

Congress of the United States
House of Representatives
Washington, DC 20515-0305

July 06, 2021

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas,

Your actions to limit U.S. Immigration and Customs Enforcement's (ICE) ability to enforce immigration law are unacceptable and must be reversed. Limiting enforcement of immigration law is an affront to the rule of law and an insult to the American people and the millions of immigrants who have come to our country legally. Additionally, it places everyone at risk because criminal aliens are not being removed.

You were recently quoted in the Washington Post saying, "I really want to elevate all of the other work [ICE] does and also ensure that its civil immigration work is well-focused in the service of the national security and public safety mission."¹ This statement is clearly your opening salvo in your dismantling of immigration enforcement in the interior of the United States. This must not occur.

According to the Department of Homeland Security's (DHS) website "Immigration enforcement is the largest single area of responsibility for ICE."² This statement accurately reflects ICE's core mission, enforcing immigration law in the interior of the United States. ICE is the "exclusive legal representative for the U.S. Government at immigration court hearings"³ and effectuates removal orders issued by immigration judges. ICE is the only agency authorized to carry out these functions. Yet the Biden-Harris administration continues to implement policies that undermine this mission.

On January 20, 2021, acting DHS Secretary Pekoske ordered ICE to "conduct a review of policies and practices concerning immigration enforcement."⁴ That review resulted in ICE releasing "interim civil immigration enforcement and removal priorities" in February that

¹ Nick Miroff and Maria Sacchetti, *Biden administration reins in street-level enforcement by ICE as officials try to refocus agency mission*, Wash. Post (May 25, 2021) https://www.washingtonpost.com/national/ice-street-arrests-immigrants-fall-biden/2021/05/25/58681782-b972-11eb-bb84-6b92dedcd8ed_story.html.

² Department of Homeland Security, Immigration Enforcement, <https://www.dhs.gov/topic/immigration-enforcement-overview>.

³ Office of Management and Budget, Detailed Budget Estimates by Agency, Department of Homeland Security, https://www.whitehouse.gov/wp-content/uploads/2021/05/dhs_fy22.pdf.

⁴ David Pekoske, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, Department of Homeland Security (Jan. 20, 2021), https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf.

significantly limited ICE's ability to enforce immigration law.⁵ Internal emails revealed that ICE leadership predicted the interim guidance would decrease enforcement by 50 percent.⁶

The predicted decrease has occurred. ICE officers arrested only 2,083 aliens in May; this is a nearly 27 percent decrease from April and nearly a 60 percent decrease since January. In April, ICE deported fewer than 3,000 aliens. That is the lowest level in the agency's history and a 20 percent decrease from March. This trend is unacceptable.

On April 27, 2021, you ordered ICE to "place new limits on civil immigration enforcement actions in or near courthouses."⁷ This order must be immediately rescinded. ICE should not be limited in where it can enforce the law. This new directive will prevent ICE from arresting convicted criminals at or near a courthouse and will require ICE officers to track aliens down in American communities, putting both officers and civilians at risk.

At a hearing before the House Appropriations Committee you testified "smart and effective law enforcement is not to be measured quantitatively, it is to be measured qualitatively." That statement is false. Effective law enforcement should be measured quantitatively and qualitatively. The American people expect ICE to enforce the law. ICE should be seeking orders of removal for all aliens in immigration proceedings who are not clearly eligible for relief and removing all aliens with final orders of removal. Failure to do this makes a mockery of our immigration system.

Former Congresswoman Barbara Jordan, who served as the Chair of the U.S. Commission on Immigration Reform in the 1990s, was correct when she testified:

Credibility in immigration policy can be summed up in one sentence: those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave. The top priorities for detention and removal, of course, are criminal aliens. But for the system to be credible, people actually have to be deported at the end of the process.⁸

Your actions preventing ICE from faithfully enforcing the law and removing aliens are causing the entire immigration system to lose credibility. You must support ICE's efforts to enforce the law instead of actively working to reduce immigration enforcement.

⁵ Tae Johnson, *Interim guidance: Civil Immigration Enforcement and Removal Priorities*, U.S. Immigration and Customs Enforcement (Feb. 18, 2021), https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf.

⁶ Adam Shaw, *ICE predicted 50% drop in illegal immigrant arrests under new DHS guidance, email shows*, Fox News (Apr. 28, 2021), <https://www.foxnews.com/politics/ice-50-drop-illegal-immigrant-arrests-new-dhs-guidance-email>.

⁷ Department of Homeland Security, *DHS Announces New Guidance to Limit ICE and CBP Civil Enforcement Actions In or Near Courthouse* (Apr. 27, 2021) <https://www.dhs.gov/news/2021/04/27/dhs-announces-new-guidance-limit-ice-and-cbp-civil-enforcement-actions-or-near>.

⁸ Testimony of Barbara Jordan, Chair, U.S. Commission on Immigration Reform Before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Claims (Feb. 24, 1995).

Please provide answers to the following questions as soon as possible, but no later than Friday, July 16, 2021.

- 1) How many aliens with final orders of removal are on ICE's non-detained docket?
- 2) How many aliens with final orders of removal are on ICE's detained docket?
- 3) How many cases has ICE agreed to dismiss in immigration court due to the interim priorities memo, whether by affirmatively moving to dismiss or agreeing to an alien's motion to dismiss or terminate?
- 4) How many aliens do you anticipate ICE will remove this year?

You must commit to faithfully enforcing our immigration laws, immediately rescind your directions to ICE, and once again allow ICE officers to enforce the law without restrictions. I also request that you provide me with your plan to ensure all aliens with final orders of removal are removed from the country as quickly as possible and all guidance that has been disseminated to ICE Field Offices or Office of the Principal Legal Advisor attorneys regarding implementation of the interim priorities memo.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy Biggs", with a stylized, cursive script.

Andy Biggs
Member of Congress