

Congress of the United States
Washington, DC 20515

July 25, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20508

Dear Secretary Mayorkas,

In an apparent move to further gut United States immigration laws, Immigration and Customs and Enforcement's (ICE) Office of the Principal Legal Advisor (OPLA) moved to dismiss or administratively close 91,938 administrative immigration removal cases pending before Executive Office of Immigration Review (EOIR) in Fiscal Year (FY) 2022. Given your dismal record for immigration enforcement and endless efforts to circumvent the will of Congress, no one should be surprised by this latest revelation.

These dismissals were done in direct accordance with your September 30, 2021, memorandum on "Guidelines for the Enforcement of Civil Immigration Law"¹, wherein you detail the limited groups of aliens who will be subjected to the laws passed by Congress. In their own subsequent guidance, OPLA argues an unprecedented use of prosecutorial discretion will be necessary to carry out your directives. Even *The New York Times* notes that no other Administration has taken a similar action and estimates more than 700,000 cases could be affected².

The entire basis for this memo is the argument that OPLA has limited resources to deal with the massive case backlog that exists. But instead of using those limited resources to appropriately deal with the backlog, OPLA directed attorneys to waste valuable manhours analyzing hundreds of thousands of cases using a lengthy list of aggravating and mitigating factors to determine whether each case is a priority for deportation. In a year, OPLA attorneys analyzed 361,540 cases and dismissed nearly 92,000 cases, while watching the case backlog balloon from 1.44 million to 1.78 million. The Secretary can undoubtedly connect the dots to realize that a massive amount of case dismissals is a component of the incentives this Administration offers illegal aliens daily. You might try enforcing the law and allowing it to serve as a deterrent to illegal entry. Historical precedent exists to support the idea.

The OPLA guidance also attempts to rewrite the overall mission of the Department of Homeland Security (DHS) and redefine the constituency that should receive justice in the enforcement of immigration laws. Absurdly, the memo states that "Sound prioritization of our litigation efforts through the appropriate use of prosecutorial discretion can...advance DHS's mission of administering and enforcing the immigration laws of the United States in an efficient and sensible way that promotes public confidence." The memo moves on with the hypocritical but simultaneous argument that "the government wins when justice is done" but that justice can come in the form of mass dismissals of prosecutions sanctioned under federal law.

¹ Alejandro N. Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law*, DHS (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

² Eileen Sullivan, *ICE Lawyers Directed to Clear Low-Priority Immigration Cases*, *The New York Times* (Feb. 26, 2022), <https://www.nytimes.com/2022/04/04/us/politics/ice-immigration-cases.html>.

Perhaps OPLA attorneys and staff need to review DHS's true mission, "With honor and integrity, we will safeguard the American people, our homeland, and our values."³ While OPLA attorneys represent DHS in court, OPLA's true interest is protecting the American people, the laws of our nation, and our sovereign borders. Justice is not served where lawlessness is rewarded.

You and OPLA leadership can make every argument you want about the latitude and benefits of using prosecutorial discretion, but this directive, coupled with this Administration's dangerous immigration policies, can only lead us to one conclusion – you have found another avenue to circumvent federal immigration law and exploited it to the detriment of the American people.

To help us understand the impact of your guidance on the immigration case backlog and what it means for the American people, please answer the follow questions by August 4, 2023:

1. The ICE FY24 Budget Overview notes that nearly 250,000 cases were completed in FY22. Of those, 40,977 were orders of relief, 108,650 were removal orders, and 17,149 were orders to administratively close proceedings. What was the outcome of the remaining 83,000 cases not described?
2. Of the 91,938 cases OPLA agreed to dismiss or administratively closed in FY22, please clarify how many cases were dismissed and how many were administratively closed.
3. In cases that were dismissed, how many aliens were not subject to removal under current statute?
4. What is the current average length of time cases have been administratively closed?
5. Has the Biden Administration reopened any cases that were previously administratively closed?
6. How many hours were spent reviewing the 361,540 cases?
7. Of those cases, how many more have been flagged for dismissal?
8. How many cases have been reviewed in FY23 for prosecutorial discretion?
9. Of those, how many have been flagged for dismissal?
10. How many of those have already been dismissed?
11. How long does OPLA expect it to take for the full backlog of cases to be reviewed for prosecutorial discretion?
12. Once a case is dismissed, what guidance is given to the alien about their lack of legal status in the United States? Are they directed to USCIS to apply for legal status? If an alien never files for legal status with USCIS, does ICE ever follow up with the alien?

Sincerely,



Andy Biggs
Member of Congress



Michael Cloud
Member of Congress



Matt Gaetz
Member of Congress



Diana Harshbarger
Member of Congress

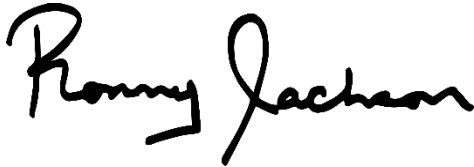
³ *Mission*, DHS (last updated Feb. 2, 2023), <https://www.dhs.gov/mission>.



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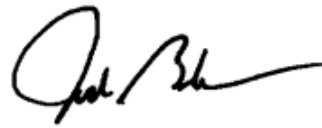
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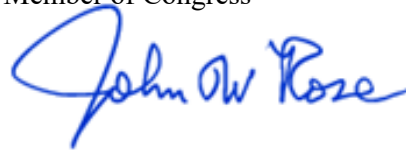
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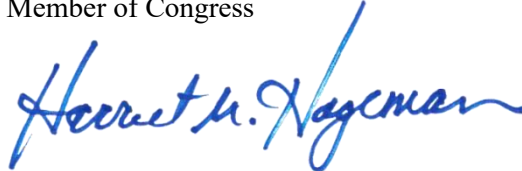
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