -- but a little more stilted than that.

7 I'll ask the questions. And please wait  
8 until I'm done before you start answering, and  
9 I'll try to do the same. Everything that we both  
10 say should be out loud. Hand gestures or nods  
11 aren't recorded by the court reporter.

12 We can take as many breaks as you like.  
13 Just ask. I'll do the same. I just ask that we  
14 don't take a break while I have a question  
15 pending.

16 A Sure.

17 Q What did you do to prepare for today's  
18 deposition?

19 A I met with my attorney, and we went  
20 over what was going to happen today.

21 Q That is Mr. Churchill?

22 A Yes. Mr. Churchill.

23 Q Did you review any documents?

24 A No. Well, I did -- I think we looked  
25 at some forms and the detainers. Some documents,

1 JOHN DRANE

2 yes.

3 Q To your knowledge, those documents have  
4 been produced in this litigation?

5 MR. CHURCHILL: It was just the  
6 exhibits from Donaghy's deposition.

7 MS. O'GRADY: Thanks.

8 MR. CHURCHILL: No problem.

9 BY MS. O'GRADY:

10 Q And I'd like to start getting a sense  
11 of your educational background and work history.

12 So since high school, what is your  
13 education?

14 A I have a master's degree.

15 Q In what?

16 A Business administration.

17 Q From where?

18 A Anna Maria College.

19 Q When did you receive that master's  
20 degree?

21 A I think 2005.

22 Q And your undergraduate?

23 A Bridgewater State University,  
24 criminology; and associate's degree from  
25 Massasoit in law enforcement.

1 JOHN DRANE

2 Q When did you receive each of those  
3 degrees?

4 A Massasoit was in '92, I believe, 1992;  
5 and Bridgewater was 1995.

6 Q And did you enter the workforce in 1995  
7 or had you had jobs?

8 A No. I went in the Army right after  
9 high school.

10 Q Okay.

11 A Then when I got out of the Army, I went  
12 to work and school.

13 Q How long were you in the Army for?

14 A Four years.

15 Q So after your undergraduate and  
16 associate's degree, what was your employment?

17 A I worked for -- I worked at Medfield  
18 State Hospital while I was going to school as a  
19 campus police officer. And then in 1996, I came  
20 to work for the Federal Government.

21 Q What was your job then in 1996?

22 A Detention enforcement officer.

23 Q Okay. And you've been with ICE from  
24 that time --

25 A Yes.

1 JOHN DRANE

2 Q -- and through now?

3 A Yes.

4 Q So when you were a detention  
5 enforcement officer, how long did you have that  
6 job?

7 A From 1996 to 2002.

8 Q Then after that?

9 A I became a deportation officer from  
10 2002 to 2008.

11 Q As a deportation officer, did you issue  
12 detainers?

13 A No, I did not.

14 Q Did you make arrests?

15 A Yes, I did.

16 Q And after your service as a deportation  
17 officer, what was your position?

18 A Supervisory detention and deportation  
19 officer from 2008 to current.

20 Q And for purposes of today, is the  
21 acronym SSDO? Is that the --

22 A SDDO.

23 Q SDDO. So when I say SDDO, that is your  
24 current position?

25 A It is. Correct.

1 JOHN DRANE

2 Q And where are you located in that  
3 position?

4 A Warwick, Rhode Island.

5 Q So that's the Rhode Island suboffice?

6 A Yes.

7 Q Have you ever been fired from any of  
8 your positions?

9 A No.

10 Q Ever demoted?

11 A No.

12 Q Disciplined in a job?

13 A No.

14 Q Have you ever been arrested?

15 A No.

16 Q What are your -- your current role is  
17 SDDO at ICE. What are your responsibilities,  
18 broadly, in that role?

19 A I supervise the CAP, Criminal Alien  
20 Program, the -- it used to be called Secure  
21 Communities. They just changed names to PAP. I  
22 can't remember what that means right now. And  
23 the nondetain docket and the detention area and  
24 overall operations.

25 Q Okay. And how many people do you

1 JOHN DRANE

2 supervise?

3 A Nine, I believe. Yeah. Nine.

4 Q And those nine people, what are their  
5 positions?

6 A Three of them are deportation officers.  
7 Five of them are immigration enforcement agents,  
8 and one of them is a removal assistant.

9 Q And of those nine people, who is  
10 responsible for the CAP program?

11 A There's three of them.

12 Q And what role do they have?

13 A What -- I don't understand what you  
14 mean.

15 Q I want to get a sense of the nine  
16 people you supervise, which ones of those nine  
17 people and what their roles are, who administer  
18 detainees through the CAP program.

19 A There's two immigration enforcement  
20 agents and one deportation officer --

21 Q So the other --

22 A -- for Rhode Island. And then there's  
23 one immigration enforcement agent for  
24 Massachusetts and one deportation officer for  
25 southeastern Massachusetts. We cover Bristol

1 JOHN DRANE

2 County.

3 Q Okay. The IEAs or the DOs that cover

4 Bristol County, are they in the Warwick office?

5 A Yes.

6 Q So all the nine people are actually

7 physically in your office?

8 A Yes.

9 Q And then there's two IEAs and one DO

10 who are administering detainers through the CAP

11 program.

12 Do I have that right?

13 A Well, everybody administers detainers,

14 if they need be. Those are in the three that are

15 in the CAP unit that handle CAP only related

16 issues.

17 Q But other officers or agents could also

18 issue detainers --

19 A Yup.

20 Q -- through the CAP program or through

21 other programs?

22 A Through other programs, for anything

23 really. Anybody can issue a detainer.

24 Q Who do you report to?

25 A Greg Mercurio.

1 JOHN DRANE

2 Q What is his position?

3 A Assistant field office director, AFOD.

4 Q Has he been the AFOD your whole time as  
5 SDDO?

6 A Yes.

7 Q Has the CAP program been in effect your  
8 whole time as SDDO?

9 A Yes.

10 Q In 2009, who did Mr. Mercurio report  
11 to?

12 A He reported to Jim Martin, I believe,  
13 in 2009. He was a deputy field office director.  
14 Oh -- yes.

15 Q And where is Mr. Mercurio located?

16 A He's in the Warwick office.

17 Q Okay. Where is Mr. Martin located?

18 A He's down in Florida now, I believe.

19 Q Where was he in 2009?

20 A Boston.

21 Q Okay.

22 A Boston/Burlington. They moved.

23 Q And then the DFOD, who do they report  
24 to?

25 A The FOD, which would have been Bruce



1 JOHN DRANE

2 Chadbourne.

3 Q Okay. Did you have direct contacts  
4 with the FOD, Mr. Chadbourne?

5 A What do you mean, "direct"?

6 Q Would you talk to him directly ever?

7 A No.

8 Q It would go through the chain of  
9 command?

10 A Yes.

11 Q Through AFOD, through the DFOD?

12 A Yeah. I would go to my AFOD, and he  
13 would bring it up the chain of command.

14 Q In the CAP program, how are the  
15 responsibilities divided between the officers and  
16 agents who administer detainees through the CAP  
17 program?

18 A I don't understand what you mean. The  
19 responsibilities?

20 Q Yeah. So you have two agents -- two  
21 IEAs and one DO. What are the responsibilities  
22 of each?

23 A Well, they -- now, you talking today or  
24 back then?

25 Q I'm asking about --

1 JOHN DRANE

2 A Everything has switched so much over  
3 the years. But today?

4 Q Good point. Actually, let's talk about  
5 2009 first.

6 A 2009, it was a whole different setup,  
7 the way it was done.

8 Q Okay.

9 A We didn't have all these other  
10 programs. We had -- at that time, there was, I  
11 believe, four IEAs and two deportation officers  
12 and there was no set CAP unit. Everybody  
13 basically did everything.

14 Q Okay.

15 A Back then, they would have --  
16 immigration agent would be duty for the week, and  
17 then during that week, he would do his --  
18 whatever had to be done, as far as CAP program  
19 done, as far as looking at the list overnight to  
20 see who was arrested overnight, who needed  
21 detainers, who didn't need detainers, scheduling  
22 the transportation or doing the transportation to  
23 bring bodies from wherever they were into our  
24 office for processing.

25 Q So there would be one agent for the

1 JOHN DRANE

2 CAP -- to administer through the CAP program for  
3 one week at a time?

4 A Correct. As a duty agent. He would  
5 take all the phone calls and be responsible for  
6 most of the work.

7 Q Okay. And then they would switch off  
8 week by week?

9 A Correct.

10 Q There were four, you said?

11 A Yes.

12 Q Was Mr. Donaghy one of those agents at  
13 that time?

14 A Yes.

15 Q So he would be on for a week and then  
16 off for a week?

17 A Yes.

18 MS. O'GRADY: This is Exhibit 1.

19 (Job description of Supervisory  
20 Detention and Deportation Officer marked  
21 Exhibit 1.)

22 BY MS. O'GRADY:

23 Q Mr. Drane, do you recognize this  
24 document?

25 A I've never seen it before, but I

1 JOHN DRANE

2 understand what it is.

3 Q And what is your understanding of what  
4 it is?

5 A Well, it's a position description for  
6 my position.

7 Q Does this document, to your knowledge,  
8 reflect the job responsibilities of an SDDO?

9 A Yes.

10 Q So it reflects your job  
11 responsibilities, your job description, but this  
12 particular document we haven't seen before?

13 A Correct.

14 Q You have no reason to think there are  
15 responsibilities listed here that you're not  
16 aware of or that you haven't performed?

17 A I have no reason to believe that. No.

18 Q I'm going to ask about a few specific  
19 descriptions of job responsibilities in this  
20 document. If they don't sound familiar to you,  
21 let me know.

22 A Okay.

23 Q We'll discuss them. In the middle of  
24 the first page, it says here, "Establishes  
25 guidelines and performance expectations for staff

1 JOHN DRANE

2 members, which are clearly communicated through  
3 the formal employee performance management  
4 system."

5 And did I read that correctly?

6 A Yes.

7 Q What is your understanding of the  
8 formal employee performance management system?

9 A It's a system that documents the  
10 employee throughout the year to say how they're  
11 doing, how their performance is. If they have  
12 deficiencies, to improve on their deficiencies.  
13 Or just their overall work performance.

14 Q As SDDO, you would take part in those  
15 evaluations?

16 A Correct.

17 Q And did those guidelines and  
18 performance expectations include expectations  
19 related to the issuance of detainers?

20 A Yes.

21 Q The next sentence there, "Observes  
22 workers' performance, demonstrates and conducts  
23 work performance critiques."

24 Is that something you've done as SDDO?

25 A Yes.

1 JOHN DRANE

2 Q How would such observations take place?

3 How would you observe a workers' performance?

4 A By their day-to-day operations, their  
5 work that they turn in to me to sign, to make  
6 sure it's done correctly.

7 Q What kind of work would they turn in to  
8 you to sign?

9 A When they do notice to appears, they're  
10 putting packets together, street cases that  
11 they're working. They bring all those folders to  
12 me to review and sign off on.

13 Q What about detainers?

14 A Detainers usually aren't brought to me.

15 Q Have they ever been?

16 A On occasion, they may have. I can't  
17 think of a time when they would, because a  
18 detainer is something that's like a routine part  
19 of your job. They don't have to bring a detainer  
20 to me to approve it.

21 Q Have there been cases, though, that you  
22 remember that an officer has brought one?

23 A I can't remember one off the top of my  
24 head, no. I do know that if they have a question  
25 about it, they'll bring it to me. But I don't

1 JOHN DRANE

2 approve a detainer before it's sent.

3 Q What kind of questions might they bring  
4 to you?

5 A It could be anything. I don't know,  
6 off the top of my head any question they have.

7 Q About whether or not they have a reason  
8 to issue a detainer?

9 A Correct.

10 Q How would they bring such questions to  
11 you?

12 A They would walk to my door and ask  
13 away.

14 Q How often would you say that happens?

15 A It's very rare that they would ask a  
16 question about a detainer. Maybe -- I can't even  
17 give you a number. It's very rare.

18 Q Would an officer ask once a month?

19 A I probably wouldn't even say once a  
20 month.

21 Q More than once a year?

22 A If I had to give you a number to guess,  
23 I would probably say maybe once a year.

24 Q Okay.

25 A They're that rare.

1 JOHN DRANE

2 Q Okay. And as SDDO, do you also  
3 critique officers' or agents' performances?

4 A As part of the performance work plan,  
5 yes.

6 Q Do you ever do so informally?

7 A Yeah, I guess I would, if I saw  
8 something that was wrong or if they asked how to  
9 do something as part of the -- as part of work.  
10 You know, how should I do this? How should I do  
11 that? Of course, yeah.

12 Q That would just take place in a  
13 conversation?

14 A Yeah.

15 Q Did you ever offer any critiques to  
16 Edward Donaghy?

17 A I don't remember. Probably.

18 Q Probably?

19 A Yes, as part of his work. I'm sure he  
20 had questions at some point.

21 Q You have no recollection of what kind  
22 of questions he might have had?

23 A No, I don't.

24 Q Going back to Exhibit 1, the next  
25 sentence, in the middle of the first page,



1 JOHN DRANE

2 "Provides informal feedback and periodically  
3 evaluates employee performance, resolves informal  
4 complaints and grievances."

5 A Mm-hmm.

6 Q We talked just a little bit about  
7 informal feedback you might have provided. Where  
8 it says, "periodically evaluates employee  
9 performance," does that refer -- were there any  
10 evaluations that took place outside the formal  
11 process?

12 A I'm sure in the course of the -- of his  
13 time, yes. I'm sure that, you know, they have  
14 questions, they come and ask me all the time.  
15 It's part of the job.

16 They don't know everything. I don't know  
17 everything. We kind of bounce things back and  
18 forth.

19 What we don't know, we look it up. We go  
20 for further guidance. It's just part of the --  
21 part of the job.

22 Q What kind of further guidance might you  
23 go for?

24 A I would ask my boss or we could ask our  
25 trial attorney unit. If we're not sure, we shoot

1 JOHN DRANE

2 it up to them and get their guidance on it.

3 That's usually who we'd go by if we didn't know.

4 Q If you had questions or an agent had  
5 questions about the issuance of a detainer, is  
6 that who you would go to?

7 A He'd come to me first. I would go to  
8 my boss first. If we couldn't resolve it, then  
9 we'd go to the trial attorney.

10 Q Just for clarity sake, the supervisor  
11 that you would ask questions to that you're  
12 talking about, who is that?

13 A Greg Mercurio.

14 Q How often would you say those kind of  
15 questions came up?

16 A With a detainer?

17 Q Yeah.

18 A Not often at all. Like I said, it's  
19 very rare.

20 Q What about other issues? Do they  
21 happen more frequently?

22 A Other issues probably would. When  
23 you're -- you know, sometimes it gets convoluted  
24 with the crimes that they've committed and how  
25 we're going to write them up, which laws we're

1 JOHN DRANE

2 going to use, which laws are accepted, which ones  
3 aren't. There's a lot that goes along with it.

4 Sometimes the way it's written up on the  
5 NCIC sheet or the record from the court is  
6 different than the way we can use it, as far as  
7 charging them on the charging document.

8 Q Okay. So that's if you were going into  
9 legal proceedings for someone?

10 A Correct, yes.

11 Q And so if you had questions about how  
12 something was written in NCIC, you might go to  
13 your supervisor and ask those questions?

14 A Yes. We have law books, guidebooks  
15 that we go by. If we can't go by that, then we  
16 would ask my supervisor or go to a trial attorney  
17 and ask them.

18 Q You said before that issuing detainers  
19 is something that was fairly routine --

20 A Correct.

21 Q -- is that correct?

22 So there were probably fewer questions asked  
23 about detainers?

24 A Well, yes.

25 Q I just wanted to clarify that.

1 JOHN DRANE

2 Okay. The second phrase I just read from  
3 the middle of Exhibit 1 was "resolves informal  
4 complaints and grievances."

5 A Mm-hmm.

6 Q Do you understand that to mean  
7 complaints and grievances from the people that  
8 you're supervising?

9 A Yes.

10 Q Is that something, as SDDO, that you  
11 did resolve such informal complaints and  
12 grievances?

13 A Yeah. They're people. They have  
14 problems. Not every day, but they have problems.

15 There's conflicts of interest between the  
16 way they think and what somebody did, what  
17 somebody didn't do. It happens all the time.

18 Q And they would come to you --

19 A Mm-hmm.

20 Q -- walk down to your office and talk to  
21 you about it?

22 A Absolutely.

23 Q How often did that happen?

24 A I don't know. It varies. It's not  
25 every day. It's rare. But it happens.

1 JOHN DRANE

2 Q A couple times a month?

3 A No. I wouldn't say that much. Maybe a  
4 couple times a year.

5 Q When you get those complaints or  
6 grievances, how do you go about resolving them?

7 A I bring the people in, talk to them,  
8 find out what is going on and how to resolve it.

9 Q What kinds of issues would they bring  
10 to you?

11 A I can't think of any off the top of my  
12 head. Could be anything. Somebody parked the  
13 wrong way.

14 You know what I mean? Somebody left  
15 something in the refrigerator. It could be  
16 anything.

17 Q Did you ever get a complaint or  
18 grievance from Mr. Donaghy?

19 A Not that I can remember.

20 Q Further down on this paragraph, it  
21 says, "Affects disciplinary measures as  
22 appropriate to the authority delegated in this  
23 area."

24 What do you take "the authority delegated in  
25 this area" to mean?

1 JOHN DRANE

2 A I would say that it's something, if  
3 something is wrong and needs to be gone up the  
4 chain of command for disciplinary action, that  
5 would start with me. And then I would talk to my  
6 boss about it. And then we would go up our chain  
7 of command.

8 Q What kinds of issues would go up the  
9 chain of command?

10 A Stuff like misuse of government  
11 equipment; if somebody is abusing sick time,  
12 abusing leave, you know, they don't come to work.  
13 Different -- any kind of discipline problems.

14 Q Would those problems include improperly  
15 issuing a detainer?

16 A They could. Sure.

17 Q Under what circumstances?

18 A If they blatantly -- I don't know. If  
19 it they blatantly put a detainer on somebody they  
20 shouldn't have. It could be anything. It's hard  
21 to say.

22 Q How often did you have to take  
23 disciplinary measures?

24 A Since I've been a supervisor?

25 Q Yeah.

1 JOHN DRANE

2 A I think -- I want to say either one or  
3 two times. I'm not really -- formal  
4 disciplinary, I think once.

5 Q Okay. And what was the reason for  
6 that?

7 A An officer was misusing a government  
8 vehicle. He had his wife in the car.

9 Q Okay. Was that after 2009?

10 A Yes.

11 Q Did you ever discipline Edward Donaghy?

12 A No.

13 Q Ever discuss with any of your  
14 supervisors the possibility of doing so?

15 A No.

16 Q Okay. On the second page of this  
17 document, the first heading on the top there is  
18 "Deportation Oversight Work."

19 A Mm-hmm.

20 Q Does deportation oversight work include  
21 oversight of detainers that are issued before  
22 deportation or removal?

23 A I would say so. Yes.

24 Q That first paragraph says, "Serves as a  
25 principal adviser on all administrative

1 JOHN DRANE

2 management matters."

3 What do you take being a principal adviser  
4 to mean?

5 A I would say that I'm their first point  
6 of contact if they have questions. My employees.

7 Q So you were the principal adviser for  
8 your regional office?

9 MR. CHURCHILL: Objection. That's  
10 vague.

11 MS. O'GRADY: I'll clarify.

12 Q What was -- you served as a principal  
13 adviser to whom?

14 A To the people that worked for me.

15 Q And those would be the nine --  
16 currently the nine agents and officers?

17 A Correct.

18 Q And in 2009?

19 A It would have been the six people,  
20 seven people.

21 Q And that included in 2009 Edward  
22 Donaghy?

23 A Yes.

24 Q In the middle of the page, there's a  
25 few lines about training. The basic immigration



1 JOHN DRANE

2 law enforcement training, did you take that  
3 training?

4 A I did.

5 Q When did you take that training?

6 A In 2002.

7 Q And where was that?

8 A FLETCI, F-L-E-T-C-I, in Georgia.

9 Federal law enforcement training center.

10 Q And that is something that all ICE  
11 agents take, that training?

12 A Correct. Yes.

13 Q Did that training include training  
14 on -- about how to issue a detainer?

15 A When I took it, I don't believe it did.

16 Q Did it include training on how to make  
17 arrests?

18 A Yes.

19 Q Did it include training on how to make  
20 arrests without a warrant?

21 A Yes.

22 Q Did it include training on how to  
23 manage agents or subordinates?

24 A Not as a basic deportation officer, no.

25 Q And in that second line there,

1 JOHN DRANE

2 "deportation officer transition training  
3 program," did you take that training?

4 A I did not.

5 Q So that means it was waived per agency  
6 policy.

7 A That training was set up for when  
8 they -- like I said, when I was a detention  
9 enforcement officer, when I went to the academy  
10 originally, it was only an eight-week academy.  
11 When I got promoted to a deportation officer, I  
12 went to the full academy.

13 What happened was that old job was upgraded  
14 from detention enforcement officers to  
15 immigration enforcement agents. And when they  
16 received their upgrades, they had to go back to  
17 the academy to get a piece of training that they  
18 didn't have originally in the first basic  
19 academy.

20 Q But you had the full training already?

21 A I did. Yes, I had both.

22 Q And in that second full training, did  
23 that include training about how to issue  
24 detainers?

25 A I'm not really 100 percent sure. I

1 JOHN DRANE

2 don't know.

3 Q In the bottom of Page 2 here it says,  
4 "The employee having developed expertise in the  
5 line of work is responsible for planning and  
6 carrying out the assignment, resolving most of  
7 the conflicts that arise, coordinating the work  
8 with others, as necessary, and interpreting  
9 policy on own initiative in terms of established  
10 objectives."

11 Did you and do you understand your role as  
12 SDDO to interpret policy?

13 A Yes.

14 Q Does that include policy with regard to  
15 how to issue a detainer?

16 A Yes.

17 Q How did you communicate that policy to  
18 agents and officers?

19 A Which policy do you mean? There's been  
20 a bunch of policies.

21 Q I was asking specifically about  
22 detainers.

23 A In 2009?

24 Q In 2009. Sure.

25 A I'm not 100 percent sure. Back then, I

1 JOHN DRANE

2 don't know. I don't remember how I would have  
3 communicated it.

4 I know when we took over the program from --  
5 we took it over from the Office of  
6 Investigations. They kind of explained  
7 everything to us and how everything was done. So  
8 we kind of did it the same way they were doing it  
9 at the time.

10 Q How did the Office of Investigations  
11 explain to you the policy?

12 A They had an agent that kind of sat down  
13 with us and went through it and said, you do  
14 this, A, B, and C, and kind of guided us through  
15 it.

16 Q And "us" was?

17 A My officers.

18 Q Your officers. So you and the agents  
19 and officers under?

20 A Not all at once. But, like, as  
21 somebody would be the duty officer or the duty  
22 agent, they would work with him as a transition  
23 to learn how to do it.

24 Q This was at the implementation of the  
25 CAP program?

1 JOHN DRANE

2 A Correct.

3 Q Were there several meetings or --

4 A I don't know. I wasn't a supervisor in  
5 the beginning of it, so I'm not really sure.

6 Could have been several times working with them.

7 I know I worked with them when I did it. So  
8 I'm assuming that everybody went through it with  
9 them.

10 Q So would it be one-on-one discussions?

11 A Yeah. Pretty much.

12 Q What was his name?

13 A Danny Sindroff.

14 Q And he would sit down with agents or  
15 officers at the time --

16 A Mm-hmm.

17 Q -- and explain how to issue a detainer  
18 through the CAP program?

19 A Correct.

20 Q Were there written materials that he  
21 used?

22 A I don't remember. I don't think so.

23 Q So it was more informal discussion?

24 A Yeah. It was more of an informal  
25 thing.

1 JOHN DRANE

2 Q Did you ever meet as a whole group?

3 A Not that I remember.

4 Q When you became SDDO, did you receive  
5 additional training?

6 A I did not.

7 Q Do you know where -- excuse me, I  
8 forgot his name.

9 A Sindroff.

10 Q -- where Mr. Sindroff got the  
11 information to convey to you?

12 A I do not. He was an agent for years.

13 Q Where was he an agent?

14 A In Providence, Rhode Island.

15 Q What was his position when he was --

16 A He was a senior special agent.

17 Q Okay. When did the CAP program begin?

18 A I'm not 100 percent sure, but I believe  
19 it was in 2007, for us. We transitioned and took  
20 it over in 2007.

21 Q And you were a deportation officer at  
22 the time?

23 A Correct.

24 Q Approximately when did you issue your  
25 first detainer through the CAP program?

1 JOHN DRANE

2 A I don't know. I don't remember.

3 Q But it was sometime in 2007?

4 A I would assume so. I don't think I  
5 have issued too many detainers in my -- when I  
6 was doing it, because I was working on something  
7 else.

8 Q What else were you working on?

9 A I was on the nondetain docket. I  
10 wasn't part of the CAP program.

11 Q How many detainers in the CAP program  
12 do you think you might have issued?

13 A Maybe two or three.

14 Q Do you ever have -- excuse me. I'll  
15 start again.

16 Do you ever have formal discussions with  
17 agents or officers about the CAP program  
18 currently?

19 A I would say yes.

20 Q What kind of discussions are those?

21 A It could -- I don't know. Headquarters  
22 will put out something, as far as numbers. You  
23 know, they want to see how we're doing in  
24 numbers. Or if our numbers have dropped, they  
25 want to know why.

1 JOHN DRANE

2 Q What numbers would those be?

3 A Like the number of charging documents  
4 issued over -- they look at last year's stats  
5 versus this year's stats.

6 They want to know if there is something that  
7 is wrong or can be improved or if we need help  
8 with anything.

9 Q So headquarters meaning --

10 A Washington.

11 Q -- Washington?

12 A Washington, D.C.

13 Q Okay. And so directly from  
14 headquarters or through the --

15 A No. It comes through the chain of  
16 command.

17 Q So headquarters, to the field office,  
18 to the AFOD, and then to you?

19 A Right.

20 Q And so if they were expressing  
21 questions about numbers, what would those  
22 questions be?

23 A Well, good example is last year's stats  
24 versus this year's stats. If we're 10 percent  
25 behind or 15 percent behind. Or in the case of



1 JOHN DRANE

2 us and Rhode Island, where we're had issues with  
3 issuing detainers now, our numbers are a lot  
4 lower than they used to be.

5 Just kind of try to work with us to see if  
6 there is anything that overall can be done to  
7 increase or decrease or if we're right where  
8 we're supposed to be. Like a snapshot of what  
9 we're doing, to see.

10 Q So they would look at the number of  
11 detainers issued one year versus another year,  
12 and they would want those years to be more equal?

13 A Well, they just want to know. I don't  
14 know if -- they've never said they need to be  
15 more equal. They just want to know what's going  
16 on. For criminal -- you know, criminal aliens  
17 versus noncriminal aliens.

18 It could be anything. It could be anything.  
19 They could want to know if we need more  
20 equipment, if -- do we have what we need to have  
21 to do our job? Do we need something? Along  
22 general work questions like how are we doing.

23 Q Did they ask those kinds of questions  
24 in 2009?

25 A I don't remember.

1 JOHN DRANE

2 Q When they asked those questions about  
3 the numbers of detainers or other statistics, did  
4 they send a written memo?

5 A Sometimes it comes down through e-mail.

6 Q Okay. And they might say, you know, to  
7 you in the Rhode Island office, your detainers  
8 numbers are way down. We want to know why. That  
9 kind of thing?

10 A Yeah. They would ask, you know -- or  
11 if a certain number is way up, why; are we doing  
12 something different?

13 Is there something that they should be aware  
14 of? Prison population shifts all the time, so  
15 they want to know -- kind of just keep their  
16 finger on the pulse just to see what is going on.

17 Q So if you received an e-mail like that,  
18 you would then call your agents and officers  
19 together to discuss it?

20 A I could. I could call them to discuss  
21 it. I could forward the e-mail to them. I could  
22 just say come see me and, you know, they would  
23 come down, and we'd sit in my office and just  
24 talk about it.

25 Or it could be a more -- if there's a bigger

1 JOHN DRANE

2 question or issue, I have to bring -- I could  
3 bring everybody into the conference room and talk  
4 about it. Just depends what it is.

5 Q Do you remember having a discussion  
6 like that since 2009 about the number of  
7 detainers that were issued?

8 A I do not.

9 Q It's possible that you might have?

10 A Possible I may have. Since the -- all  
11 this is happening in Rhode Island, they don't  
12 accept our detainers like they used to. So it's  
13 more of a question of -- more of an officer  
14 safety question for us now, because we have to do  
15 more street work.

16 If a guy gets out of the prison, and where  
17 before we have a detainer and we could pick him  
18 up at the prison, it's more of a safety issue now  
19 because we have to go in the street and look for  
20 him. It's much more dangerous.

21 Q We talked a little about detainers  
22 already. But just to go back to basics, can you  
23 just define what a detainer is?

24 A A detainer is a document that we would  
25 serve on either a police department or jail,

1 JOHN DRANE

2 prison, saying that we have interest in an  
3 individual. And we want -- when they're done  
4 with them, we'd like to get them and talk to  
5 them.

6 Q And that's Form I-247.

7 A Correct.

8 Q Sometimes referred to as that?

9 A Correct.

10 Q When we say detainers today, we  
11 understand that we're talking about --

12 A That's the form number. Yes.

13 Q Is it correct to say that ICE issues a  
14 detainer?

15 A Yes.

16 Q And then the state or local enforcement  
17 that receives the detainer is expected to honor  
18 the detainer or --

19 A Well, things were different back in '09  
20 than they are today. There's been two or three  
21 detainer policies that have come out since then  
22 and changes. There could be one that comes out  
23 tomorrow. I don't know.

24 Back in '09, it was different than it was  
25 the detainer policy for today.

1 JOHN DRANE

2 Q So what would you say it was in 2009?

3 A I would say it wasn't as convoluted as  
4 it is today. Basically a person would do his  
5 investigation and see if -- what they could find  
6 out about the person, issue the detainer, and  
7 wait for them to come into our custody after  
8 whatever law enforcement agency was done with  
9 them.

10 Q How was that policy communicated to you  
11 in 2009? How did you know that was the policy?

12 A Just through work. Through, like I  
13 said, that OGT we had, when we took the program  
14 over, talking about it. Knowing the law  
15 versus -- you know, we've all been trained in the  
16 law, so we know what an illegal alien is and if  
17 we can put a detainer on them.

18 MS. O'GRADY: Okay. This is going to  
19 be Exhibit 2.

20 (Immigration Detainer marked  
21 Exhibit 2.)

22 BY MS. O'GRADY:

23 Q Sir, do you recognize this document?

24 A Yes.

25 Q And this is the Form I-247?

1 JOHN DRANE

2 A Correct.

3 Q And this one specifically is for the  
4 plaintiff in this case. I'm just going to talk  
5 generally about the form for a few moments.

6 A Okay.

7 Q So on the bottom, right-hand corner,  
8 there's a date. It looks like August 1, 2007.

9 A Mm-hmm.

10 Q So this was the detainer form that was  
11 in effect from that day until 2009?

12 A Yes.

13 Q So as a deportation officer, you would  
14 have been very familiar with this form at that  
15 point?

16 A Yes.

17 Q And you would expect all ICE agents to  
18 read this form and understand this form?

19 A Yes.

20 Q Did you discuss this form with ICE  
21 agents? Would you have a discussion about how to  
22 use the form and what agent fields means?

23 A No, not really. I mean, everybody was  
24 aware of the form.

25 Q Okay. I'm going to refer back to this.

1 JOHN DRANE

2 So I'll move on right now. But you can put that  
3 aside.

4 (Witness complies.)

5 Q So I asked you earlier as a deportation  
6 officer if you made arrests.

7 A Mm-hmm.

8 Q Actually, I think I asked if you had  
9 training on how to make arrests. And now I'll  
10 ask, as a deportation officer, did you ever make  
11 arrests?

12 A Yes.

13 Q So detainers are not the only means of  
14 apprehending a deportable?

15 A No. Not at all.

16 Q If you were going to make an arrest,  
17 how would you go about doing so?

18 A You want from like the beginning of  
19 time or --

20 Q I guess not. My question is, so you  
21 can have an arrest either with a warrant. Could  
22 you also have a warrantless arrest, if you --

23 A Yes. If we had -- yes.

24 Q And so in your career, you've made an  
25 arrest without a warrant?

1 JOHN DRANE

2 A Correct.

3 Q Is your understanding when you've made  
4 such an arrest that you would need probable cause  
5 to make that arrest?

6 A Yes.

7 Q At other times, have you obtained an  
8 arrest warrant before making an arrest?

9 A Yes.

10 Q In 2009, was it possible to issue a  
11 detainer by fax?

12 A Yes.

13 Q And is that still true today?

14 A Yes.

15 Q Are there any other methods that you  
16 could issue a detainer?

17 A You could hand deliver a detainer.

18 Q Did that happen often?

19 A It happened -- it happened. I don't  
20 know how often it happened. Most of our  
21 detainers were by fax.

22 If a police department had somebody, we  
23 could handwrite a detainer and hand it to them,  
24 and then we'll follow them through that way. We  
25 have done handwritten ones.



1 JOHN DRANE

2 Q It sounds like that would be the  
3 exception.

4 A Yeah.

5 Q More often than not, it was a fax?

6 A I believe so.

7 Q So in 2009, did you expect local law  
8 enforcement to honor the detainer?

9 A Yes.

10 Q Did local law enforcement ever refuse  
11 to detain somebody that you issued a detainer?

12 A Not that I can remember.

13 Q Would local law enforcement ever ask  
14 for more information before honoring the  
15 detainer?

16 A Not that I can remember.

17 Q Would you be surprised if they did, if  
18 they were to call up and say, we want more  
19 information about this person before we hold  
20 them?

21 A Yes. I would be surprised.

22 Q Back to the detainer form, it says in  
23 the middle, "Federal regulations require that you  
24 detain the alien for a period not to exceed 48  
25 hours."

1 JOHN DRANE

2 And what does it mean when that box is  
3 checked?

4 A That -- to me, or what we interpret it  
5 as?

6 Q To you personally, sure.

7 A If we issue this detainer, if it was  
8 like maybe a Thursday or a Friday and the person  
9 was ready to go and it was after duty hours or  
10 something that they would hold them for us until  
11 our next duty day.

12 Federal holiday, if we're off on a Monday  
13 and the person is there ready to be picked up,  
14 they would hold them for us until Monday morning  
15 when they came to work.

16 Q Your personal understanding you think  
17 is shared by the people you work with?

18 A Yes.

19 Q That's the understanding that you've  
20 communicated to agents?

21 A Yes.

22 Q In 2009, did ICE agents tell a person  
23 who was detained that they were detained?

24 A I don't understand what you mean by  
25 that.

1 JOHN DRANE

2 Q A person who is subject to a detainer  
3 who is being held subject to a detainer, were  
4 they told they were being detained?

5 MR. CHURCHILL: Objection. Counsel,  
6 just to clarify for the record, are we talking  
7 CAP -- detainers issued in CAP --

8 MS. O'GRADY: Yes, I am.

9 MR. CHURCHILL: Just to clarify for the  
10 record.

11 MS. O'GRADY: Thank you.

12 A No. We would fax this detainer over  
13 to -- this one in particular, to the ACI, and  
14 they would put it in their system.

15 Then when she was released -- or in this  
16 case, she was released, they would call us and  
17 let us know that she had finished all her state  
18 business and she was ready to come to our  
19 custody.

20 Q And so you're not -- you wouldn't know  
21 if local law enforcement let her know that she  
22 was being held subject to a detainer?

23 A I would not.

24 Q Would you expect they would have told  
25 her that is why she was being held?

1 JOHN DRANE

2 A I don't -- I don't know. It wasn't our  
3 business what they did. I don't know.

4 Q So after -- in 2009, when you were  
5 SDDO, what did you expect an ICE agent to do  
6 after issuing a detainer?

7 A Wait.

8 Q Okay.

9 A Wait for a phone call, let the person  
10 know.

11 Q Wait for a phone call from whom?

12 A From whatever agency had the detainer.

13 Q Okay.

14 A Whether it was the ACI or district  
15 court or a police station, when they're done with  
16 their business with them, they would call us and  
17 say, hey, so and so is ready to be picked up.

18 Q After getting that phone call, you'd  
19 pick them up, you'd expect?

20 A Yes. Either we picked them up or a  
21 transport team would pick them up.

22 Q Besides waiting for that phone call or  
23 fax or any other information coming in from local  
24 law enforcement, would you expect an ICE agent to  
25 do anything else?

1 JOHN DRANE

2 A Not really. No.

3 Q Would you expect them to conduct any  
4 further investigation about the person's status?

5 A They could probably order a file if  
6 there was a file. A lot of times we don't have a  
7 file for them. If they're just straight illegal  
8 aliens, they don't have files yet.

9 Q Order a file, meaning an A file?

10 A An A file. Correct.

11 Q How would they do that? How would they  
12 order the file?

13 A They would go to the -- usually the ERA  
14 and say I need -- ERA, Enforcement and Removal  
15 Assistant -- just say they need the A file for  
16 this number or for this A number. They look it  
17 up, see where the file is, if it was at the  
18 National Records Center or if it was in a  
19 different office. It could be anywhere around  
20 the country. Just to try to locate it and get it  
21 for us so that when the person did come out of  
22 custody, we'd have a file ready to go forward.

23 Q So did ICE agents always try to order  
24 an A file after issuing a detainer?

25 A If there was an A number, they would

1 JOHN DRANE

2 try to locate it. Yes.

3 Q If they had an A number, they would?

4 A Yes.

5 Q Any other circumstances would they?

6 A After a detainer is issued?

7 Q Yeah.

8 A I don't believe so.

9 Q I think I might -- let's backtrack a  
10 little bit and talk about A files in more  
11 detail --

12 A Okay.

13 Q -- since we're on the topic already.

14 A Sure.

15 Q You're calling it the file. It's an A  
16 file?

17 A It it's an A file. Yeah.

18 Q That's fine. I just want to clarify  
19 for the record. Who has an A file? Who gets an  
20 A file?

21 A Anybody that has ever been encountered  
22 by us should have an A file.

23 Q "Encountered by us," meaning had an  
24 encounter with ICE?

25 A Immigration.

1 JOHN DRANE

2 Q Immigration. Would that be an  
3 application for benefits?

4 A Yes.

5 Q Or it would be an arrest?

6 A Any -- any -- if they have any contacts  
7 with us where they take any action on them,  
8 they're issued an A number and then that A number  
9 follows them throughout their immigration  
10 process.

11 Q And who maintains the A files?

12 A I believe CIS is actually in charge of  
13 the A files.

14 Q And what information do A files  
15 typically contain?

16 A Everything about their case, from  
17 beginning to end.

18 Q So --

19 A It could have their birth certificates  
20 in it, any paperwork from when they came to the  
21 country, their arrest records, their, you know,  
22 conviction documents. Anything that has to do  
23 with them.

24 Q Would it have a naturalization  
25 certificate?

1 JOHN DRANE

2 A Yes.

3 Q So how would -- was an agent -- in  
4 2009, how would an agent access an A file?

5 A He would look into -- to see where it  
6 is, and then if it was in our local office, he  
7 would just go get it.

8 If it was at the NRC, the National Records  
9 Center, one of our assistants would order it. Or  
10 if it was in New York, wherever in the country  
11 the assistant would find out where it is and then  
12 order it.

13 Q How would the assistant find out where  
14 it is?

15 A Through our system, through whatever  
16 systems, FTS.

17 Q So which A files would be in the local  
18 office?

19 A It could be any office. At that time,  
20 we were collocated with CIS. So we could have  
21 files in our office that we were working. It  
22 could be files waiting, because we have  
23 detainers, we're waiting for them to come in.

24 On the other side of the office, they could  
25 have files that they are just holding waiting for



1 JOHN DRANE

2 benefits. It could be any number of reasons.

3 Q So an agent would try to find out where  
4 the file is and then request it?

5 A Correct.

6 Q If the file was not in the local  
7 office, if it was in the National Records Center  
8 or elsewhere, how would they then receive the  
9 records?

10 A They would usually -- if somebody was  
11 in custody, they would overnight it. If not,  
12 they would regular mail it.

13 Q Could they ever be faxed?

14 A Yes. If we have somebody in custody,  
15 and the file is in the NRC, we could request that  
16 they fax pertinent documents we would need to  
17 start the processing to do a work folder until  
18 the regular A file showed up.

19 Q Was that something that you did  
20 commonly?

21 A It was common. More for people that  
22 already had warrants of deportation, have already  
23 been ordered and we need to get copies of the  
24 immigration judge's order, the deportation order,  
25 stuff like that, pertinent documents that we need

1 JOHN DRANE

2 to hold them.

3 Q Could an agent ever ask over the phone  
4 to convey information that was in an A file?

5 A To who?

6 Q To them. So an agent is looking for an  
7 A file. They won't be able to get it until the  
8 next day. Could they ask on the phone if it was  
9 in the National Records Center, for instance, can  
10 you look in there, see if there's a  
11 naturalization certificate, for example?

12 A Usually -- yeah. No. The NRC usually  
13 wouldn't tell us that. We would say, hey, we  
14 need this, this, and this, or send an e-mail to  
15 them. But if the file was in, like, another  
16 office, say, in San Diego, you could call and  
17 talk to somebody and say, hey, can you fax me  
18 this stuff. You could more communicate.

19 The NRC didn't really do it that way. It's  
20 a different process.

21 Q Okay. That kind of phone conversation,  
22 is that something that agents did often?

23 A Yeah.

24 Q Would an agent always look for an A  
25 file after issuing a detainer?

1 JOHN DRANE

2 A I'm not going to say always, but if  
3 there was an A number, they usually would so they  
4 can get it in process. Because if he was only  
5 duty for a week, and the person was being held  
6 for two weeks, he'd want to get all that stuff  
7 together for the next guy that is taking over.

8 Q So what circumstances would they not  
9 look for an A file after issuing a detainer?

10 A If there was no A number.

11 Q Any other circumstances?

12 A Not that I can think of.

13 Q And is the A number the only way you  
14 can access an A file?

15 A Yes.

16 Q You can't access it through a name?

17 A You can look the name up. And that  
18 gives us the A number. That's what we're focused  
19 on getting is that A number, if there is one,  
20 because that is how we track everything.

21 If you want to see any benefits or anything  
22 that's going on with the case, it's by the A  
23 number.

24 Q How would you look up the A number? If  
25 you had a name, for instance.

1 JOHN DRANE

2 A Name, date of birth search.

3 Q In what database?

4 A All of our databases: CIS, claims,  
5 NCIC records.

6 Q So if you were looking for an A number,  
7 you could search by name in any of those  
8 databases to find the A number?

9 A Yes.

10 Q And were agents expected to do that  
11 before looking for an A file?

12 A As part of the detainer process, as  
13 part of any process, looking for an alien, yes,  
14 you look as much as you can to try to find as  
15 much information as you can.

16 Q If you were looking for an A file and  
17 you had a Social Security number, could you find  
18 the A number through the Social Security number?

19 A Not really, because we never use Social  
20 Security numbers. I'm not going to say we never  
21 use them, but it's very rare that we use them  
22 because of the amount of fraud that goes on with  
23 Social Security numbers, we don't rely on them at  
24 all.

25 Q Is it possible to locate an A number if

1 JOHN DRANE

2 you have a Social Security number?

3 A Is it possible? I guess anything is  
4 possible. Yeah. But it's not something that we  
5 do. We don't look for a Social Security number  
6 and then try to find our A number.

7 We try to find our A number our way. We  
8 don't use Social Security numbers.

9 Q But could you?

10 A I imagine you could. It's just  
11 something that we don't do.

12 Q What about using name and date of  
13 birth; can you locate an A number that way?

14 A Yes.

15 Q What about using an FBI number?

16 A The FBI number won't give us -- an FBI  
17 number could give us an A number if it's  
18 associated to, like, a reentry or somebody that  
19 has a warrant of deportation. Sometimes  
20 there's -- they have the A number in there  
21 because it will search through the databases.

22 But usually an FBI number is not a good --  
23 the FBI number for us lets us know what criminal  
24 charges they've had or convictions they've had,  
25 so that goes into the process of deciding how

1 JOHN DRANE

2 we're going to handle a case.

3 Q Okay. We've talked about looking for  
4 an A file after a detainer is issued.

5 Do agents look for an A file before issuing  
6 a detainer?

7 A Yeah. It's part of the process. Yes.

8 Q As part of what process?

9 A Of issuing a detainer.

10 Q So you would expect an agent to look  
11 for an A file before issuing a detainer?

12 A Absolutely.

13 Q And you trained them to do that?

14 A Yes. Well, they've been trained. I'm  
15 not saying I specifically did. But part of the  
16 training is, yes, when they start this process,  
17 they get the name, the date of birth. And then  
18 as they go, they start looking through the  
19 different systems trying to find out who this  
20 person is and trying to find that A number.

21 That is what we need is that A number.

22 Q And as SDDO, did you supervise officers  
23 looking for A numbers before issuing detainers?

24 A Well, I supervise officers, but the  
25 detainer process is more of an independent

1 JOHN DRANE

2 process. There's no supervision that really goes  
3 along with it.

4 It's more like -- it's an independent  
5 process. It's nothing they have to come and say,  
6 hey, I'm trying to issue a detainer. It's just  
7 something that they do. It doesn't take any  
8 oversight to do that.

9 Q Would you ever review a detainer that  
10 an agent issued?

11 A No.

12 Q How did you satisfy yourself that  
13 agents knew how to issue detainers?

14 A Because they've had the training to do  
15 it. It's something that is -- for us, it's like  
16 a police officer issuing a ticket. It's a basic  
17 function of the job. We don't micromanage  
18 everything that they do.

19 A detainer is a basic function of what we  
20 do. Alienage and deportability, that's our  
21 thing. That's what we're looking for; determine  
22 alienage, determine deportability.

23 Q So the training that officers received  
24 about how to issue a detainer, that's what we  
25 discussed before, sort of when the CAP program

1 JOHN DRANE

2 was implemented?

3 A Mm-hmm.

4 Q Those early conversations. Was there  
5 anything else that they had, when you say they  
6 were trained to issue a detainer?

7 A When you go to the academy, you're  
8 trained, like the very first block of instruction  
9 you get is, like, naturalization. So you start  
10 learning the law and learning what constitutes an  
11 alien, what doesn't constitute an alien. You  
12 know, forms of naturalization.

13 It's just part of the basic what we do.  
14 Like I said, it's -- issuing detainers is  
15 probably the -- kind of a basic piece of the big  
16 immigration puzzle.

17 Q Right. Once an officer has been  
18 through that training -- as SDDO, if you know an  
19 officer has been through that training, do you  
20 feel like there's anything else you need to tell  
21 them about how to issue a detainer?

22 A I do not.

23 Q There's nothing else that you need to  
24 ask them about how they understand the detainer  
25 policy?



1 JOHN DRANE

2 A Mm-mmm.

3 Q They got it all at that training?

4 A They should. Yes. Everybody has  
5 questions once in a while. But as part of a  
6 basic, that's their gig. That's what they do.  
7 No different than a police officer issuing a  
8 ticket on the road.

9 He doesn't stop a car and then call a  
10 sergeant, say, Hey, can I issue this ticket?  
11 It's part of their job. It's what they do.

12 Q At that training, are officers trained  
13 that they need probable cause before issuing a  
14 detainer?

15 A Reasonable suspicion, probable cause  
16 all comes as part of arresting somebody or taking  
17 that process. So, I mean, it's explained to them  
18 what they need to issue a detainer. Whether they  
19 use those words or not, I'm not sure.

20 Q You said reasonable suspicion and  
21 probable cause. So it's either/or?

22 A No. I would say more reasonable  
23 suspicion for a detainer, which gets us started  
24 with the process to be able to -- like in this  
25 case here, to get her to our office to talk to

1 JOHN DRANE

2 her more about what's going on.

3 Q Okay. So ICE agents are trained --  
4 your understanding is that ICE agents are trained  
5 at the training that they need reasonable  
6 suspicion to issue a detainer?

7 A Correct. That's what I --

8 Q And not probable cause?

9 A Yes.

10 Q And then when -- as SDDO, you have  
11 agents and officers under your supervision. And  
12 you -- do you augment that training at all?

13 A Which training?

14 Q The training they receive that they  
15 need reasonable suspicion to issue a detainer.

16 A I don't believe so. No.

17 Q So once they go through that training,  
18 learn that they need reasonable suspicion, they  
19 come to your office, and you operate under the  
20 assumption they know how to issue detainers?

21 A Right. When they first come back from  
22 the academy, they're nervous. They have  
23 questions. They don't know exactly what to do.  
24 They ask the other officers.

25 But as a general, yes, they know what --

1 JOHN DRANE

2 they know what they're doing. The process might  
3 not be exactly what they're used to. They have  
4 to learn actually how to do it.

5 Q Okay. "The process," meaning?

6 A Going to the computer, fill out the  
7 form. Like they know the difference between an  
8 illegal alien or an alien that is here legally.  
9 So -- which is -- you know, that's the function  
10 of a detainer is to try to figure out exactly  
11 what we're going to do.

12 MS. O'GRADY: We're almost at an hour.  
13 I'd like to take a break now, if that's okay with  
14 everyone.

15 MR. CHURCHILL: That's fine.

16 MS. O'GRADY: Ten minutes.

17 (A recess was taken.)

18 BY MS. O'GRADY:

19 Q Okay. We've talked a lot about what  
20 happens after a detainer is issued, and I'd like  
21 to talk about what happens before.

22 A Okay.

23 Q So what is a daily commitment report?

24 A Pardon?

25 Q What is a daily commitment report?

1 JOHN DRANE

2 A From the ACI?

3 Q Yes.

4 A Yes. It tells us who was arrested over  
5 the night and who has been held.

6 Q And that is sent to you by fax?

7 A You know what? I don't know if it was  
8 faxed to us or if they go in and pull it off of  
9 the ACI computer. I'm not really 100 percent  
10 sure about that.

11 Q You said "was." So as of 2009, that's  
12 the daily commitment report. Is there a  
13 difference now?

14 A No. It's still -- I think they get it  
15 a different way now. We don't have the terminal  
16 like we used to have. I think it goes through  
17 WINFACTS and we have to access it a different  
18 way. I'm not 100 percent sure.

19 Q So in 2009, the ICE agent who is on the  
20 CAP rotation for that week --

21 A Yeah. For duty.

22 Q -- they come into the office in the  
23 morning.

24 A Mm-hmm.

25 Q About what time?

1 JOHN DRANE

2 A About 6 a.m.

3 Q Okay. 6 a.m. And then they see the  
4 daily commitment report with all the names of  
5 people who are in local custody?

6 A Correct.

7 Q And then what is an ICE agent trained  
8 to do at that point?

9 A He takes that commitment list and he  
10 goes through it and goes into the ACI computer.  
11 It pulls up their --

12 (Discussion off the record.)

13 A So he would go and he would start -- go  
14 down the list of names and, one by one, go into  
15 the ACI computer and look at the biographical  
16 information that is in there for that person.  
17 And then just try to figure out who they are and  
18 where they're from; if they need a detainer, if  
19 it they don't need a detainer.

20 Q Okay. So just to parse out what you  
21 said, the daily commitment report lists the names  
22 of those in custody. Does it list other  
23 information about them?

24 A I think it just has their name. I  
25 believe it just has their name and maybe their

1 JOHN DRANE

2 number from the ACI.

3 Q Their ACI number?

4 A Yeah.

5 Q And then the agents are trained to look  
6 up every name on that list?

7 A Yes.

8 Q And determine who was born in another  
9 country?

10 A Yes. To determine if they were born in  
11 another country. They go through every name on  
12 the list because you can't tell by their name  
13 where they're from.

14 Q Right.

15 A You could have a Spanish-sounding name  
16 or you could have an Anglo name, an English name,  
17 and they could be from Jamaica. You don't know.

18 You can't just look at a list and say, I'm  
19 going to look up these three, and not these. You  
20 have to look every name up to see what  
21 information is in there.

22 Q And the first pass of looking every  
23 name up would be on the INFACIS database?

24 A They would go into -- I don't know what  
25 the database is called. It would be in the ACI's

1 JOHN DRANE

2 database, which would pull up usually a picture,  
3 sometimes, I don't know if it's all the time, and  
4 then just say biographical information.

5 There is a box that asks their nationality,  
6 if they're a U.S. citizen, yes or no, and their  
7 date of birth.

8 Q And that -- from that database, would  
9 then they decide to issue detainers or would they  
10 do further investigation?

11 A No. Once they looked at the  
12 biographical information, then they would start  
13 looking in our systems to try to find the person  
14 to see what information we have on them --

15 Q Okay.

16 A -- to see if the detainer should be  
17 issued or not.

18 Q When you say "our systems," you mean --

19 A CIS, NCIC, ER, NFORCE, all our  
20 databases that we have people in.

21 Q So on a typical day, when the ICE agent  
22 gets there at 6 a.m. and looks through all the  
23 names on the daily commitment report, how long  
24 would that initial search of ACI's database take?

25 A Depending how many people got arrested

1 JOHN DRANE

2 the night before. It could be an hour. It could  
3 be three hours. It could be 20 minutes.

4 Q Is it ever more than three hours?

5 A It could be. I don't know. It  
6 depends. It depends on how busy the night before  
7 was. Mondays are usually longer because the  
8 weekends, more people got arrested.

9 Q How long typically do they spend on  
10 each name?

11 A Again, that depends.

12 Q Can you give me a range?

13 A I really can't. I can't, because if  
14 you pull it up and it's, you know, where were you  
15 born? United States? Yes. You know, that's  
16 quick. That's two seconds.

17 If it's -- you know, all the information  
18 isn't there, it could take 20 minutes. It could  
19 take a half hour. It depends clearly on what  
20 they find.

21 Q Okay. And then how do -- how does an  
22 ICE agent decide which names to check in CIS and  
23 NCIC?

24 A After they go through the ACI list?

25 Q Right.



1 JOHN DRANE

2 A Well, they would go through the ACI  
3 list, and they would look at the biographical  
4 information that was in there, and they would  
5 make that decision whether -- so in that  
6 self-report information, whether it says they  
7 were born in the United States or born in  
8 Dominican Republic, whatever. They would go from  
9 there.

10 Q So if the ACI database says they're  
11 born in the United States, the ICE agent would  
12 not check that person?

13 A Correct. Most of the time.

14 Q If the ACI database said they were a  
15 citizen, the ICE agent probably would not check  
16 that person?

17 A Probably not. They could. But  
18 probably not.

19 Q Under what circumstances might they?

20 A If the name rang a bell, if we've  
21 encountered the person before. A lot of times,  
22 we get people that we know just because we've  
23 dealt with them before. If they see that name --  
24 let me clarify a little bit. We deal with a  
25 person, so we know that name.

1 JOHN DRANE

2 Q Right.

3 A But other people have the same name, so  
4 they would see that name and say, oh, that name  
5 rings a bell. Let me do further check on it.

6 Q So if they knew the name, and they  
7 checked in ACI, saw that maybe -- saw that the  
8 person was a citizen in ACI, they might still  
9 check --

10 A They might --

11 Q -- just in case?

12 A -- just in case just because that name  
13 rings a bell. It could be a brother.

14 Q It could be a brother. Could there be  
15 a mistake in the ACI database?

16 A Of course. Sure.

17 Q So it was common that records might  
18 contradict one another?

19 A Yeah. It's all input by human beings,  
20 so there -- anything can happen.

21 Q Is that true for CIS and NCIC also?

22 A It could be. Sure.

23 Q So did you ever conduct trainings or  
24 even informal discussions with ICE agents about  
25 how to run these daily commitment report checks

1 JOHN DRANE

2 in the morning?

3 A I didn't, no. Not specifically me.

4 Q Did anyone?

5 A As part of their training when we took  
6 over the program. Remember, this program was  
7 taken over before I got there.

8 Q Yeah.

9 A So all the initial training and  
10 everything would have been done before I took  
11 over.

12 Q Sure.

13 A So I can't speak for -- do you know  
14 what I mean?

15 Q Yeah.

16 A I don't know.

17 Q When ICE agents are checking names on  
18 daily commitment reports, do they sometimes  
19 encounter women who have changed their names  
20 after marriage?

21 A Oh, yes.

22 Q That's common?

23 A Mm-hmm.

24 Q Is that reflected in the ACI database?

25 A No.

1 JOHN DRANE

2 Q No?

3 A Not that I know of.

4 Q So you might get the name on a daily  
5 commitment report, but the name has been changed  
6 because the person got married?

7 A It could be right. Or people give  
8 false names all the time. So it could be by  
9 accident. The name could be entered wrong. The  
10 person could be giving the wrong name because  
11 they don't want us to find them.

12 There's a plethora of reasons why people do  
13 what they do. I don't know.

14 Q But a name change after marriage, you  
15 wouldn't consider a false name?

16 A No. No. I would assume that's -- if I  
17 look at -- you know, if you show me that this is  
18 your name, I'm going to assume on the outtake  
19 that that is your name.

20 Q So who enters the data in the ACI  
21 database?

22 A I have no idea.

23 Q The people in local law enforcement, to  
24 your knowledge?

25 A If it was in the ACI database, I would

1 JOHN DRANE

2 assume it's the ACI.

3 Q Would an agent ever issue a detainer

4 without looking first at the ACI database?

5 A In regards to -- I mean --

6 Q Through the CAP program?

7 A No.

8 Q Does the ACI database contain an A

9 number entry?

10 A I don't believe it does.

11 Q So after checking the ACI database, you

12 said the agents would then determine who to do

13 further investigation on?

14 A Mm-hmm.

15 Q That investigation would entail looking

16 at CIS and NCIC?

17 A Yes. EARM. Whatever systems they have

18 available to them.

19 Q Generally, as SDDO, what systems did

20 you expect ICE agents to check?

21 A CIS, usually NFORCE's, EARM, NCIC if it

22 came up -- if they came up with an FBI, or they

23 would run them to see if there was an FBI number.

24 If that was the case, they would run their

25 criminal history.

1 JOHN DRANE

2 Q They would check NCIC to see if there  
3 was an FBI number first?

4 A Correct. They'd run the name and date  
5 of birth or the FBI number or the state, because  
6 it will list the state criminal record also.

7 Q Speaking first about CIS, specifically,  
8 what data are in CIS?

9 A All biographical data. You could  
10 look -- if -- it would give us their A number,  
11 which is our big thing is the A number.

12 Q Does CIS include Social Security  
13 number?

14 A It may or may not.

15 Q There's a field for it, though?

16 A I can't answer 100 percent that I know  
17 that. It may be in like a sub database. So I'm  
18 not 100 percent sure right now.

19 Q Okay. Who enters the data in CIS?

20 A CIS employees.

21 Q And how does a person get a record in  
22 CIS? Does everyone have a record in CIS?

23 A No. Only if you get -- if you have  
24 some kind of encounter with either CIS, they're a  
25 separate agency than us, or us, that generates

1 JOHN DRANE

2 you getting put into those systems. Back in '09.

3 Now it's a little different today.

4 Q How is it different today?

5 A They have the biometric stuff at the  
6 airport, so people get entered that way.

7 Q And when you say "an encounter with  
8 us," an encounter with ICE, what do you mean by  
9 "encounter"? What constitutes an encounter?

10 A Us taking some kind of action towards a  
11 person.

12 Q Does that include issuing a detainer?

13 A Yes. Well, not necessarily -- well,  
14 the detainer is the beginning of the encounter.  
15 It's not the end all, be all. We've issued  
16 detainers before and then canceled them for  
17 whatever reason.

18 But a detainer, itself, if you issue a  
19 detainer and we don't have an A number for you,  
20 it's blank until we can get you an interview and  
21 issue an A number, there's a process that has to  
22 go along with that.

23 Q So it would be possible for a person to  
24 have a detainer issued against them and then have  
25 it canceled, and then they would not have a

1 JOHN DRANE

2 record in CIS?

3 A Correct.

4 Q Is that true they would not then have a  
5 record in an A file?

6 A Yes. If we never issued them -- us --  
7 or if you go to CIS to apply for a benefit, you  
8 get an A number also. If you don't have some  
9 kind of official encounter with us that we're  
10 going to process you, you won't have an A number.

11 Q Okay. And a detainer is not considered  
12 one of those official encounters?

13 A No. It's just like it says on here, an  
14 investigation. We're trying to figure it out.  
15 We don't know, so...

16 Q Okay. To your knowledge, how far does  
17 the data go back in CIS?

18 A Since Ellis Island. I've seen some  
19 old, old files. You know, as time goes on, they  
20 update them and transition them and put them into  
21 the systems and everything, so...

22 Q Are they more accurate the more recent  
23 they are?

24 MR. CHURCHILL: Objection. That's  
25 vague. But you can answer.



1 JOHN DRANE

2 A I was going to say I don't know. It  
3 depends. Again, it's on the person that puts the  
4 information in.

5 Q Sure. So it's possible that someone  
6 might not be in CIS even though they have an A  
7 file?

8 A No. If it they have an A file, it has  
9 to go through CIS. Because that is how you  
10 create -- through that system, you create the A  
11 file.

12 When we create A files, it actually has to  
13 be created through CIS for us to be able to start  
14 an A file.

15 Q Okay. If a person is a naturalized  
16 citizen, would they have a file in CIS?

17 A Yes.

18 Q To your knowledge, all naturalized  
19 citizens would?

20 A Absolutely.

21 Q So if it a person was born outside the  
22 United States and does not have a record in  
23 CIS --

24 A Yup.

25 Q -- would that mean to you then they

1 JOHN DRANE

2 were in the country illegally?

3 A Yes.

4 Q Yes?

5 A Right.

6 Q And so if you knew a person was foreign  
7 born and were unable to find a CIS record, would  
8 that then be -- would that constitute reasonable  
9 suspicion to issue a detainer?

10 A Yes.

11 Q Would that constitute probable cause to  
12 issue a detainer?

13 A I would say no. I would say that the  
14 reasonable suspicion to issue the detainer so  
15 that we can get the probable cause.

16 Q And how then would you get the probable  
17 cause?

18 A By the person coming in to us after and  
19 talking to us and then -- like more of a broader  
20 interview; where were you born; where your  
21 parents born; what are you doing here, type  
22 questions.

23 Q And the answers to those questions  
24 would then get the probable cause in order to --

25 A For us to issue an A file or to issue a

1 JOHN DRANE

2 charging document. Yes.

3 Q Okay. I'm going to ask questions now  
4 specifically about NCIC. What data are in NCIC?

5 A I'm not 100 percent sure. It's  
6 criminal data. I don't know all -- everything  
7 that's in NCIC.

8 Q How does a person get a record in the  
9 NCIC database?

10 A After they've been arrested. It's  
11 input by the -- it's input by the local police  
12 departments and the FBI.

13 Q So every person who has been arrested  
14 has an NCIC record?

15 A I don't know if that's true either. I  
16 don't know.

17 Q Are all naturalized U.S. citizens on  
18 NCIC?

19 A No.

20 Q Only those who have been arrested would  
21 be on there?

22 A Yeah.

23 Q So if a person is born outside the  
24 United States and has no record in NCIC, would  
25 that be reasonable suspicion that they're in the

1 JOHN DRANE

2 country illegally?

3 A Not everybody that's in the country  
4 illegally is a criminal, though. Do you know  
5 what I mean? If you're in NCIC, it's because  
6 you've committed a crime and there is information  
7 there.

8 So, no, just because you're here illegally  
9 doesn't make you a criminal. Well, as far as  
10 NCIC goes.

11 Q And with respect to CIS, I was asking  
12 about the lack of a record in CIS --

13 A Mm-hmm.

14 Q -- being reasonable suspicion and  
15 probable cause.

16 A Yeah.

17 Q Your understanding -- where did you get  
18 your understanding of whether or not a no hit in  
19 CIS constitutes reasonable?

20 A Because if -- because to us, if a  
21 person has self-reported they're from another  
22 country and we don't have a record of them, that  
23 means we've never encountered them. So that  
24 means there's no A number because that's what  
25 we -- everything we do is off the A number.

1 JOHN DRANE

2 So there's no A number. To us, that tells  
3 us that that it needs more looking into. They're  
4 either here illegal or there's a problem  
5 somewhere.

6 So, for us, the no hit with the name,  
7 matched date of birth and no record tells us that  
8 we need to look further. They're either here  
9 illegally; they've never been encountered with  
10 us; something is not right.

11 Q How -- do you consider that policy of  
12 ICE -- the opinion you just expressed, is that  
13 ICE policy?

14 A I would say yes.

15 Q And your understanding is that the  
16 field offices all have that policy? Or all  
17 understood?

18 A It's a national -- it's a national  
19 policy.

20 Q And your statement earlier that a no  
21 hit in CIS would be enough for reasonable  
22 suspicion, but not probable cause, how did you  
23 learn that policy?

24 A I don't know. Just over the years.  
25 Just it is.

1 JOHN DRANE

2 Q And is that the policy that you  
3 have imparted onto the agents?

4 A I don't impart any policy. I have no  
5 policy-making ability whatsoever. It's --  
6 anything that we do is because it comes from our  
7 headquarters and funneled down through us. We  
8 don't make -- I'm not allowed to make any local  
9 changes to the way they want us to do things.

10 Q Sure. So your sense is that's the way  
11 they want you to do things. If an ICE agent were  
12 to ask you, I have a no hit in CIS, I know they  
13 were born outside the country, is that sufficient  
14 to issue a detainer? You'd say yes?

15 A Yes.

16 Q If they asked you, does that constitute  
17 probable cause, what would you say?

18 A We'd probably have the same  
19 conversation you and I are having, more  
20 reasonable suspicion, and just explain that this  
21 is why we're doing this so that we can talk to  
22 the person to get more information so that we can  
23 issue a charging document or not issue a charging  
24 document.

25 Q So, in your view, reasonable suspicion

1 JOHN DRANE

2 is what you need to issue a detainer. And  
3 probable cause is what you need to issue a  
4 charging document?

5 MR. CHURCHILL: Objection. That is  
6 compound. You can answer that.

7 A Yes. I would say yes, because we  
8 can't -- just because -- just because we don't  
9 have enough information in the beginning doesn't  
10 mean that we'll get that information, or we will  
11 or we won't get that information.

12 For us to issue a charging document, we have  
13 to have certain information. We just can't  
14 willy-nilly issue charging documents.

15 We have a process that we have to go through  
16 to do it.

17 Q But the process for issuing a detainer  
18 is different?

19 A Yes.

20 MS. O'GRADY: I'm going to mark  
21 Exhibit 3.

22 (Standard Operating Procedures  
23 for Enforcement Officers: Arrest, Detention,  
24 Processing and Removal of June 6, 1997 marked  
25 Exhibit 3.)

1 JOHN DRANE

2 BY MS. O'GRADY:

3 Q Do you recognize this document or at  
4 least the text?

5 A I don't recognize it. I don't -- I've  
6 never seen it before, but I understand what it  
7 says. Yes.

8 Q So this is -- this was produced to us  
9 as is, and it's been represented to us that it's  
10 an excerpt of the standard operating procedures  
11 for officers for 1997.

12 A Mm-hmm.

13 Q So does the text of it seem familiar,  
14 if not the format?

15 A I mean, yes, but I've never seen it.  
16 So I don't, you know --

17 Q In the middle of the first paragraph,  
18 it says, "A detainer may also serve as a request  
19 to hold an alien for a brief period until the  
20 service can arrange to assume custody of an alien  
21 who a custodial agency no longer intends to  
22 detain."

23 A Yes.

24 Q So is that your understanding of what a  
25 detainer is and does?



1 JOHN DRANE

2 A Yes. It goes back to what you were  
3 asking previously about this, about nights,  
4 holidays, weekends.

5 Q And then on the second to last  
6 paragraph down at the bottom it says, "Upon  
7 completion, file one copy of the detainer in the  
8 alien's A file and either mail or transmit by fax  
9 machine a copy to the detaining agency or  
10 institution." Did I read that correctly?

11 A Yes.

12 Q So if an A file has not been located,  
13 what is an officer then supposed to do?

14 A We have -- let me get this right. We  
15 have a detainer drawer, so if we're waiting for  
16 people to come out of custody to us and they  
17 don't have an A file, we have a detainer drawer  
18 where we stick the detainers. So when the person  
19 comes in to us, we pull that out and maybe any of  
20 the records checks that they've done.

21 From there, we go and recreate an A file.  
22 All that stuff that we used goes into the A file.

23 Q So you would make a new A file  
24 essentially?

25 A Correct. Yes. We would issue an A

1 JOHN DRANE

2 file.

3 Q Is there any circumstance under which

4 you would not issue a new A file at that point?

5 A If they already have an A file, another

6 one shouldn't be issued. No.

7 Q But if they don't already have an A

8 file?

9 A If they don't have one, we have to

10 issue one. We have to create it.

11 Q Is that true even if the detainer is

12 subsequently canceled?

13 A If the detainer is canceled and we're

14 not taking any enforcement action against them,

15 then we don't create an A file for them.

16 Q So the A file is not created upon the

17 issuance of the detainer?

18 A No.

19 Q It's upon the enforcement action after

20 the detainer?

21 A Correct.

22 Q We're going to go back to Exhibit 2,

23 which is the Morales detainer. You have it right

24 there.

25 So you'll see at the bottom of this document

1 JOHN DRANE

2 that it says, "Signature of immigration officer,"  
3 and Edward Donaghy's name is above it.

4 A Yes.

5 Q That means that Edward Donaghy is the  
6 one who issued this detainer?

7 A Yes.

8 Q And you were his supervisor at the  
9 time?

10 A Yes.

11 Q So I think you said, as supervisor, you  
12 did not tend to review detainers that were issued  
13 by agents?

14 A That's correct.

15 Q Did you ever review a detainer issued  
16 by an agent?

17 A Not that I can remember.

18 Q Did agents ever ask you questions  
19 before they issued a detainer about whether it  
20 would be appropriate to do so?

21 A They could have. Yes. For whatever --  
22 I can't think of a specific reason, but if they  
23 had a question, they would have come and said,  
24 hey, I have this question, X, Y, and Z. What  
25 should I do?

1 JOHN DRANE

2 Q You can't remember a specific example?

3 A I cannot, no.

4 Q Did that happen often?

5 A It doesn't happen often. That's why I  
6 can't come up with a good answer for you. See,  
7 back in -- I don't mean to keep talking, but back  
8 in '09 -- like now, today, issuing a detainer  
9 today is a lot different than when we issued  
10 detainers back in '09. So there's probably more  
11 questions now than previously.

12 Q So today it would be more likely that  
13 an agent might say, I'm about to issue a  
14 detainer; can we talk about it?

15 A I would say because of the priorities  
16 we have, because of the President's priorities  
17 and enforcement priorities, we issue a lot less  
18 detainers than we used to.

19 Q But in 2009, you wouldn't expect an  
20 agent to come to you before issuing a detainer?

21 A No, not at all.

22 Q You'd be surprised if they did?

23 A I would be surprised if they did.

24 MS. O'GRADY: I'm going to mark  
25 Exhibits 4 and 5 together here. That will be 4.

1                                   JOHN DRANE  
2                                   (Summary of Events,  
3           Bates-stamped 0018 and 0019 marked  
4           Exhibit 4.)

5                                   MS. O'GRADY: This is 5.  
6                                   (E-mail dated April 25, 2012  
7           marked Exhibit 5.)

8 BY MS. O'GRADY:

9           Q     So, Mr. Drane, do you recognize these  
10           documents?

11           A     I have seen them, yes. I don't  
12           remember getting that e-mail, but I've seen this  
13           through the process here.

14           Q     Okay. And "this," meaning the summary?

15           A     Yes.

16           Q     And when did you first see the summary?

17                                   MR. CHURCHILL: Just to be clear, the  
18           summary is Exhibit 4?

19                                   MS. O'GRADY: Yes. Thank you.

20           A     I think when we were going over our  
21           prep for the deposition.

22           Q     Yeah. Not before then?

23           A     No. I've never seen this before,  
24           before this process.

25           Q     Did you discuss the Morales detainer

1 JOHN DRANE

2 with Agent Donaghy at any time?

3 A No.

4 Q You'll see Exhibit 5 is an e-mail from  
5 Mr. Donaghy to you attaching a summary, which is  
6 Exhibit 4.

7 A Mm-hmm.

8 Q And you don't recall receiving this  
9 e-mail?

10 A I don't.

11 Q You don't recall looking at the summary  
12 at the time?

13 A I don't. Sorry.

14 Q Was this kind of summary something that  
15 ICE agents often put together?

16 A No, not at all.

17 Q Do you recall ever asking an ICE agent  
18 to put together this kind of summary?

19 A Never.

20 Q At what point did you learn that Agent  
21 Donaghy had placed a detainer on a United States  
22 citizen?

23 A When this lawsuit came about.

24 Q So in April of 2012?

25 A Yes. Well, whenever. Yeah, whenever

1 JOHN DRANE

2 it popped. I don't know the date. But...

3 Q And at -- in April 2012, did you ask

4 Mr. Donaghy to update the NFORCE record?

5 A I did not.

6 Q How did you find out that a detainer

7 had been placed on a United States citizen?

8 A When the lawsuit came about.

9 Q Okay. So someone told you about the  
10 lawsuit, generally?

11 A Right.

12 Q And at that point, did you talk to  
13 Mr. Donaghy about the lawsuit?

14 A I did not, because he was communicating  
15 with Greg Mercurio about it. I didn't have  
16 anything to do with it.

17 Q Did you talk to Mr. Mercurio about it?

18 A I probably did. I don't remember  
19 discussing it in length. I probably asked what  
20 happened. And, you know, just brief, he did  
21 this. So there wasn't any lengthy discussions  
22 about it.

23 Q Did you have any e-mails with him about  
24 it?

25 A I may have. He may have copied me on

1 JOHN DRANE

2 e-mails like one. But I really wasn't -- because  
3 at the time, it was -- Mercurio was involved in  
4 it with Donaghy, so they were working together.  
5 I didn't really get involved in it.

6 Q Did you have any casual conversation  
7 with Mr. Donaghy about it?

8 A I may have. I don't recall any  
9 specific conversations about it. It wasn't an  
10 in-depth conversation.

11 Q But it could have been something  
12 passing in the hallway?

13 A Yeah. Absolutely.

14 Q From what you know now about the case  
15 and the situation, do you think that Mr. Donaghy  
16 acted appropriately?

17 A I do.

18 Q Have you expressed that to Mr. Donaghy?

19 A I probably have.

20 Q If he had asked you at that time  
21 whether or not he should issue the detainer  
22 against Ms. Morales, would you have said yes?

23 A With the information he had at the  
24 time?

25 Q Mm-hmm.



1 JOHN DRANE

2 A Yes.

3 MS. O'GRADY: I'm going to mark this as  
4 Exhibit 6.

5 (Memorandum Bates-stamped 0020  
6 through 0022 marked Exhibit 6.)

7 BY MS. O'GRADY:

8 Q Do you recognize this document?

9 A Yes.

10 Q Generally, what is it?

11 A If we have a -- it's a document that if  
12 we have somebody in custody that is claiming that  
13 they're a U.S. citizen, what we have to do, our  
14 process of sending up the chain of command to get  
15 an answer on whether we're going to keep them  
16 detained or not detained.

17 Q Okay. So this sort of -- it's called  
18 superseding guidance.

19 Does this mean it would commonly come  
20 through the chain of command to you as SDDO?

21 A Yes. Through the whole field office.

22 Q Through the field office. Specifically  
23 you, as SDDO, did you have a duty with respect to  
24 communicating this to agents?

25 A I probably would have sent it,

1 JOHN DRANE

2 forwarded it through e-mail. A lot of times we  
3 get e-mail broadcasts that are -- we get  
4 broadcasts that are country-wide. We get  
5 broadcasts that are field office-wide.

6 Something like this, I probably would  
7 have -- after it went out to everybody, I would  
8 have re-sent it to everybody and say -- you know,  
9 typically what I do is, See below. Make sure you  
10 guys read this new guidance, type of thing.

11 Q How often did that happen?

12 A I don't know. Whenever they come out.

13 Q Yeah.

14 A The government, they send a lot of  
15 stuff out.

16 Q So a couple of times a month?

17 A It could be a couple times a month. It  
18 could be once every six months. Varying things.  
19 There's no timeline.

20 Q Would you ever do anything more  
21 extensive than forward the e-mail? Would you  
22 have a meeting in the office?

23 A I could if it was something that was  
24 really relevant. I didn't. I don't think I did  
25 with this.

1 JOHN DRANE

2 Q Yeah.

3 A But I could.

4 Q Can you think of an example when you  
5 did?

6 A I can't. Sorry.

7 Q Okay. So this memorandum reflects  
8 national policy about how to handle claims of  
9 United States citizenship?

10 A Correct.

11 Q On the first page here, it says in the  
12 last sentence on that second full paragraph, "DRO  
13 officers must fully investigate all claims of  
14 U.S. citizenship immediately upon learning of the  
15 assertion of citizenship."

16 A Mm-hmm.

17 Q What do you take that to mean?

18 A If we -- I take it to mean if we have  
19 somebody in custody that tells us, I'm a U.S.  
20 citizen, we have to investigate further, find out  
21 what their claim is, why they are claiming that.

22 Q Okay. So how would a person make such  
23 an assertion of U.S. citizenship?

24 A Well, usually it's -- there could be a  
25 few different ways. When we have -- if we have

1 JOHN DRANE

2 somebody in custody that is a long-term case, say  
3 they're in jail for murder and they're going to  
4 be there for 20 years, and one of my officers  
5 goes over and talks to them and tries to figure  
6 out what they're doing, and they say, Hey, I'm a  
7 U.S. citizen. Why are you a U.S. citizen? How?

8 They'll explain everything. And they'll  
9 come back and do all the investigation, all the  
10 research to try to figure out why they're making  
11 that claim.

12 Q Okay.

13 A On a case that's -- where somebody gets  
14 arrested and we put a detainer on them and they  
15 come in the next day and they make -- hey, I'm a  
16 USC, a U.S. citizen, again the same questions:  
17 How? Why? Tell us more.

18 Then they give us that information. We look  
19 it up. If it's something that -- in the case of,  
20 like, not a long-term case, but somebody that was  
21 arrested overnight or something and comes to us  
22 the next morning, then we would release them  
23 right then.

24 If it was a long-term case, and they're  
25 going to be there for years or whatever, it's --

1 JOHN DRANE

2 the same type of investigation goes on. And then  
3 we decide whether we're going to lodge a detainer  
4 or not lodge a detainer.

5 Q So for the short-term case that you  
6 mentioned, how would a person say that they're a  
7 U.S. citizen? To whom would they say that?

8 A To the officer when they came in to be  
9 processed.

10 Q To the local law enforcement officer or  
11 the ICE officer?

12 A ICE officer. If we issue a detainer  
13 and the person goes to court or whatever and  
14 they're cleared up and then they come to us  
15 because there's a detainer, when they come in the  
16 door, and we, you know, start talking to them,  
17 and they say, Oh, I think I'm a United States  
18 citizen. Why do you think that? They give us  
19 their reason, and we go in and research it.

20 Q That claim can only be made after the  
21 detainer has been issued?

22 A To us, because we haven't talked to  
23 them. If it's a short term.

24 Q So before you issue the detainer, you  
25 don't talk to them. So they could only make a

1 JOHN DRANE

2 claim to you after being brought in?

3 A Right. We do -- in our case in Rhode  
4 Island, we do that research to issue the detainer  
5 and try to get as much information as we can to  
6 make that decision; what we don't know, what we  
7 do know. So we have to issue the detainer so  
8 they come to us so that we can find out more  
9 information.

10 Q So I think you said if then, when  
11 they're talking to an ICE officer, after the  
12 detainer has been issued, they're being brought  
13 into custody, they say then they're a United  
14 States citizen, what further investigation then  
15 happens?

16 A Well, we ask them why. And they tell  
17 us. There's many ways people can be United  
18 States citizens. Whether they naturalized. They  
19 could derive. They could have been born here,  
20 but they didn't want to put that on there. You  
21 know what I mean? There's a lot of different  
22 ways.

23 Sometimes they don't know. You know,  
24 sometimes they come in, and in the course of our  
25 talking to them, they start telling us things.

1 JOHN DRANE

2 We go, oh, wait a minute, you might be a  
3 U.S. citizen. There's a lot of different ways --  
4 a lot of derivative ways to become a citizen that  
5 sometimes they don't know, sometimes that we're  
6 not sure of. So we conduct the investigation.

7 Most of the time, if somebody makes a claim  
8 to U.S. citizen, we're going to -- all the time  
9 when they make a claim to U.S. citizen, we're  
10 going to investigate it right then.

11 Sometimes what they're telling us doesn't  
12 match up to what we have for records. And in  
13 that case, we would continue to detain them.

14 We would put all that information together  
15 and then send that up the chain to the FOD for  
16 him to look at or TAU to look at, somebody to  
17 look at and say, let him go; don't let him go.  
18 So...

19 Q So when a person is taken into local  
20 custody --

21 A As far as us or for the local law  
22 enforcement?

23 Q For the local law enforcement.

24 A Okay.

25 Q To your knowledge, do they ask that

1 JOHN DRANE

2 person if they're a United States citizen?

3 A I have no idea if they do or not.

4 Q So, to your knowledge, the first time  
5 they would get asked would be when they come into  
6 ICE custody?

7 A Yes, if we have a detainer on them and  
8 they come to us. Sometimes in the past we've had  
9 local law enforcement, if they have a car stopped  
10 on the side of the road, they'll call us and ask  
11 us to help them or they'll call the law  
12 enforcement support center up in Vermont.

13 But in a situation where we issue a  
14 detainer, and the first time they come to us is  
15 probably the first time they're going to have the  
16 chance to express that to somebody that, for lack  
17 of a better word, cares.

18 Q Yeah.

19 A Because local law enforcement is not  
20 trained. They don't understand immigration laws.  
21 So they don't know. It's not part of their job.

22 Q So it was -- the policy of your office  
23 was that an ICE agent, after issuing a detainer,  
24 would not interview the detainee until --

25 A No.



1 JOHN DRANE

2 Q Until --

3 A No. If -- there's a couple of  
4 different ways -- if somebody gets arrested  
5 overnight, and the next morning they're going off  
6 to court and everything else, so we come in --  
7 the officer comes in at 6 a.m., and he starts  
8 running the list and finding out who is who.  
9 He'll issue the detainer. He'll fax the detainer  
10 over. It may not be to the ACI. It could be to  
11 a district court and say, okay, here is a  
12 detainer. When you're done with them, let us  
13 know. Those are quick. We don't have time to  
14 interview them because the ACI is getting them  
15 ready to go to court.

16 We can't really go to court and interview  
17 them because they're in court. There's no time  
18 for that.

19 The detainer is issued so that when they're  
20 done with their whirlwind of whatever is going on  
21 that morning, they either come back to us, or if  
22 they go back to the ACI and are going to be held  
23 because they have bail or whatever, yes, then we  
24 would go talk to them.

25 If they're going to be there for a day or

1 JOHN DRANE

2 two or 20 years, whatever, we have time to do  
3 that. But first -- the first hits in the morning  
4 where the people are going and they're moving all  
5 around, we don't have time to do that. We issue  
6 a detainer in '09 we're talking about time  
7 frame --

8 Q Yes.

9 A -- we issue that detainer so that the  
10 district court know or whoever knows, superior  
11 court, district court, ACI, whoever has them,  
12 that when you guys are done with them, let us  
13 talk to them because we want to know what their  
14 status is.

15 Q I think you said before that after an  
16 ICE agent issues a detainer, they then  
17 essentially -- under the CAP program, they  
18 essentially then wait for the phone call from  
19 local law enforcement --

20 A Yes.

21 Q -- to say that's all that is holding  
22 them?

23 A Yes.

24 Q Between issuing the detainer and that  
25 phone call or fax, do they make an attempt to

1 JOHN DRANE

2 interview the detainee at that time?

3 A No. Because there's really no way to  
4 do that without getting -- interrupting the  
5 operation of the local law enforcement process.

6 Q Even if that person doesn't have a  
7 court date or isn't being transported?

8 A If they're not being transported, if  
9 they're going to be held for a while, then, yeah,  
10 we have time to go and interview them, if we  
11 think we need to.

12 So because there's -- you're kind of -- I'm  
13 not going to say -- the process is different for  
14 different things.

15 Do you know what I mean?

16 Q Yeah.

17 A It's not -- if somebody is being held,  
18 if somebody gets arrested in Rhode Island and  
19 they're at the ACI intake, and let's say they get  
20 arrested at 9 o'clock at night, we don't work  
21 nights. So we don't find out until we come in  
22 that morning at 5, 7 o'clock, whatever time they  
23 come in to start running through the list.

24 We could get through that list, and that  
25 person is already gone from the ACI, and we have

1 JOHN DRANE

2 to hunt them down then, find out, well, are they  
3 at Sixth District Court? Are they at Fifth  
4 District Court? Are they here, here?

5 We don't know where they are. So we try to  
6 hunt them down and get that detainer on them so  
7 that we can talk to them and try to found out  
8 what is going on.

9 If, for whatever reason, they're more of a  
10 long-term case, we, yes, have time to go over and  
11 interview them before we'll issue a detainer,  
12 because we want to know that. We don't want to  
13 just issue detainers crazily.

14 You know what I mean? Our job is to find  
15 out what your status is. It's our -- it's what  
16 we do. You know what I mean? It's not like  
17 we're guessing. We're trying to figure out,  
18 okay, what is your status.

19 Sometimes we know. If you run it and they  
20 have an A number, you can -- you know who that  
21 person is through the A number. You can look at  
22 their crimes. You can see what they were  
23 arrested for. You can prepare a little bit  
24 better. But people that are just illegal here  
25 and we don't know, that's what we're trying to

1 JOHN DRANE

2 find out.

3 Q Okay. I think you said, and this  
4 reflected on the document, that when an  
5 affirmative claim of U.S. citizenship is made, it  
6 goes up the chain of command to the FOD.

7 MR. CHURCHILL: Objection. I don't  
8 think that's exactly what he said. But you can  
9 go ahead and answer.

10 Q Fair enough. Clarify for me.

11 A Yeah. No, if we're going to hold a  
12 person, if someone is arrested and they're going  
13 to be in custody for a while, or they could have  
14 a detainer issued to them and they come to us and  
15 they say, I'm a U.S. citizen, we start off by,  
16 Okay, why? How are you a U.S. citizen? What do  
17 you think -- why do you think you're a U.S.  
18 citizen? They'll explain everything to us.

19 The information they give us, then we check  
20 out. We do a further investigation. Either it's  
21 true, it's not true, or somewhere in the middle.  
22 It could be true, but we're not sure.

23 So if it's the -- if that's the case and  
24 we're going to continue holding somebody because  
25 they say, hey, I'm a U.S. citizen, and our

1 JOHN DRANE

2 investigation -- our paperwork, we look at it and  
3 we go, I don't really think you are, that  
4 situation is where we're going to run it up the  
5 chain of command and say, so and so says he's a  
6 U.S. citizen. We don't think he is because of  
7 here. We give our evidence. We send it up the  
8 chain of command. The FOD looks at it.

9 He looks at everything. He'll tell us, hold  
10 him; don't hold him. That is how this policy is  
11 set up to work.

12 Q So if there's -- excuse me. I'll start  
13 again.

14 The further investigation that happens after  
15 the claim of citizenship is made, how is that  
16 different than the investigation that is done  
17 before the detainer is issued?

18 A Because we may not have all the  
19 information. We have a limited amount of  
20 information in the beginning to go by.

21 We may -- like on a detainer form, if you  
22 look at it, there's different boxes that says a  
23 warning has been issued for your removal. That  
24 person, you look them up. You get their A  
25 number. You look, okay, they've been ordered

1 JOHN DRANE

2 removed already.

3 That's a different situation than if you  
4 look through the databases and you see a name, a  
5 date of birth and nothing comes back, because  
6 that tells us different information.

7 So whatever information we get back from the  
8 systems is -- kind of puts us down the road that  
9 we need to go down. Now, in a case where, you  
10 know, you put a detainer because you have no  
11 information, the person finishes up with their  
12 state court and everything.

13 They come to us and say, hey, I'm a U.S.  
14 citizen. Okay. Well, we couldn't determine that  
15 this morning or earlier, so tell us your story.  
16 Why are you a U.S. citizen?

17 As they tell their story, why they're a U.S.  
18 citizen, that's when we can do our further  
19 investigation and say, oh, yeah, you know what,  
20 you are; have a nice day. Or we don't think you  
21 are, you're going to stay detained. In that  
22 case --

23 Q That's when it goes up to the FOD.

24 A -- that is when it goes up to the chain  
25 of command.

1 JOHN DRANE

2 Q If that further investigation confirms  
3 what the person is saying is true, then it  
4 doesn't move up the chain of command?

5 A Correct.

6 Q Is a record kept of that interview?

7 A It should have -- somewhere be noted.  
8 It should be noted in probably EARM, NFORCE  
9 comments.

10 Q Why -- would there be a case where it  
11 wouldn't be?

12 A There could be.

13 Q What would be the reason?

14 A They just forgot, maybe. I don't know.  
15 There could be any number of reasons.

16 Q What kind of information would the  
17 person give during that interview that would help  
18 determine whether or not they were telling the  
19 truth?

20 A They would tell us where they were -- I  
21 was born in Mexico, but I became a naturalized  
22 citizen, you know, five years ago, yesterday, two  
23 years ago. Or I came into the country with my  
24 mother before I was 18 years old, and she  
25 naturalized, so I automatically naturalized with



1 JOHN DRANE

2 her. Any -- you know.

3 Q Could they say, you know, this is my  
4 name. I got married. I have a Social Security  
5 number?

6 A Absolutely.

7 Q They could give you --

8 A Social Security number doesn't have  
9 anything to do with it, though. That -- Social  
10 Security numbers don't mean anything to us. But  
11 you're correct, the name. Hey, I got married, I  
12 changed my name. This is the name I naturalized  
13 under. Absolutely.

14 You could pull that name up then and find  
15 out that they naturalized under a different name.

16 Q Do you know -- I'll speak more  
17 generally first.

18 Who usually conducts the interview? Is it  
19 the same agent that issues the detainer?

20 A It varies --

21 Q Okay.

22 A -- if that agent is not on duty  
23 anymore, if he was home sick; I mean, it could be  
24 anybody.

25 Generally, if it's a quick case, where the

1 JOHN DRANE

2 guy puts a detainer on Monday morning, Monday  
3 afternoon they clear up their things and come in,  
4 if he's duty officer, yes.

5 If they're held for a couple of weeks  
6 because they have bail and they can't make bail,  
7 then it could be somebody else.

8 Q Okay. And do you have any memory of  
9 hearing Mr. Donaghy talk about the interview with  
10 Ms. Morales?

11 A Not at all.

12 Q Isn't -- is it common for a detainer to  
13 be issued against a U.S. citizen?

14 A It's not common at all. No.

15 Q How often would you say it happens?

16 A I may have seen it -- I'll throw a  
17 number -- maybe two or three times. It's not  
18 common at all.

19 Q Two or three times since you've been  
20 SDDO?

21 A Since I've been at Immigration. It's  
22 not a common occurrence at all, from what I've  
23 seen.

24 Q These interviews of -- after a person  
25 asserts their U.S. citizenship, are they -- you

1 JOHN DRANE

2 said sometimes there's a record of it. Are sworn  
3 statements taken?

4 A Could possibly be, yes.

5 Q Under what circumstances would a sworn  
6 statement be taken?

7 A I don't really know. If they're  
8 adamant about it, and we're adamant that it's  
9 not, we could take their sworn statement to say,  
10 why do you think so? But I don't know of  
11 specific cases of that.

12 Q Did you ever, in your capacity, conduct  
13 these kind of interviews?

14 A I have not.

15 Q Did you ever talk to the agents that  
16 you supervise about these interviews and what  
17 should go into them?

18 MR. CHURCHILL: Objection. Just to be  
19 clear for the record, could you -- like I said,  
20 you can go ahead and answer, but maybe just for  
21 the record to be clear, I guess from -- maybe I'm  
22 wrong, but are you talking about the interviews  
23 that I guess are conducted -- the interviews  
24 that -- you know, are generally when he's being  
25 brought in or the interviews that are done when

1 JOHN DRANE

2 someone, you know, makes a claim to U.S.  
3 citizenship and then they decide to hold them and  
4 then they're going further up the chain?

5 MS. O'GRADY: I appreciate that  
6 clarification. So I guess both. If there's a  
7 different answer.

8 A So I'm sorry. You have to say it  
9 again.

10 MR. CHURCHILL: I'm sorry. I didn't  
11 mean to interrupt. Just to be clear for the  
12 record.

13 MS. O'GRADY: No. I appreciate that.  
14 That's fine.

15 A You want to know if I'm present when  
16 they have an interview for somebody claiming to  
17 be a U.S. citizen, or do you want to know if I'm  
18 present for the interviews when they come in on  
19 the detainer, or both?

20 Q Both. Let's take coming in on the  
21 detainer first. A person is brought in on the  
22 detainer and they say, I'm a U.S. citizen.

23 A Mm-hmm.

24 Q Are you present for that?

25 A No.

1 JOHN DRANE

2 Q Did you ever talk to your agents under  
3 your supervision about what to do when somebody  
4 says that -- when somebody says they're a U.S.  
5 citizen when they're brought in from a detainer?

6 A I probably have. I don't remember a  
7 specific example of it. They all know. For us,  
8 a detainer on a U.S. citizen is a big deal.

9 It's not something that we take lightly. So  
10 they all know. If they come in and say, hey, I'm  
11 a U.S. citizen, they know automatically what they  
12 have to do. It's like they have to say: Why?  
13 Because it's not something that we do. It's not  
14 our job.

15 So they may come to me after and say, so and  
16 so said he was a USC. I'd say, Well, what  
17 happened? We let him go. Or what happened? Oh,  
18 we had biometric data that says he's not a U.S.  
19 citizen. So depending on what happens.

20 And then if it's something -- the latter  
21 cause where they say we have data that says  
22 you're not, I mean, they'll do this paperwork and  
23 I'll get it.

24 Q Right.

25 A They'll let me know, hey, so and so

1 JOHN DRANE

2 says he's a U.S. citizen. I don't think he is  
3 because of X, Y, and Z. The paperwork is coming.

4 Q Okay.

5 A Okay. And I'll wait for it. They send  
6 it up to me. I read everything and then I  
7 forward it up the chain and get an answer as  
8 quick as we can. That way -- because we're not  
9 going to detain them if FOD says or TAU says, no,  
10 you guys are wrong, let him go; or, yes, you're  
11 right, keep him. We have to wait for that  
12 decision.

13 Q So if the person who is subject to a  
14 detainer comes into custody and says, I'm a U.S.  
15 citizen, and then the ICE agent there at the  
16 time, they would then go back to their office and  
17 check CIS again with a new name they were given?

18 A We have processing -- in the processing  
19 area, we have systems they could check right  
20 there. They don't leave them and run off. They  
21 do it right then and there. That's --

22 Q So they check right then and there. If  
23 they determine the person was telling the truth,  
24 they would release them?

25 A Yes.

1 JOHN DRANE

2 Q And then they would come and tell you  
3 what happened?

4 A Yes.

5 Q And you would expect them to?

6 A Yes. Absolutely. They would say, so  
7 and so said they were a U.S. citizen. Well, what  
8 happened? We didn't know they derived, because  
9 whatever reason they have. Okay. That's fine.  
10 It's part of daily -- it's part of life.

11 Q Do you remember that happening with  
12 Ms. Morales' detainer?

13 A Absolutely not.

14 Q So then Mr. Donaghy, you don't remember  
15 him coming and saying, I issued this detainer and  
16 she said she was a citizen?

17 A No. The first time I ever heard of  
18 Ms. Morales was when this lawsuit happened.

19 Q You also said it's only happened two or  
20 three times in your career?

21 A As far as I can remember. Yes. It's  
22 not a very often occurrence.

23 Q So if it -- but you would expect that  
24 an agent would come to you and tell you that  
25 happened?

1 JOHN DRANE

2 A Let me clarify. I say it's not an  
3 occurrence where -- it's not -- we don't do it a  
4 lot where we keep them if they say they're a U.S.  
5 citizen. I haven't seen a lot of cases where  
6 we're right, they're wrong.

7 Q I see. So the two or three times that  
8 you mentioned were times when the person claimed  
9 to be a U.S. citizen and --

10 A And they weren't.

11 Q -- and they weren't?

12 A Correct.

13 Q But it's more common that a person is a  
14 U.S. citizen and had a detainer issued against  
15 them?

16 A It's more common, but it doesn't happen  
17 regularly.

18 Q Okay. Would you expect an agent to  
19 come tell you when that happened?

20 A Yes. We have instances where, you  
21 know, we have detainers on people, and, you know,  
22 the family knows however they find out that  
23 there's an immigration detainer, whether they're  
24 waiting to pay bond or somebody tells them,  
25 they've come to the office and brought birth



1 JOHN DRANE

2 certificates, passports. Hey, you guys have a  
3 detainer on my sister, but here's her paperwork.  
4 She's U.S. citizen. Oh, okay, so we go and lift  
5 the detainer. They don't even come to us.

6 Q Did you consider that a serious event  
7 when that happens?

8 A I don't consider it a serious event at  
9 all. It's because people make mistakes. People  
10 give us the false names. They give us different  
11 names. You know, they weren't thinking. You  
12 know, there's a lot of different reasons it could  
13 happen.

14 I don't consider it serious at all for -- as  
15 they walk in the door. What I would consider  
16 serious, if they told one of my officers, I'm a  
17 U.S. citizen, and they did whatever, and they  
18 locked them up and kept them. That, yes.

19 But if they come in the office, I'm a U.S.  
20 citizen. Why? Because of this. Okay. And they  
21 release them, that's not serious at all.

22 Q If that were to happen frequently,  
23 would you try to retrain your agents?

24 A If it was something that was happening  
25 a lot with an agent, yeah, absolutely, because

1 JOHN DRANE

2 it's not a normal occurrence.

3 When we say it happens, it happens two or  
4 three times a year, maybe, maximum. It's not  
5 something that is weekly or daily or anything  
6 like that. It's a very rare instance. So...

7 Q So in 2009, Mr. Chadbourne was the FOD.  
8 Correct?

9 A Correct.

10 Q Did you ever have personal interactions  
11 with him?

12 A No.

13 Q Were you ever in meetings with him?

14 A Meetings. I mean, you know, he's part  
15 of -- in '09? Wait a minute. Once I moved down  
16 to Rhode Island, back from Boston, I never --  
17 very, very rarely did I ever have any meetings  
18 with him or interactions with him.

19 Q Did he ever visit the suboffice?

20 A I got down there in '07. I think I saw  
21 him in our office maybe twice.

22 Q So not a common occurrence --

23 A No, not at all.

24 Q -- to directly interface with him?

25 A No.

1 JOHN DRANE

2 MS. O'GRADY: This is going to be  
3 Exhibit 7.

4 (Performance Appraisal Report  
5 marked Exhibit 7.)

6 BY MS. O'GRADY:

7 Q Do you recognize this document?

8 A Yes.

9 Q And what is this?

10 A This is Ted Donaghy's PWP, performance  
11 work plan.

12 Q Okay. Performance work plan. And what  
13 is a performance work plan, PWP?

14 A It's a rating, to tell you how you're  
15 doing throughout the year, quarterly ratings.

16 Q I think earlier and in some of the  
17 other records I've seen, it's called a  
18 performance appraisal record.

19 A Yes.

20 Q Is that the same thing?

21 A Yes.

22 Q So if you say PWP and I say PAR, it's  
23 the same thing?

24 A Yeah. Sorry.

25 Q No. That's fine. So this is -- you

1 JOHN DRANE

2 said you met throughout -- you would meet  
3 throughout the year?

4 A Mm-hmm. Yes. I'm sorry.

5 Q Excuse me?

6 A You have to give a quarterly review,  
7 just how you're doing, a snapshot. If there's  
8 any problems, you notate them.

9 Q Is this your signature under "Rating  
10 Official"? It has your name.

11 A Yes.

12 Q So one of your roles as SDDO is to sign  
13 these performance appraisal records?

14 A Yes.

15 Q And you would always be present at the  
16 quarterly meetings?

17 A Yes. They're with me.

18 Q And was Mr. Mercurio also there?

19 A No.

20 Q So it would be just you and the agent?

21 A Yes.

22 Q Okay. And then you would do this for  
23 all the agents under your supervision.

24 A Yes. All my employees. Even my  
25 assistant.

1 JOHN DRANE

2 Q Okay. So what does it mean to be a  
3 rating official?

4 A To do these (indicating).

5 Q Okay. And so you would fill them out  
6 before the meeting and then discuss them at the  
7 meeting?

8 A Yeah. Well, you fill them out at the  
9 beginning of the year. You put what duties  
10 you're expected to have throughout the year. The  
11 initial one you give them, they read through  
12 everything, understand what their goals are for  
13 the year. They sign it.

14 And then as you go through the year, if  
15 there's -- you bring them in quarterly to say  
16 we're on track. Do you have any concerns,  
17 questions, or if I have any questions or  
18 concerns, it will go in here. Then the final  
19 rating, you cover the year of any problems or  
20 anything.

21 Q Okay. Are these related to  
22 compensation at all?

23 A No.

24 Q So did agents ever receive bonuses?

25 A Agents do receive bonuses, but -- let

1 JOHN DRANE

2 me back up.

3 If we're going to -- if at the end of the  
4 year they're going to give us money or time off,  
5 they have to be at least fully successful in  
6 order to be allowed to get that.

7 Q What does "fully successful" mean?

8 A That means you're meeting the minimum  
9 guidelines.

10 Q So you'd get a bonus for every year you  
11 meet the minimum guidelines?

12 A We don't always get them, and not  
13 everybody gets them sometimes. I guess they kind  
14 of tell us we have X amount of dollars, split it  
15 up; don't split it up.

16 Some people sometimes will tell you we don't  
17 have any money this year. If you have people,  
18 you can give them a time-off award. It's not a  
19 guaranteed thing.

20 What I'm saying is if we do have something  
21 and we're going to give it out, they have to be  
22 at least fully successful.

23 Q And would it be your decision as SDDO  
24 to parcel out that money or that time off?

25 A To an extent. I get told, you know,

1 JOHN DRANE

2 how much we have. Or an e-mail will come down  
3 from the chain of command to say we have X amount  
4 of dollars to split up between you guys or  
5 whatever.

6 Q Then you would decide who that goes to?

7 A I would decide if -- yeah, some would  
8 get it; some wouldn't get it. It depends how  
9 their year went.

10 Q What kind of metrics would you decide  
11 who would get it?

12 A I, personally -- if everybody has met  
13 at least fully successful, and I get a pot of  
14 money, I personally give it to everybody.

15 I split it up and give it to everybody,  
16 because I don't know how you would say he gets it  
17 and he doesn't. I don't know how to do that. So  
18 that's just the way I do it.

19 Q And these PWP's, when you have these  
20 meetings, did you try to address any problems  
21 that might arise?

22 A I would address them. Yeah. I mean, I  
23 would address problems as they go along. But if  
24 it was something significant, it would go in here  
25 (indicating). So that way it would be noted.

1 JOHN DRANE

2 Q So you tried to be generally  
3 comprehensive about a person's performance.

4 A Absolutely.

5 Q And honest about it?

6 A Yes.

7 Q And you tried to make your feedback  
8 clear?

9 A Yes.

10 Q Did anyone ever come back after a PWP  
11 meeting or getting the written -- excuse me. Let  
12 me back up.

13 Were written copies of these given to your  
14 agents?

15 A They are.

16 Q And did anyone ever come back and say,  
17 I don't think that's accurate?

18 A No. Not with mine.

19 Q What did you do to prepare for these  
20 quarterly?

21 A I don't really prepare. I mean, I know  
22 what they do throughout the year. I just kind of  
23 know. I talk to my employees a lot. I have a  
24 really open-door policy. They're in and out of  
25 my office every day talking to me, work related,



1 JOHN DRANE

2 not work related.

3 It's just an open atmosphere. I don't want  
4 them to feel like if they have something to say,  
5 they're afraid to say anything.

6 So throughout the year, they just -- I know  
7 what they do. I watch them. You know, I hear  
8 what they say type of thing.

9 Q Did you ever review their statistics  
10 before?

11 A I usually don't review statistics. No.

12 Q Do you have any ongoing, like, notes or  
13 files about each agent that you refer to?

14 A No, I don't.

15 Q On Page 8 -- it says Page 8 of 15  
16 above. So this is -- the job element here is  
17 "Arrests/Violaters of Immigration and Nationality  
18 Laws."

19 A Mm-hmm.

20 Q And then on the next page, Page 9, the  
21 notation on the bottom is, "Agent Donaghy  
22 performs this task at an acceptable level. CAP  
23 numbers are on par with his peers." Did you  
24 write that?

25 A I did.

1 JOHN DRANE

2 Q What did you mean by that?

3 A As with everybody, that's a human  
4 being, some guys work hard; some guys don't work  
5 hard. So you have to have some kind of judgment  
6 of what they're doing as far as are they working  
7 a lot or are they not working so much.

8 You've got to kind of keep an eye on them,  
9 you know. Good days, bad days happen. But good  
10 days, bad quarters don't. You know what I mean?

11 Q Specifically, CAP numbers, what CAP  
12 numbers does that refer to?

13 A That would be detainers issued,  
14 charging documents issued. It's kind of an  
15 all-inclusive statement. If there's any mistakes  
16 or anything like that. If they make too many  
17 mistakes, then you may need to sit down with them  
18 and say, what's wrong? Why do you keep screwing  
19 up this one thing?

20 Q And CAP numbers being on par with  
21 peers, are you then -- does that mean you're  
22 comparing Mr. Donaghy's CAP numbers with other  
23 agents' CAP numbers?

24 A Yes. With the other agents that are in  
25 CAP.

1 JOHN DRANE

2 Q That would include the number of  
3 detainers issued?

4 A Yeah.

5 Q And as we just noted, this is under the  
6 section of "Arrests/Violaters of Nationality  
7 Laws."

8 Is a detainer considered an arrest?

9 A I don't consider it an arrest. No.  
10 But in CAP, they also go out and make street  
11 arrests. So that -- when you say CAP numbers, it  
12 has to do with street arrests.

13 Some guys don't like to go on the street.  
14 Some guys do like to go on the street. As long  
15 as their averages are good and they're not  
16 sitting around doing nothing all day.

17 Q Did you have a specific benchmark of  
18 CAP numbers your agents were expected to follow?

19 A No.

20 Q Nothing from headquarters --

21 A No.

22 Q -- saying to meet this amount?

23 A No.

24 Q You did compare agents to one another  
25 based on how many detainers they issued and how

1 JOHN DRANE

2 many arrests they might have made?

3 A I kind of look and see -- when they're  
4 duty, I know what they're doing. I know how much  
5 they're working. I know if you get a guy that is  
6 issuing zero detainers or zero charging  
7 documents, he's not doing anything.

8 But if -- when I say "on par with others,"  
9 it could be -- you know, it could be five. It  
10 could be ten. I don't have a number.

11 It just could be, you know -- if a guy is a  
12 duty guy for a week and he has nothing, I mean,  
13 what are you doing?

14 Q Yeah.

15 A Oh, there isn't anybody. Nobody is  
16 getting arrested. Not that often, but we have  
17 ebbs and flows in law enforcement. People just  
18 don't get arrested.

19 Sometimes it's busy weeks where more people  
20 get arrested. Beginning of the summer is always  
21 busier than the middle of winter.

22 Q Did you ever have a conversation with  
23 one of your agents saying that their CAP numbers  
24 were not on par with their peers?

25 A Not that I can remember, no.

1 JOHN DRANE

2 Q But if somebody's CAP numbers were very  
3 low, you would have mentioned it during the PWP?

4 A I may not have. I might have talked to  
5 them and said, what are you doing? Let's get  
6 your stuff up.

7 Q So some feedback was informal?

8 A Yeah. Absolutely.

9 Q Do you remember anything about this  
10 conversation with Mr. Donaghy's CAP numbers?

11 A I do not.

12 MS. O'GRADY: The next exhibit is  
13 No. 8.

14 (Performance Appraisal Report  
15 marked Exhibit 8.)

16 BY MS. O'GRADY:

17 Q Okay. And this is the performance  
18 appraisal record from the 2007 to 2008 period.

19 Right?

20 A Mm-hmm.

21 Q Again, is that your signature under  
22 "Rating Official"?

23 A No.

24 Q That's not?

25 A No. I didn't do this one.

1 JOHN DRANE

2 Q You were not SDDO at this time?

3 A No. This isn't mine.

4 Q Have you ever seen this rating period's  
5 records?

6 A Yes.

7 Q So you've seen this document before?

8 A I have.

9 Q In what context?

10 A I believe my attorney showed it to me  
11 to ask me about it.

12 Q And before that?

13 A Before that, no. Not that I remember.

14 Q As SDDO, do you have access to these  
15 personnel files?

16 A To an extent. Once we finish these,  
17 they go up to Burlington, up to our main office,  
18 so I'd have to order the older ones.

19 Q You never did that for Mr. Donaghy?

20 A No.

21 Q Whose signature is that? Do you know?  
22 It's hard to tell.

23 A The first one is Ed Donaghy's. The  
24 second one is Greg Mercurio's. The third one  
25 looks to me to be Jim Martin.

1 JOHN DRANE

2 MR. CHURCHILL: Just to be clear for  
3 the record, you're referring to --

4 THE WITNESS: The top three.

5 MR. CHURCHILL: -- the first, second  
6 and third. It's not clear.

7 A Yeah.

8 Q So Mr. Martin, was he SDDO at this time  
9 or --

10 A He was -- because before -- before I  
11 became a supervisor, Mercurio was the supervisor.

12 Q Got it.

13 A He was promoted to AFOD. And then I  
14 was a supervisor under him. But during this time  
15 period, Jim Martin would have been his boss. So  
16 to have the second rating official would have had  
17 to have been Jim Martin's.

18 Q Okay. With the understanding that you  
19 did not do this performance review, I'll ask you  
20 a little bit about it.

21 A Okay.

22 Q Maybe it will be familiar to you.

23 A Okay.

24 Q So Page 4 of 12, it says here, "Agent  
25 Donaghy consistently submits his reports in a

1 JOHN DRANE

2 timely manner."

3 And then it says, "He has proven his  
4 devotion to duty with the considerable efforts he  
5 has expended in helping to formulate some of the  
6 procedures and reports in our fledgling CAP  
7 program."

8 Do you have a sense of what Mr. Donaghy did  
9 at that time to help get the program going?

10 A I do not. I think it was just because  
11 he was kind of there when it started.

12 Q You were there, too, at that time?

13 A I was. But I didn't have anything to  
14 do with it, because I did a different job. So...

15 Q Is this consistent with your assessment  
16 of Mr. Donaghy as an employee?

17 A Yes. He's never -- I've never had any  
18 problems with him.

19 MS. O'GRADY: Exhibit 9.

20 (Performance Appraisal Report  
21 marked Exhibit 9.)

22 BY MS. O'GRADY:

23 Q Okay. This is the performance  
24 appraisal record from 2010-2011. And you did  
25 conduct this review --



1 JOHN DRANE

2 A Yes.

3 Q -- is that correct?

4 A Hmm. Mm-hmm.

5 MR. GOLDSMITH: I'm sorry. What is  
6 this exhibit marked as?

7 MS. O'GRADY: That is 9.

8 BY MS. O'GRADY:

9 Q On Page 9 of 15, on the bottom half, it  
10 says, "ATD numbers are on par with his peers."

11 A He went to a different program. ATD,  
12 Alternatives to Detention. It was a new program  
13 we started up in Rhode Island. He moved to this  
14 program.

15 Q So you're no longer looking at the CAP  
16 numbers, because --

17 A Correct.

18 Q -- he's now in ATD?

19 A Correct. It's now an ATD thing. It's  
20 a totally separate program.

21 Q Sure. And what was your role with  
22 regard to supervising that program? Did you do  
23 the same role with supervising CAP?

24 A Yes. Yes. Yes.

25 Q So for the agents who are still in the

1 JOHN DRANE

2 CAP program, you might have been looking at  
3 their -- you still would have been looking at  
4 their numbers for CAP?

5 A Yeah. And the people that work in ATD,  
6 I would look at theirs.

7 Q Got it.

8 A Program specific.

9 MS. O'GRADY: Sure.

10 All right. Exhibit 10.

11 (Performance Appraisal Report

12 marked Exhibit 10.)

13 BY MS. O'GRADY:

14 Q All right. This is the performance  
15 appraisal record from the 2008 to 2009 period.

16 A Okay.

17 Q And this is your signature on the front  
18 page?

19 A Yes.

20 Q So you were also in charge of this one?

21 A Yes.

22 Q And this would have covered May 2009.

23 Is that right?

24 A Yes.

25 Q Is there any reason to believe that you

1 JOHN DRANE

2 didn't meet during the May 2009 quarter of this  
3 year?

4 A Without telling you 100 percent yes or  
5 no, no. My wife was sick during this time  
6 period, so I was out of work a lot. So I don't  
7 know if I did or not. My mind was obviously  
8 elsewhere.

9 Q Understandable. Was it common to skip  
10 a reporting period? Did that happen before?

11 A As far as what, the quarterly meeting?

12 Q Yeah.

13 A No. I mean, like I said before, I meet  
14 with them all the time. So it's as issues come  
15 up, I address it. Maybe just because I didn't  
16 notate it on here, but I'm sure we still talked.

17 Q You might have had an informal meeting,  
18 if it wasn't the formal?

19 A Yes.

20 Q I know that you've said you don't have  
21 a recollection of discussing the Morales detainer  
22 with Agent Donaghy.

23 A Mm-hmm.

24 Q Would you have discussed it during a  
25 performance appraisal meeting?

1 JOHN DRANE

2 A No. No. Like I said before, the first  
3 time I really ever heard about the Morales  
4 detainer was when this lawsuit happened. There  
5 was never any mention of it historically at all.

6 Q So a detainer issued against a U.S.  
7 citizen wouldn't be something that you'd bring up  
8 in one of these performance appraisal reviews?

9 A Well, he didn't know he issued it to --  
10 to us, it wasn't towards a U.S. citizen, because  
11 the information we had at the time when we issued  
12 the detainer, she wasn't a U.S. citizen. So when  
13 she came in and said, I'm a U.S. citizen, she  
14 went home. It wasn't an issue.

15 It wasn't anything that was, in our eyes,  
16 done wrong.

17 Q Agent Donaghy did learn or someone at  
18 ICE learned on May 5th that she was a U.S.  
19 citizen, and released her?

20 A Yes.

21 Q At that point, you knew a detainer had  
22 been issued against a U.S. citizen?

23 A Mm-hmm.

24 Q Knowing at that point that that had  
25 happened, it would not be something you discussed

1 JOHN DRANE

2 during these --

3 A No. It it's not even -- no, because  
4 it's not -- he didn't -- in my eyes at the time,  
5 there was -- nothing was told to me or nothing  
6 was -- it wasn't known.

7 Q So, in your view, if something like  
8 that were to happen again, it wouldn't be  
9 something worth discussing in this review?

10 A No. If somebody came to me and said,  
11 hey, this happened. Okay. It's kind of a normal  
12 part of our job. It happens. If, you know, he  
13 was a detainer or something, that's a whole  
14 different thing.

15 But this situation -- if this situation  
16 happened again tomorrow, it happens. There's  
17 nothing -- we do -- it's a little different now.  
18 But back then, the way we did our job was that's  
19 what happens sometimes. It wasn't, you know, an  
20 intentional.

21 He didn't look to say, oh, I'm putting this  
22 on a USC. It just happened. So...

23 MS. O'GRADY: I'm at a fine breaking  
24 point if you want to stop here.

25 MR. WEINTRAUB: Do you know how much

1 JOHN DRANE

2 longer you have?

3 MS. O'GRADY: I'm not sure. It's not  
4 very much, frankly.

5 COURT REPORTER: Do you want to go off?

6 MS. O'GRADY: Yes. Let's go off the  
7 record.

8 (Discussion off the record.)

9 (A recess was taken.)

10 MS. O'GRADY: I'm going to mark  
11 Exhibit 11.

12 (Morales v. Chadbourne:  
13 FY2009-FY2014 YTD ERO Detainers marked  
14 Exhibit 11.)

15 BY MS. O'GRADY:

16 Q Mr. Drane, is this familiar to you at  
17 all?

18 A It is not.

19 Q Well, it purports to be the statistics  
20 of detainers prepared and subsequently canceled,  
21 booked into ICE custody and removed. And this  
22 was prepared for us in connection with this  
23 litigation.

24 A Okay. When I said "no," I mean it's  
25 not a form that I see all the time.

1 JOHN DRANE

2 Q Yeah. I wouldn't expect that it would  
3 be.

4 A Okay.

5 Q So I'd like to ask you some questions  
6 about the stats here, understanding that you  
7 didn't prepare this document.

8 A Sure.

9 Q So generally the detainers that were  
10 prepared in the Boston AOR, that first table, can  
11 you explain why, in your view as SDDO, the number  
12 of detainers has almost dropped in half between  
13 2009 and 2014?

14 A Yes. Because -- my opinion is because  
15 of -- in Rhode Island, or nationwide, the new  
16 policies that are put forth by the President have  
17 limited what we do.

18 Q Okay. And can you say more about that?  
19 How have they limited what you can do?

20 A They just have more guidelines on  
21 who -- they have to have certain criminal  
22 convictions to -- for us to encounter them and  
23 charge them.

24 Q Has the standard for -- has the  
25 standard for what information is needed before

1 JOHN DRANE

2 issuing a detainer changed?

3 A No. The standard of information needed  
4 hasn't changed. The standard of the seriousness  
5 of their crimes have changed.

6 Q The seriousness of the crimes, though,  
7 is that relevant in detainers issued through the  
8 CAP program?

9 A Yes. Because you can't -- if you have  
10 a person that's an LPR, legal permit resident, a  
11 Green Card holder, you can't -- if they haven't  
12 committed certain crimes, you can't charge them.

13 Q Right.

14 A Do you know what I mean?

15 Q Yes.

16 A And also somebody that is in the  
17 country just straight illegally, if they haven't  
18 committed certain crimes, they don't want us to  
19 encounter them either.

20 Q So that's what is new about it. The  
21 crimes that a person who is not a legal permanent  
22 resident, but just a person who is illegal?

23 A Yes. Any illegal alien or a legal  
24 alien, for us to take action on them, the crimes  
25 have to be more severe than they used to be.



1 JOHN DRANE

2 Q Okay. I think you said the standards  
3 have changed. Suppose a person has a crime  
4 that's considered a deportable crime.

5 A Mm-hmm.

6 Q Before you had testified that -- before  
7 you had said that reasonable suspicion is needed  
8 to issue a detainer.

9 A Correct.

10 Q If a person has a deportable crime, is  
11 that still the case?

12 A For us to -- let me think for a second.  
13 For us to actually issue a detainer, now today  
14 there's more that we have to do crime-wise to  
15 issue a detainer. There has to be more -- not  
16 more biographical information. However we  
17 determine, that part of it is still the same.

18 But once we get to that point, whether we  
19 have all the information we need on a person or  
20 not, once we get to a certain point and look at  
21 the crimes, we're not going to issue, not because  
22 of who they are, but because of the crimes  
23 they've committed. Does that make sense to you?

24 Q It does. I think I understand you. I  
25 just want to be clear for the record.

1 JOHN DRANE

2 So before we were talking about, you know,  
3 if there's a record on CIS and you don't find a  
4 record of someone on CIS --

5 A Right.

6 Q -- and you know they're born outside  
7 the country --

8 A Correct.

9 Q -- I think you said -- and correct me  
10 if I'm wrong, but I think you had said that would  
11 constitute reasonable suspicion --

12 A Correct.

13 Q -- which is needed to issue a detainer?

14 A Yes.

15 Q Okay. So say -- and now you said that  
16 was true in 2009?

17 A Correct.

18 Q Now you said in 2015, things have  
19 changed a bit.

20 When did the changes take place, would you  
21 say?

22 A I think they started taking place last  
23 year.

24 Q Okay. So when the changes took place  
25 at some point last year, you need different

1 JOHN DRANE

2 information about the crimes that the person  
3 committed?

4 A Correct. The alienage and  
5 deportability is always going to be the same.  
6 The thing that has changed is the criminal aspect  
7 of it.

8 Q So if you had sufficient information on  
9 the criminal aspect and you were satisfied that  
10 criminally what -- the crime that they have  
11 alleged to have committed is sufficient under the  
12 new policy --

13 A Correct.

14 Q -- the no hit in CIS, plus foreign  
15 birth would still be enough to issue the  
16 detainer?

17 A Yes. If it met the crime threshold.

18 Q Understood. Okay. Thanks.

19 A Yeah.

20 Q Okay. So we just talked a little bit  
21 about the Boston AOR detainer stats and then  
22 Rhode Island, much the same, I think you've  
23 explained that they've gone down because of the  
24 new priorities.

25 A Mm-hmm.

1 JOHN DRANE

2 Q It looks like they were going down even  
3 earlier. Do you have any sense of why that might  
4 be?

5 A My personal opinion?

6 Q Yeah.

7 A The President. That's what -- why it's  
8 going down. His stance on immigration is  
9 different than previous administrations. And,  
10 you know, different administrations do different  
11 things. And that affects us directly.

12 Q How has his stance affected you?

13 A He wants less -- in my opinion, he  
14 wants less people deported. He wants us to do  
15 less work.

16 Q And that shift in policy is filtered  
17 through the FOD to you?

18 A It's filtered from him to Homeland  
19 Security, to Immigration, to, you know,  
20 headquarters, on down. It comes from those guys  
21 to us.

22 We -- you know, we come to work every day  
23 and do what they tell us to do.

24 Q In terms of issuing detainers, how has  
25 what they tell you to do changed? I mean --

1 JOHN DRANE

2 A In Rhode Island, specifically, the  
3 politics side of it, this case has directly  
4 affected our detainers, because the -- the ACI,  
5 the state prison won't accept a detainer unless  
6 we have an order from a judge to remove somebody.

7 Q And that change in policy, has that  
8 been communicated in writing?

9 A Oh, yes.

10 Q Sorry. I didn't mean the change in  
11 policy in Rhode Island. My fault. I meant sort  
12 of the change in priorities that you sense from  
13 the President going on down.

14 A Absolutely. His executive orders.  
15 It's been on the news. It's common knowledge  
16 what his priorities are.

17 Q And the third table on Exhibit 11, the  
18 detainers prepared by Officer Donaghy, I think  
19 you explained that he was moved to a different  
20 program after 2009.

21 A Subsequently moved again also. Yeah.  
22 He's not in the same --

23 Q Where is he now?

24 A He's on fugitive operations now.

25 Q That shift in program would explain the

1 JOHN DRANE

2 difference between the 2009 --

3 A Correct.

4 Q -- detainers issued and 2010?

5 A Yes.

6 Q And is that -- is it common that there  
7 would be -- here he has 31 detainers subsequently  
8 canceled out of 77. Is that sort of a normal,  
9 common statistic, breakdown of canceled  
10 detainers?

11 A Yes. If you look at the numbers up top  
12 for the whole Boston office, 2,227, 1,024. Just  
13 looking at the numbers quick --

14 Q It's about half.

15 A -- percentage-wise, it's, you know,  
16 40-something percent. It's probably the same  
17 with them. So it's about the same.

18 MS. O'GRADY: Okay. I'm going to talk  
19 about -- this will be Exhibit 12.

20 (Morales v. Chadbourne:

21 Production No. 11 FY2009-FY2014 YTD ERO

22 Detainers marked Exhibit 12.)

23 BY MS. O'GRADY:

24 Q So like Exhibit 11, this was prepared  
25 for us during this litigation.

1 JOHN DRANE

2 A Okay.

3 Q And these are the statistics of  
4 detainers prepared, the heading says, for aliens  
5 claiming U.S. citizenship.

6 A Mm-hmm.

7 Q Have you seen these kind of stats  
8 gathered before?

9 A No.

10 Q Where it says here, "Detainers prepared  
11 in the Boston AOR for aliens claiming U.S.  
12 citizenship," what would you assume "aliens  
13 claiming U.S. citizenship" would mean in this  
14 context?

15 A Like we talked before, like if it's  
16 somebody that is going to be more of a long-term  
17 case where they come to us and say, I'm a U.S.  
18 citizen, and we say, No, we don't think you are,  
19 I would say that's what this would be a snapshot  
20 of.

21 Q So this wouldn't include people like  
22 Ms. Morales, who said they were a U.S. citizen,  
23 and then it was confirmed that they were?

24 A Correct.

25 Q So, to your knowledge, are statistics

1 JOHN DRANE

2 kept of detainers lodged against U.S. citizens,  
3 whether or not they made a claim that triggers an  
4 investigation? But just U.S. citizens who have a  
5 detainer issued against them. Are there any  
6 stats that track that?

7 A I don't believe so. No.

8 Q I think you testified before that it  
9 was rare for that to happen.

10 A Yes.

11 Q Do you have a sense of really how often  
12 it happens?

13 A I don't. Like I said, maybe two or  
14 three times a year. Not very often at all.

15 MS. O'GRADY: Okay. You can put that  
16 aside.

17 (Witness complies.)

18 BY MS. O'GRADY:

19 Q Okay. So generally when is a detainer  
20 canceled -- for what reason would a detainer be  
21 canceled?

22 A Because, you know, like I said earlier,  
23 if somebody comes and says, hey, I'm a USC, they  
24 show us documents, we'll cancel a detainer.  
25 If -- it could be any number of things.



1 JOHN DRANE

2 I don't -- off the top of my head, that's  
3 what comes up. It could be because if it's going  
4 to be a longer-term case, the person issued a  
5 detainer and they start doing more research for  
6 it, and they find out there's another reason,  
7 like if he's, like, a legal resident, maybe, and  
8 he was charged with murder, and then it got pled  
9 down to assault and battery. That wouldn't meet  
10 our thresholds anymore, so we would cancel a  
11 detainer.

12 Q Okay. And one of the examples -- I  
13 think you said this, just to be clear -- is if a  
14 person turned out to be a U.S. citizen, the  
15 detainer would be canceled?

16 A Correct.

17 Q So every time a person -- after the  
18 detainer is issued, the person comes then to ICE  
19 and --

20 A Not right away.

21 Q Right.

22 A After -- it could be one day. It could  
23 be 20 years.

24 Q At that point then, when they come to  
25 ICE, and they're released, is the detainer

1 JOHN DRANE

2 canceled at that point if that was all that was  
3 holding them?

4 A It should be.

5 Q And is there an instance where it  
6 wouldn't be?

7 A Maybe. I don't know.

8 Q Can you think of a reason it might not  
9 be?

10 A He may have forgot.

11 Q Does that happen often?

12 A I don't know. It could; it could not.  
13 I don't know.

14 Q Did you ever, as SDDO, check in on an  
15 agent to make sure that the detainer was  
16 canceled, if it was appropriate to be canceled?

17 A I have not.

18 Q Is a detainer supposed to be -- is it  
19 policy that a detainer is canceled immediately  
20 after release occurs?

21 A I don't know the answer to that. I  
22 don't know.

23 Q In your office, what do you generally  
24 tell agents to do or --

25 A Generally tell them to lift the

1 JOHN DRANE

2 detainer. Now, lifting a detainer, if you look  
3 on -- can we go back to the detainer real quick?

4 Q Sure.

5 A Lifting and canceling can be two  
6 different things.

7 MR. CHURCHILL: Just for the record,  
8 make sure you specify what exhibit you're looking  
9 at.

10 MS. O'GRADY: It's Exhibit 2.

11 A Two. If you look on the bottom, it's  
12 "please cancel this detainer previously placed  
13 on" blah, blah, blah. So if we have somebody  
14 over there, we check this box off and fax it back  
15 to them. Generally, they fax it back to us and  
16 let us know it was canceled. You can do that and  
17 cancel a detainer. They're supposed to go back  
18 in.

19 If you look at the way these are generated,  
20 they're generated in NFORCE/Eagle now. They're  
21 supposed to go back in and do some work on it to  
22 cancel it.

23 But as far as if they lift the detainer,  
24 cancel the detainer, whatever word you want to  
25 use, at the facility, they'll check off this box,

1 JOHN DRANE

2 send it over to them and say -- so the facility  
3 knows that we're canceling the detainer.

4 Q Would that happen -- the person  
5 wouldn't still -- would the person still be held  
6 in that facility?

7 A It could be.

8 Q You cancel it by faxing if the person  
9 is still there?

10 A Yeah. Like I said, if it's a legal  
11 resident and they were charged with murder but  
12 now it's pled down to assault and battery, we'd  
13 say we don't need a detainer anymore.

14 They track the long-term cases so they know  
15 what is going on with them. They watch the court  
16 dates and everything. So we'd send these over  
17 there, we don't want this guy anymore, so we'll  
18 cancel the detainer.

19 MS. O'GRADY: Let's look at Exhibit 13.

20 (Immigration Detainer - Notice  
21 of Action marked Exhibit 13.)

22 MS. O'GRADY: It's a canceled detainer  
23 so we can look at one while we talk about it.

24 BY MS. O'GRADY:

25 Q Have you seen this before?

1 JOHN DRANE

2 A I believe I've seen it in the -- yes,  
3 in the prep.

4 Q Okay.

5 MR. CHURCHILL: Actually, I have to say  
6 I didn't show you this document in prep. So...

7 THE WITNESS: All right. Maybe Max  
8 showed it to me. I think I've seen it.

9 Q Okay. Looking down at the bottom, the  
10 box next to "Please cancel the detainer  
11 previously placed by this office" is checked.

12 A Okay.

13 Q That is what you were just talking  
14 about. You'd check that box, and that's how you  
15 would cancel it?

16 A Yes. It looks like he wrote on top or  
17 somebody wrote on top, "cancel." I don't know  
18 what DAC means. That's the date, the day after.

19 Q What would happen to this -- one  
20 moment. On this document, it actually says  
21 October 19, 2009.

22 A Yeah.

23 Q Is that the date of the cancelation?

24 A It says here it was canceled on 5/5.  
25 This may be when they actually went in and

1 JOHN DRANE

2 canceled it. I don't know. I don't know why  
3 it's like this.

4 It looks like it was faxed over. I can't  
5 really read the date. Does that say '09 there on  
6 the end? It's hard to tell.

7 Q It's hard to tell.

8 A I don't know.

9 Q But it would be your expectation that a  
10 detainer would be canceled when the person is  
11 released from custody?

12 A Yes.

13 Q So the file number up here of  
14 October 19, 2009, if this were -- if that's the  
15 date of cancelation --

16 A Yeah. That may be the date he actually  
17 went into the system and canceled it.

18 Q Why would there be such a lag time?

19 A I don't know. That's what I'm looking  
20 at now. I'm not really sure. I don't know.

21 Q Who decides whether a detainer should  
22 be canceled?

23 A The officer that placed them.

24 Q So --

25 A Or an officer that takes over the case.

1 JOHN DRANE

2 Q And so typically it would be the person  
3 who issued -- the agent who issues the detainer  
4 would be the agent to cancel it?

5 A Yes. Or somebody that is taking over  
6 the case to work on it. I don't know -- like I  
7 said, I don't know what this DAC acronym -- I  
8 don't know what that is. It says 5/5. So I  
9 don't know.

10 Q After cancelation, is an agent expected  
11 to change any records to reflect the cancelation?

12 A No. It's usually if they go in and  
13 cancel it, it's just in the system as canceled.  
14 It's not a --

15 Q Is it in the NFORCE system as canceled?

16 A I'm not 100 percent sure about that. I  
17 don't know.

18 Q Would you expect that agents would  
19 cancel it in NFORCE?

20 A Yeah. I just think that it's more of  
21 cancel it while they're still in custody. I  
22 don't know -- that's why I don't understand why,  
23 if it was in October that he would send over a  
24 canceled detainer, if she got out of custody on  
25 the 5th.

1 JOHN DRANE

2 I don't -- I don't know why. I have no  
3 idea, unless she was encountered again, and they  
4 canceled the detainer because they realized. I  
5 have no idea.

6 Q Would you expect that -- would you  
7 expect that documentation that a detainer was  
8 canceled be kept somewhere?

9 A Not necessarily.

10 Q Why wouldn't it be?

11 A Just because it doesn't really need to  
12 be. It doesn't really matter one way or another  
13 if it's canceled or not canceled.

14 Q What if a person was encountered by ICE  
15 subsequently, but the records showed they had  
16 been detained but it hadn't been canceled?

17 A That's why I was wondering by the  
18 October date if she was encountered again because  
19 somebody could have logged the detainer and read  
20 the notes and said, oh, no, cancel the detainer.

21 I don't know. I'm speculating. I have no  
22 idea.

23 Q If it comes to light that a person is a  
24 U.S. citizen, had a detainer issued on them,  
25 would you expect that the agent would then try to



1 JOHN DRANE

2 correct the record in NFORCE to show they were a  
3 citizen?

4 A I'm not sure about correcting the  
5 record as much as putting notes in the known  
6 aliases record.

7 Q So that would tell them, look up this  
8 name instead, if she's ever encountered again?

9 A Yeah, because people sometimes, if  
10 they -- if you're encountered by us and you get  
11 an A number, which is, you know, the  
12 all-important A number for us, and you get  
13 encountered again, a lot of times at the border,  
14 they'll ask, Have you ever been arrested? This  
15 goes back to this time period, where now today  
16 they have a lot of fingerprint matches and  
17 everything else.

18 Back in the day, they would go home and then  
19 come back. They'd come back. Have you ever been  
20 encountered before? No. They'd bring them over  
21 and start that whole process again.

22 Somewhere down the line, you realize these  
23 two people are the same thing. They would merge  
24 those A numbers together and consolidate them.  
25 And the original one would be the main number,

1 JOHN DRANE

2 and the other one -- so you could have this  
3 person have two or three A numbers that haven't  
4 been consolidated yet.

5 So you try and go in, if you know there's  
6 two or three alias, one alias, whatever, you try  
7 to go into each record until they're consolidated  
8 to put, you know, their A number in there under  
9 this name, whatever, naturalized whatever date.

10 Q So you would expect an agent to do that  
11 once the --

12 A Yes.

13 Q And did you ever talk to agents about  
14 doing that?

15 A I may have. It may have been a  
16 question that -- I don't remember any specific  
17 example of it. But it's a known -- it happens.

18 Q And you would express to them that it  
19 would be important to change the record?

20 A Yes. Absolutely. Yeah, definitely.

21 Q Just to clarify, the linking of  
22 those -- the records of different aliases, would  
23 you expect agents to do that in NFORCE, in CIS  
24 and NCIC?

25 A If it's done -- when two files are

1 JOHN DRANE

2 consolidated, if it's done by CIS, and they merge  
3 the files, we can link -- if you look on here,  
4 the subject ID numbers and event numbers, we can  
5 sometimes link, like, a subject ID number so  
6 that if a person is picked up, it will pull up  
7 other event numbers and other subject ID numbers  
8 so that we can link them together.

9 Q Okay. How often does that -- does an  
10 agent have to do that kind of linking to correct  
11 the record?

12 A It varies. But it does happen. It's  
13 not -- it happens quite a bit.

14 Q Yeah.

15 A People have different event numbers,  
16 especially. Maybe not so many times A numbers,  
17 but they have event numbers. Because if they  
18 get -- if they get stopped at the border, they  
19 get interviewed, they do a sheet on them. Not  
20 this sheet, but some kind of encounter sheet and  
21 don't issue an A number. They just send them  
22 back across the border, and they come back in the  
23 next day or the next week, whatever. You know,  
24 they have that person again. They can link those  
25 two together until they're going to actually

1 JOHN DRANE

2 process them and write them up.

3 Q Is the same process -- what happens if  
4 there's just like a straight-up mistake in a  
5 file, like a typo?

6 A I'm sorry. If there's a typo, what?

7 Q Say there was a typo in CIS --

8 A Okay.

9 Q -- and that resulted in a person's  
10 record -- you can't locate a record. So you  
11 think they have no record, but they do.

12 A Right.

13 Q You were to discover there was that  
14 kind of typo. Is it the same type of process to  
15 correct the record?

16 A Yeah. We'd have to get in touch with  
17 CIS, because some records we can't change  
18 ourselves.

19 Q Right.

20 A So we have to get in touch with CIS.  
21 It happens because, you know, we'll pick somebody  
22 up, and their brother stole their identity, so we  
23 think we have this guy, but he's the good guy  
24 because his brother stole all his information.  
25 So we have to figure all that out and take it

1 JOHN DRANE

2 over to CIS for them to separate and take out of  
3 the system, this guy is the one we want versus  
4 this guy.

5 Q Those kind of communications with CIS  
6 to correct a record, how often does that happen?

7 A Again --

8 Q A couple times a year?

9 A Maybe once a year. I've seen that  
10 situation I described maybe two or three times in  
11 18 years.

12 Q Sure. When that happens, as SDDO, you  
13 would be involved in that?

14 A Yeah. They would come up and let me  
15 know, hey, this is what is going on. What are we  
16 going to do? Then tell them you have to call so  
17 and so or whoever and get it fixed.

18 Q If a record like that weren't fixed, I  
19 guess kind of what is the danger of that? If a  
20 record isn't corrected --

21 A Well, if it's not corrected, I mean,  
22 they always run the risk of being encountered by  
23 us again.

24 We try to minimize that through, like I was  
25 saying, with the EARM comments, to say that, you

1 JOHN DRANE

2 know, this has happened before. Whether we're in  
3 a process of fixing it, we can't fix it. We're  
4 trying to fix it. But look for this, too.

5 Q So --

6 MR. CHURCHILL: Just for the record, do  
7 you want to spell out that acronym for her.

8 THE WITNESS: EARM. E-A-R-M. It's  
9 Enforcement Alien Removal Module.

10 MR. CHURCHILL: Sorry.

11 BY MS. O'GRADY:

12 Q So, as SDDO, you would expect agents to  
13 take seriously the obligation to correct the  
14 record so a person is not encountered again if  
15 they don't deserve to be?

16 A Yes.

17 Q One of those situations would be if a  
18 person is a citizen and it's not reflected in the  
19 databases?

20 A Yes. But we can't control if somebody  
21 gives us a different name. Do you know what I  
22 mean?

23 Q I do.

24 A It can't be -- yeah, they may be in the  
25 database. But if they give us a totally

1 JOHN DRANE

2 different name, we can't control that.

3 Q When the fact that -- if two names are  
4 actually the same person because a person has  
5 changed their name for marriage, for example --

6 A Right.

7 Q -- would you expect ICE agents then to  
8 work with CIS to correct that record and to link  
9 those two records?

10 A Yes. At a minimum, I would expect  
11 comments in EARM, identifying this person is also  
12 this person. Here is their -- here is their A  
13 number.

14 Q As SDDO, would you do anything to  
15 ensure that that correction happened or those  
16 comments were made?

17 A I would ask them if they -- you know,  
18 hey, make these corrections. And then probably  
19 follow up and say, Did you do it?

20 Q In the case of Morales, did you do  
21 that?

22 A I did not. I don't remember that at  
23 all.

24 Q I'm going to go back and ask a few  
25 questions about the CIS database for a moment.

1 JOHN DRANE

2 Did officers receive, from you or from  
3 anyone else, any training on specifically how to  
4 search CIS?

5 A I believe that we had classes in the  
6 academy about it, and then as part of working.  
7 The systems that we have are old and DOS-based  
8 systems. So they're kind of hard to navigate  
9 sometimes, so you kind of have to ask the more  
10 experienced, hey, how do I do this?

11 Q How do you do that, meaning how do I  
12 run certain searches?

13 A Mm-hmm.

14 Q If I have a bit of information?

15 A Yes.

16 Q There's nothing formal?

17 A Not that I know of.

18 Q Did you ever have meetings about how to  
19 search CIS?

20 A Not that I know of.

21 Q Did you ever discuss how to search CIS  
22 with agents?

23 A I may have. They may have asked me,  
24 and I told them what I do. I don't remember any  
25 specific cases.



1 JOHN DRANE

2 Q And what you do, meaning how you --

3 A How I search for somebody? Sorry.

4 Q Okay. What kinds of questions might  
5 they have about how to search?

6 A What kind of information to put in  
7 there. You know, sometimes a lot of the  
8 Hispanics have a hyphenated last name. Do you  
9 search one name, the other name? Do you  
10 hyphenate the name?

11 Just different variations on how you would  
12 look for some information.

13 Q We talked a little before about who has  
14 records on CIS. Would a person who became a  
15 citizen, other than through the naturalization  
16 process, have a record on CIS? For instance, if  
17 their parents were --

18 A They may not. They may not. If we get  
19 them -- if we get somebody who, again, we run it,  
20 we come back with nothing, we put it in. They  
21 come and we interview them, and they start  
22 telling us certain things. They could have  
23 derived their citizenship through their parents  
24 and not even know. We have had cases where we  
25 tell people, Hey, you're a citizen. Go file your

1 JOHN DRANE

2 paperwork. They don't know. Nobody knew. The  
3 mother didn't tell them. Whatever. So it does  
4 happen.

5 MS. O'GRADY: This is going to be  
6 Exhibit 14.

7 (Memorandum dated 5-4-09 marked  
8 Exhibit 14.)

9 BY MS. O'GRADY:

10 Q Do you recognize this document?

11 A Yes.

12 Q And what is this?

13 A This is what happens when we put --  
14 when we're getting somebody released from the  
15 ACI, this is the document they send us telling us  
16 that the person is ready for us to pick up and,  
17 like, the date.

18 Q So on this fax --

19 MR. WEINTRAUB: To clarify, are you  
20 looking at the front?

21 MS. O'GRADY: Good question.

22 Q Let's look at the back. It's numbered  
23 11, because that has the whole page on it.

24 So this document has the date May 4, 2009.

25 MR. CHURCHILL: Wait a second.

1 JOHN DRANE

2 THE WITNESS: She's looking at the fax  
3 copy.

4 MR. CHURCHILL: Sorry. I'm on the  
5 right page now.

6 MS. O'GRADY: They're pretty much the  
7 same.

8 Q So this fax was received in the office  
9 on May 4, 2009?

10 A Yes.

11 Q And this was typical to receive a fax  
12 like this?

13 A Yes.

14 Q And it says here, "Below is the name of  
15 an inmate who no longer has state charges  
16 pending, and an immigration retainer is the only  
17 document holding this inmate at the Department of  
18 Corrections. Please contact the records unit  
19 with any information that you may have pertaining  
20 to this inmate."

21 Have I read that correctly?

22 A Yes.

23 Q And then below there, the name, it  
24 actually says "Ana Morales."

25 A Yes.

1 JOHN DRANE

2 Q Plaintiff's name is Ada Morales.

3 That's probably just a typo?

4 A Typo.

5 Q That's common?

6 A Yeah.

7 Q So are you familiar with this

8 particular fax about Ms. Morales?

9 A No. I mean, I've seen it.

10 Q Yeah.

11 A But this is a typical format we get.

12 Q Okay. So you said this kind of fax was

13 typical?

14 A Mm-hmm.

15 Q What was the policy of your office to

16 do once receiving this fax? What would an agent

17 do?

18 A The morning we came in, they would --

19 we would send our transport team. I can't

20 remember if we were using Bristol County

21 transport team or my officers to go over.

22 They would go over in the morning and pick

23 up whatever -- this may not be the only fax we

24 got that day. We may have ten. We could have

25 had one.

1 JOHN DRANE

2 Whoever -- however many we have, we'd go  
3 over and pick them up at the intake facility and  
4 bring them to our office to process them.

5 Q You do that right away upon receiving  
6 the fax?

7 A This fax came in at 8:30 at night, but  
8 first thing in the morning, you know, when people  
9 get in, probably around 8:00, 9:00 in the  
10 morning. Not at 6:00 or so.

11 Q But no action would be taken that  
12 night?

13 A There's nobody there at that time.  
14 There's no -- we leave the office at 4:00, 5:00.  
15 We wouldn't even see this until -- the duty guy  
16 would come in the next morning and get the fax  
17 off the fax machine and say, We've got four  
18 pickups, five pickups. However many we had.  
19 One.

20 Q Okay. Did you personally receive these  
21 faxes, ever?

22 A No.

23 Q So it would come to the office  
24 generally and then an agent would pick it up?

25 A Yes. Whoever was duty is responsible

1 JOHN DRANE

2 for getting the faxes in the morning, finding out  
3 how many, because you have to -- if you have five  
4 people, you have to bring five, six chains and  
5 all that stuff.

6 Q If this fax had come in earlier in the  
7 day, would anything be different?

8 A Possibly. I mean, it depends what  
9 time. You know, at 4:30, no. Maybe at 10:00 in  
10 the morning, yes.

11 Q Okay. Let's take your 4:30 example.  
12 If there was an ICE agent in the office at 4:30  
13 and they got this faxing saying the detainer is  
14 the only thing holding the person, they wouldn't  
15 then get the transport team to pick up the person  
16 at 4:30 p.m.?

17 A Probably not. If it was that late,  
18 everybody was gone, so -- I mean, our core hours  
19 are 8:00 to 4:00. They may be working late on  
20 other stuff. They may not check the fax machine.

21 It depends what they're doing. That's why  
22 duty -- it's the duty guy's responsibility when  
23 he comes in in the morning to do all this.

24 When I say 10:00, maybe, because that's  
25 earlier in the day, and the duty guy would check

1 JOHN DRANE

2 it and possibly could have went over.

3 Q Is it definite that someone would have  
4 gone over at 10:00 a.m.?

5 MR. CHURCHILL: I'm going to just  
6 object as speculative and irrelevant. But you  
7 can go ahead and answer.

8 A Nothing is definite. It depends. It  
9 depends if we had people to go get them. If the  
10 transport team was busy. I don't know.

11 Q You wouldn't be surprised if this fax  
12 was received at 10:00 and transport team didn't  
13 go until the next day, for example?

14 A I throw 10:00 out -- I mean, earlier in  
15 the day, yes, probably we'd just go pick them up.  
16 We don't -- you know, if it's early enough, yeah.  
17 We go get them if they're ready. There's no  
18 reason not to.

19 MS. O'GRADY: Can we take a short,  
20 five-minute break and then come back? I think I  
21 have very little left to go.

22 MR. WEINTRAUB: Sure.

23 (A recess was taken.)

24 BY MS. O'GRADY:

25 Q Mr. Drane, I have a few clarifying

1 JOHN DRANE

2 questions, then I think that will be it for me.

3 Going back to Exhibit 13, which is the

4 detainer cancelation --

5 A Okay.

6 Q -- I know we had some confusion about

7 the notation on the top. Could that have

8 possibly been written by ACI, who received the

9 fax?

10 A It very well could have been. Yes.

11 Q And then the DACD notation, would it

12 make sense if that meant discharged at court on

13 5/5/09?

14 A Oh, it could. Yeah. Maybe. I just --

15 it doesn't look familiar to me. Maybe it is some

16 of their notes.

17 Q And then I have a clarifying question

18 about Exhibit 11, which is -- I think that's it

19 there, the stat sheet.

20 A Okay.

21 Q You know what, then I guess --

22 A Twelve, too?

23 Q No. Just 11. Sorry about that.

24 And that -- subpart C on each of the tables,

25 "subsequently booked into ICE custody" --



1 JOHN DRANE

2 A Mm-hmm.

3 Q -- what does that mean?

4 MR. CHURCHILL: I'm going to object  
5 based on lack of foundation. I don't think he  
6 prepared this. Go ahead and answer, if you know.

7 Q If you know.

8 A I don't know. I mean, I'm assuming  
9 that it means that it's -- the detainer was  
10 issued and then we actually put him into custody.  
11 We took them into custody for whatever reason.

12 Q So that would be after the detainer was  
13 issued and then when they came -- then they would  
14 be in ICE custody after the issuance?

15 A Yes. We don't hold everybody we  
16 charge.

17 Q The canceled detainers would be  
18 detainers on people who were then not booked into  
19 custody. The detainer was canceled before then?

20 MR. CHURCHILL: Same objection to lack  
21 of foundation, but go ahead if you can answer the  
22 question.

23 A Yeah. I assume so. I don't know.

24 MS. O'GRADY: Thank you. Just one  
25 moment.

1 JOHN DRANE

2 Q Sorry. Back on this, we had discussed  
3 previously when they come back into the office  
4 and they're interviewed and sometimes verified  
5 and they're released right away --

6 A Correct.

7 Q -- would that be considered being  
8 booked into ICE custody?

9 A No.

10 Q And it doesn't look like those -- it  
11 doesn't look like that is reflected in these  
12 statistics, then, whether or not a person was  
13 brought into custody to be interviewed and then  
14 subsequently released?

15 MR. CHURCHILL: I'm going to object  
16 again based on lack of foundation, lack of  
17 personal knowledge. But go ahead and answer.

18 A Yeah. We don't keep stats on that.

19 MS. O'GRADY: Thank you.

20 THE WITNESS: Yup.

21 MS. O'GRADY: I am done for now.

22 Anybody want to ask questions?

23 CROSS-EXAMINATION

24 BY MR. SHOLES:

25 Q Mr. Drane, we met earlier. My name is

1 JOHN DRANE

2 Adam Sholes. I represent the director of the  
3 Department of Corrections in this case. I'm  
4 going to ask you a few questions.

5 You testified earlier that in May of 2009,  
6 you would expect a law enforcement agency to  
7 honor detainees?

8 A Yes.

9 Q In your view, is the Rhode Island  
10 Department of Corrections considered a law  
11 enforcement agency?

12 A Yes.

13 Q So you'd expect that RI DOC would honor  
14 the detainer in May of 2009?

15 A Yes.

16 Q Did you expect RI DOC to take any steps  
17 if someone claimed to be a U.S. citizen?

18 A No.

19 Q Have you had any conversations with  
20 Director Wall?

21 A No.

22 Q Have you ever met him?

23 A I may have met him once.

24 Q Have you ever had any conversations  
25 with Director Wall about immigration detainees?

1 JOHN DRANE

2 A No.

3 Q How about any RI DOC staff? Any  
4 conversations with them about immigration  
5 detainers?

6 A No.

7 Q Was it within Agent Donaghy's scope of  
8 his employment to issue detainers?

9 A Yes.

10 Q So would you agree that detainers  
11 ordered by him were valid, in your eyes?

12 A Yes.

13 Q If you look at Exhibit 2, which is the  
14 detainer --

15 A Okay.

16 Q -- I think you already testified on the  
17 bottom it says Form I-247.

18 A Correct.

19 Q Is this a standard form used throughout  
20 the United States by ICE?

21 A Yes.

22 Q So it was not just a form used in -- by  
23 the Rhode Island suboffice?

24 A Oh, no. Not at all.

25 Q You testified that you've been working

1 JOHN DRANE

2 at ICE since 1996. Is that correct?

3 A Yes.

4 Q And you've been an SDDO since 2008?

5 A Correct.

6 Q And based on all of your experience at  
7 working at ICE, is there anything on its face  
8 with Exhibit 2 that you believe makes it  
9 irregular or odd?

10 MR. CHURCHILL: Objection. Vague. But  
11 you can answer, if you'd like.

12 A No. It looks like a normal detainer to  
13 me.

14 Q Is there anything on Exhibit 2 that you  
15 believe makes it invalid?

16 A No.

17 MR. CHURCHILL: Objection. I don't  
18 know what the term "invalid" means, but you can  
19 answer, if you like, which you did.

20 A No.

21 MR. SHOLES: I have no further  
22 questions. Thank you.

23 CROSS-EXAMINATION

24 BY MR. GOLDSMITH:

25 Q I'm Aaron Goldsmith. I represent Agent

1 JOHN DRANE

2 Donaghy. Did you ever tell Ted Donaghy he should  
3 use a Social Security number in conducting  
4 searches of the CIS database?

5 A No.

6 MR. GOLDSMITH: No further questions.

7 MR. WEINTRAUB: Max Weintraub,  
8 representing former FOD Chadbourne, SEO Riccio,  
9 and the United States.

10 CROSS-EXAMINATION

11 BY MR. WEINTRAUB:

12 Q Would you ever have instructed an ICE  
13 agent to use Social Security numbers as the basis  
14 of a search?

15 A No, I wouldn't.

16 Q When you say you worked at ICE starting  
17 in 1996, just to clarify, you mean ICE or its  
18 predecessors, correct?

19 A Correct. When I started, it was INS.

20 Q I just have a few questions. You had  
21 said that you had never disciplined Agent Donaghy  
22 for misissuing a detainer. Did you ever  
23 discipline anyone for misissuing a detainer or  
24 issuing one when he should not have otherwise  
25 have?

1 JOHN DRANE

2 A No, I have not.

3 Q We talked a great deal about A numbers  
4 and A files. I just want to clarify what you  
5 think it means if someone hasn't got an A number.

6 A To us, it means if somebody doesn't  
7 have an A number, they're -- the possibility that  
8 they are illegally in the United States, that  
9 they're here without -- we call it EWI, entered  
10 without inspection.

11 Q That is specifically someone who was  
12 born -- who admits to being born in another  
13 country?

14 A Correct. Admit to being born in  
15 another country, and we can't -- and they provide  
16 us their biographical information. We can't find  
17 them in any of our systems. We take that as  
18 they're here entered without inspection. They've  
19 never been encountered by Immigration before.

20 Q You testified that you believe it was  
21 ICE policy and that all field offices had the  
22 policy that reasonable suspicion is all that's  
23 necessary to issue a detainer, but that they  
24 would need probable cause to issue the NTA.

25 Where do you believe you learned that that

1 JOHN DRANE

2 was nationwide policy that reasonable suspicion  
3 was all that was necessary?

4 A I don't know. But I would assume that  
5 we learned it in the academy. I don't ever  
6 remember specifically that one piece.

7 Q That's fine. And when you were talking  
8 about the procedures that an ICE agent who was  
9 the duty officer would do before issuing the  
10 detainer, you said that they would start by  
11 looking at the commitment report. Is that right?

12 A Correct.

13 Q And I believe you said that they  
14 would -- using that commitment report, they would  
15 go into the ACI system?

16 A Correct.

17 Q You said there was a terminal that you  
18 thought they used back then.

19 A We had a terminal in our office that we  
20 used.

21 Q That got directly into the ACI  
22 database?

23 A Yes.

24 Q The INFACITS system, I think it's been  
25 called elsewhere?



1 JOHN DRANE

2 A Yes. I think -- it was a direct line  
3 to the ACI.

4 Q And in that system, is there an  
5 indication of where the individual who shows up  
6 on a commitment report was born?

7 A Yes. There's a box that says -- I  
8 don't know exactly what it says, but nationality,  
9 I think, or where were you born.

10 Q Is there a box -- is there an  
11 indication as to whether an individual is a U.S.  
12 citizen or not?

13 A Yes. There's a box that says yes or no  
14 or it's left blank.

15 Q And if it says -- if the nativity or  
16 nationality or place born is not in the U.S., and  
17 the box indicating citizenship says "yes," would  
18 your -- would an ICE agent be expected to issue a  
19 detainer in that case?

20 A Probably not. They would take that  
21 information to not issue the detainer if that box  
22 was saying "yes."

23 MR. WEINTRAUB: Thanks. That's all I  
24 have.

25 MS. O'GRADY: I have one further

1 JOHN DRANE

2 question.

3 REDIRECT EXAMINATION

4 BY MS. O'GRADY:

5 Q If the box listing where the person was  
6 born said another country, not the United States,  
7 and that box was blank, what would you expect an  
8 agent to do?

9 A Further investigation to see what -- if  
10 we could find out any more information.

11 MS. O'GRADY: Okay. Thank you.

12 MR. CHURCHILL: Could I have five  
13 minutes so I don't duplicate any questions and  
14 just go through my notes real quick to see if I  
15 have anything? I may have not. I've been trying  
16 to pay attention.

17 MR. WEINTRAUB: Do you want us with  
18 you?

19 MR. CHURCHILL: Yeah. You can come  
20 with me, if you like. I just want to make sure I  
21 hit everything.

22 (A recess was taken.)

23 MR. CHURCHILL: I do have a few brief  
24 questions.

25 CROSS-EXAMINATION

1 JOHN DRANE

2 BY MR. CHURCHILL:

3 Q It's primarily just trying to -- so the  
4 record is clear with respect to the dates that  
5 the CAP program, the Criminal Alien Program,  
6 started and the dates that you were involved with  
7 it.

8 A Okay.

9 Q So could you -- when did the Rhode  
10 Island field office begin, I guess, the  
11 criminal -- what is known as the Criminal Alien  
12 Program?

13 A Sometime in 2007. I'm not exactly sure  
14 the date. I believe it was in July of '07.

15 Q And what part or I guess subpart,  
16 division, whatever the proper term is, what  
17 division of the Rhode Island field office was  
18 responsible for the Criminal Alien Program at  
19 that time?

20 A It was the IEAs that were assigned to  
21 the office, immigration enforcement agents.  
22 There was four.

23 We hadn't split up our unit yet, but those  
24 four were responsible for CAP.

25 Q Prior to the 2007 date, had the process

1 JOHN DRANE

2 of issuing detainers on people who were detained  
3 in jails -- was that handled in the Rhode Island  
4 field office?

5 A Yes. By investigations.

6 Q Could you explain what is the  
7 difference between investigations handling that  
8 task and your office handling it or when -- in  
9 2007?

10 A Yeah. We're two separate -- I'm not  
11 going to say agencies, but within Immigration,  
12 there was investigations and there's ERO. It's  
13 kind of like the same as CIS. It's just a whole  
14 different group of people that aren't responsible  
15 for what we're responsible for.

16 Q So who -- let's back up, as far as the  
17 timeline. Prior -- when did you begin working in  
18 the Rhode Island field office?

19 A I worked in Rhode Island from '98 to  
20 2002.

21 Q And after that?

22 A Then I went up -- came to Boston. Then  
23 I transferred back to Rhode Island in 2007, but I  
24 don't exactly remember the date.

25 Q So between the 2002-2007 period, were

1 JOHN DRANE

2 you in the Boston office?

3 A I was up here. Yes.

4 Q When you transferred back to Rhode  
5 Island in 2007, was that the time that you took  
6 over the CAP program in the Rhode Island office?

7 A No. I didn't take it over until 2008,  
8 when I got promoted to a supervisor.

9 Q All right. Who was in charge of the --  
10 or I guess who held your position in the CAP  
11 program prior to you taking that position?

12 A Greg Mercurio was the supervisor  
13 from -- since before that, to 2008.

14 Q When you took that -- your position  
15 in -- do you remember the date, precisely?

16 A July 21st, 2008, I believe, is when I  
17 EOD'd.

18 Q So on July 2008, when you took this  
19 position, what position did Greg -- or  
20 Mr. Mercurio take?

21 A He became the AFOD. He was my  
22 first-line, so their second-line supervisor. It  
23 was a newly created position.

24 Q Who was your supervisor with regard to  
25 the CAP program?

1 JOHN DRANE

2 A Greg Mercurio is my supervisor still.

3 MR. CHURCHILL: That's it. That's all

4 I have.

5 MR. WEINTRAUB: If you don't mind.

6 RECROSS-EXAMINATION

7 BY MR. WEINTRAUB:

8 Q Do you know who selected you for the  
9 position?

10 A As a supervisor?

11 Q Yes. To run the CAP program.

12 A I believe Mercurio selected me and then  
13 it went up to Chadbourne and Martin for their  
14 approval.

15 Q Martin and Chadbourne?

16 A Yes.

17 MR. WEINTRAUB: Thanks.

18 MS. O'GRADY: Okay. All set.

19 (Deposition concluded at 1:16 p.m.)

20

21

22

23

24

25

1

JOHN DRANE

2

E R R A T A S H E E T

3

I, JOHN DRANE, do hereby certify that I

4

have read the foregoing transcript of my

5

testimony, and further certify that it is a true

6

and accurate record of my testimony (with the

7

exception of the corrections listed below).

8

PAGE LINE

CORRECTION

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Signed under the pains and penalties this \_\_\_\_\_

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day of \_\_\_\_\_, 2015.

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JOHN DRANE

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JOHN DRANE

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

I, Janet M. Sambataro, a Registered Merit Reporter and a Notary Public within and for the Commonwealth of Massachusetts do hereby certify:

THAT JOHN DRANE, the witness whose testimony is hereinbefore set forth, was duly sworn by me and that such testimony is a true and accurate record of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

I further certify that I am not related to any parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of May, 2015.

\_\_\_\_\_  
JANET M. SAMBATARO  
Notary Public

My Commission Expires:  
July 16, 2021



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**J**

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