



U.S. Immigration and Customs Enforcement

STATEMENT OF JANICE AYALA ASSISTANT DIRECTOR

OFFICE OF INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT DEPARTMENT OF
HOMELAND SECURITY REGARDING A HEARING ON “KEEPING FOREIGN
CORRUPTION OUT OF THE UNITED STATES: FOUR CASE HISTORIES”
BEFORE THE UNITED STATES SENATE COMMITTEE ON HOMELAND
SECURITY AND GOVERNMENTAL AFFAIRS PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS

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Chairman Levin, Ranking Member Coburn, and distinguished Members of the

Subcommittee:

On behalf of Secretary Napolitano and Assistant Secretary Morton, thank you for the opportunity to testify today on the efforts of U.S. Immigration and Customs Enforcement (ICE) to pursue corrupt foreign officials who plunder state coffers for personal gain, and then attempt to place those funds in the U.S. financial system. I commend the Subcommittee for its recently released staff report detailing many years of hard work in holding corrupt foreign officials accountable by denying them the enjoyment of their illgotten gains. I assure you that ICE shares this goal.

ICE FINANCIAL INVESTIGATIONS

Before discussing the specifics of ICE's antikleptocracy initiatives, I would like to discuss our unique capabilities with respect to financial investigations. ICE has the most expansive investigative authority and largest force of investigators in the Department of Homeland Security (DHS), and is the second largest investigative agency in the federal government. We protect national security and uphold public safety by targeting transnational criminal networks and terrorist organizations that seek to exploit our nation's immigration and customs laws. The financial investigative authorities and capabilities of ICE enable us to identify, dismantle, and disrupt the financial criminal enterprises that threaten our nation's economy and security.

Corruption undermines the rule of law, threatens the principles of democracy, and impedes economic development. It poses a significant threat to government infrastructure and erodes the trust of the public, creating an unstable environment where criminal and terrorist organizations flourish. Foreign corruption adversely affects the United States; corrupt actions hamper U.S. national security interests, foreign assistance goals, and the security of the U.S. against transnational crime and terrorism. Kleptocracy perpetuates the cycle of poverty, instability, and crime that denies the most vulnerable nations and people prosperity.

Combating foreign corruption remains a key U.S. objective, one that ICE has pursued since its inception in 2003. In 1977, Congress established a mechanism for the investigation of foreign bribery by U.S. companies and American citizens by enacting the Foreign Corrupt Practices Act. In 2003, at the G8 Summit in Evian, France, the U.S. was involved in the inception of the “No Safe Haven” policy for kleptocrats and their assets, aimed specifically at senior corrupt public officials and those who corrupt them. The U.S. strongly supports and participates in many global instruments that target issues such as corruption and kleptocracy, including the AntiBribery Convention of the Organization for Economic Cooperation and Development, as well as other regional treaties and initiatives such as the InterAmerican Convention and The Council of Europe’s Group of States Against Corruption.

The most comprehensive is the near global United Nations Convention against Corruption, which came into force in 2005; its comprehensive provisions cover prevention, criminalization and law enforcement, international legal cooperation, and asset recovery. Furthermore, the U.S. cooperates with foreign authorities through investigative relationships and continues to support the international effort to combat corruption.

ICE'S RESPONSE TO KLEPTOCRACY

ICE works closely with our domestic and foreign law enforcement partners in the fight against kleptocracy. ICE has more than 60 offices in 44 countries and provides investigative support to our foreign law enforcement counterparts in corruption investigations involving senior foreign officials, their family members, and close associates – often referred to as “politically exposed persons” or “PEPs”. ICE and the State Department’s Bureau of International Narcotics and Law Enforcement Affairs work cooperatively under Presidential Proclamation 7750 to deny entry to corrupt seniorlevel public officials and those who corrupt them. Further, ICE participates in the overall U.S. Government response to the issue of largescale corruption by foreign public officials as a member of an ad hoc antikleptocracy working group, which was initiated by the National Security Council. ICE plays an integral role in the development of the government-wide antikleptocracy strategy, as we are uniquely positioned to address the issue through our expertise in international money laundering, customs and immigration law, and our extensive international investigative assets. Our authority allows us to exploit a wide array of investigative leads related to kleptocracy.

ICE appreciates the interest of the Subcommittee in our preeminent kleptocracy investigations unit, the Foreign Corruption Investigations Group, which was established in Miami in 2003. Miami was chosen as the group’s location due to the amount of requests received by ICE’s Miami Special Agent in Charge Office from Central and South American and Caribbean governments, seeking ICE assistance in developing evidence against, and locating the Investigations Group was created to target corrupt foreign public officials who have utilized the United States’ financial institutions and other investments to facilitate criminal acts involving the laundering of proceeds emanating from foreign public corruption, bribery, or embezzlement. We anticipate that developing nations, often the most susceptible to the threat of corrupt officials, will continue to seek the expertise of ICE in the fight against corruption. We stand willing to assist our foreign law enforcement partners in this worthy endeavor.

To further highlight the functions and accomplishments of this group, I would like to discuss some significant recent successes.

Pursuant to a mutual legal assistance request from Romania, the ICE Foreign Corruption Investigations Group, in coordination with Romanian authorities, arrested the former Director of Romania's National Railroad, also Romania's number one fugitive at the time, who was accused of stealing \$110 million in government funds while in office. Throughout the course of the investigation, we were able to locate numerous properties, bank accounts, and several corporations associated with the former director, who is currently pending extradition to Romania on charges of theft and misappropriation of government funds.

"Operation Persistence," an investigation conducted by the Foreign Corruption Investigations Group, exemplifies the versatility of ICE expertise that is brought to bear in foreign corruption investigations. Operation Persistence began as a narcotics investigation that utilized an undercover vessel to transport 300 kilograms of cocaine from Colombia to Miami. As a result, over 20 Colombian nationals were indicted, extradited from Colombia, and convicted. The subsequent investigation uncovered evidence of corruption by a Colombian. Currently, this individual is incarcerated in Colombia pending extradition to the United States.

In addition to the Foreign Corruption Investigations Group, ICE's foreign Attaché Offices and domestic Special Agent in Charge Offices conduct foreign corruption investigations as well. When practical, these investigations are worked jointly with representatives of the victimized foreign government. The objective is to prevent foreign-derived, ill-gotten gains from entering the U.S. financial system, to seize identified assets in the U.S., and to repatriate funds to victimized governments. ICE is the only U.S. law enforcement agency with an investigative group dedicated to combating kleptocracy. Due to the sensitivity of these investigations, we coordinate our efforts with the Department of State, the Department of Justice, and other federal law enforcement and other agencies.

As a result of our antimoney laundering efforts and investigative initiatives, ICE continues to seize funds and other assets in the United States that represent proceeds of foreign corruption. Since the inception of the Foreign Corruption Investigations Group, ICE has initiated 182 investigations, made 80 criminal arrests, secured 148 indictments, and seized over \$131 million. As part of our layered approach to combating foreign corruption, we also rely on certain in-house expertise, including our Asset Identification and Removal Groups that open corresponding investigations to locate and seize proceeds of foreign corruption, and our Trade Transparency Unit that aggressively investigates corrupt foreign officials and their associates who are involved in trade-based money laundering, as well as other targets.

APPLICATION OF KEY LEGAL AUTHORITIES

ICE's aggressive approach to kleptocracy has been facilitated by the implementation of certain antimoney laundering provisions of the USA PATRIOT Act. Section 315 of the USA PATRIOT Act amended 18 U.S.C. § 1956, and allows for the inclusion of foreign corruption offenses as predicate offenses to money laundering crimes. As a result, ICE has been empowered to assist foreign governments with analyzing financial records of PEPs who may have engaged in public corruption and laundered their illicit gains through U.S. financial institutions. Whenever possible, ICE seeks prosecution of these corrupt officials in the United States.

Effective forfeiture legislation is also critical to ICE's efforts to recover the proceeds of foreign official corruption and to protect the U.S. financial system from becoming a safe haven for such criminal proceeds. Indeed, official immunities or the influence of corruption officials and their associates can make successful prosecution of corruption offenses in the victim country can make prosecution difficult or impossible. However, where the United States is able to forfeit and repatriate the proceeds of foreign official corruption, it sends a strong signal that the United States will stand with the people of the victim state and refuse to harbor corruption proceeds.

U.S. civil forfeiture legislation – as well as criminal forfeiture where prosecution is possible – is instrumental in this effort.

Another important tool in the U.S. fight against kleptocracy is the authority provided in the Immigration and Nationality Act (INA), Section 212(f). That section allows the President of the United States to issue a proclamation in order to suspend the entry of any alien or class of aliens believed to be detrimental to the interests of the United States or impose any restrictions deemed to be appropriate. Pursuant to Presidential Proclamation 7750, this farreaching diplomatic and other special visa holders.

Yet another important tool used by ICE in kleptocracy investigations is the query process, as provided under Section 314(a) of the USA PATRIOT Act. The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) regulates this process. Queries under Section 314(a) allows an ICE agent in pursuit of a foreign corruption money laundering investigation to reach more than 45,000 points of contact at more than 22,000 financial institutions to locate accounts and transactions for lead information. FinCEN assures the appropriateness of 314(a) requests by mandating that the investigating agent submit certifying documentation that outlines the credible evidence of terrorist financing or money laundering, delineates the impact of the case, and cites other facts to detail the case's significance. In addition, the agent must certify that, in cases involving money laundering, all traditional means of investigation have been exhausted so as not to overwhelm the financial industry with superfluous or duplicative requests. ICE's partnership with FinCEN is a vital resource in the pursuit of money laundering investigations.

THE WAY FORWARD

ICE recognizes the significance and integral role that industry groups play in establishing and bolstering antimoney laundering guidance and oversight. The private sector represents America's first line of defense against money laundering. Through our Operation Cornerstone initiative, ICE partners with the private sector, along with state and federal agencies, to combat financial and trade crimes by: establishing, implementing, and promoting best practices to deny entry to proceeds of corruption; facilitating sharing of suspicious financial information; and Department of State, ICE provides financial investigations training to foreign governments. These initiatives have proven to be a conduit for foreign governments to communicate leads relating to foreign corruption allegations. These initiatives also serve as a platform for international dialogue aimed at facilitating asset recovery and strengthening international financial system integrity.

One of the challenges in foreign corruption investigations is obtaining sufficient evidence of the predicate criminal conduct to support a prosecution or forfeiture action in the United States. While in many other types of investigations the United States can obtain documentary or testimonial evidence in support of an investigation through bilateral cooperation or mutual legal assistance channels, where corrupt officials or their associates remain in positions of influence in the victim country it is particularly difficult or impossible to obtain timely production of evidence. As a result, even where foreign officials are widely believed to be corrupt and some degree of information is available, the United States may have difficulty forfeiting the proceeds of foreign official corruption due to inadequacy of evidence.

Recently released studies by the Financial Action Task Force (FATF) for Money Laundering and the World Bank have highlighted the global financial community's insufficient scrutiny of asset relationships with PEPs and the need for effective enforcement of corruption involving such persons. The World Bank report entitled "Stolen Asset Recovery: a Good Practices Guide for NonConviction Based Forfeiture" delineates several recommendations made by the World Bank on how to raise international standards to address this issue. ICE concurs with several of their findings and recommendations, but none are more important than conviction.

Although we agree with the World Bank that nonconviction based asset forfeiture should never be a substitute for criminal prosecution, we support the recommendation that nonconviction based asset forfeiture should be a viable alternative when criminal prosecution is impractical absent support from the victimized country. We commend the World Bank's efforts to promote this important legal reform in the international financial community.

ICE continues to work with the FATF and fully concurs with recommendation six of the "40+9 Recommendations," which calls for enhanced due diligence by international financial institutions once they encounter a PEP in the course of business.

Also, ICE acknowledges the Subcommittee's concern about the use of U.S. shell corporations by corrupt PEPs and the related complications in money laundering and kleptocracy investigations. ICE has long recognized the misuse of corporations and limited liability companies (LLCs) formed under state law as a serious threat to the ongoing effort to combat international criminal activities. The lack of corporate transparency has allowed unlawful elements a gateway into the financial system and further veils their illicit activity. The same vulnerability exists when attorneyclient, law office, or shell company accounts are used to hold corruption proceeds and to facilitate transactions for corrupt foreign officials. Investigations can be significantly hampered in cases where criminal targets utilize shell corporations. The difficulty of law enforcement in obtaining true beneficial ownership information impedes investigators' ability to follow criminal proceeds. Furthermore, the 2005 U.S. Money Laundering Threat Assessment, the first government-wide analysis of money laundering in the United States, specified that "legal entities such as shell companies and trusts are used globally for legitimate business purposes, but because of their ability to hide ownership and mask financial details they have become popular tools for money launderers."

The establishment of U.S. shell companies provides criminal organizations and corrupt officials with another possible method for moving their illegal criminal proceeds. Obtaining information on true beneficial corporation owners and LLCs formed under state law, and providing the information to civil or criminal law enforcement upon receipt of a subpoena or summons, would assist DHS in its endeavor to protect the homeland.

CONCLUSION

I would like to thank the Subcommittee for the opportunity to testify today and for your continued support of ICE and our law enforcement mission. ICE will continue to pursue those who exploit their positions of power for personal gain. With that shared goal in mind, we appreciate the interest of the Subcommittee Members and the level of awareness each of you bring to this issue. I would be pleased to answer questions you may have at this time.