



February 18, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, D.C. 20528

Re: Enforcement reform priorities for the next 100 days

Dear Secretary Mayorkas:

Over the past four years, immigrants have borne the brunt of cruel and dehumanizing federal policies enacted under Trump. However, as you know, the dysfunction and gratuitous suffering at the center of the nation's immigration system long pre-date 2017. The system weaponized by Trump was constructed by prior administrations from both political parties, and funded and enabled by laws passed by Congress under both Republican and Democratic leadership. The unprecedented and ever-increasing scale of detentions and deportations have squandered billions of taxpayer dollars and devastated millions of families. These detentions and deportations also [disproportionately harm Black and Brown immigrants](#), reinforcing the racial hierarchies and racial injustice that pervade our society.

Reversing the dysfunction and brutality of the immigration enforcement system must be a central priority for the new Administration. It is time to challenge the misconception that detention and deportation must anchor the enforcement of our nation's immigration laws, and instead build a fair, humane, and functional system that facilitates compliance and respects all people regardless of race, religion, or birthplace. In the long term, enforcement reform will require Congressional action. However, significant progress can be made through executive action - and the needs are urgent.

We Are Home - a nationwide, multi-racial, multi-ethnic, multi-generational immigrant justice campaign representing millions of people across the country - alongside the National Immigrant Justice Center, the National Immigration Project, and the 100 undersigned organizations, urge the Department of Homeland Security to take the following actions within the next 100 days to begin to reduce the harms that detention and deportation continue to inflict in immigrant communities.

URGENT ASK FOR IMPLEMENTATION OF INTERIM ENFORCEMENT PRIORITIES AND AFFIRMATIVE CONSIDERATION OF RELEASE FOR PEOPLE IN DETENTION

On January 20, the Department of Homeland Security (DHS) released a [memorandum](#) announcing a 100-day pause on removals and interim enforcement priorities and committing to a top-to-bottom review of

policies and practices regarding immigration enforcement. Although the pause on removals is currently subject to a Temporary Restraining Order, the rest of the memo remains in place.

The We Are Home campaign and the undersigned organizations welcome the new direction signalled by the January 20 memo. However, the reality of enforcement for immigrant communities has not yet significantly changed. We urge DHS to issue the operational guidance on implementation of the interim enforcement priorities required by the January 20 memo as soon as possible, and to ensure that ICE officers in the field are shifting their enforcement practices in alignment with the Department's new guidance.

We are also concerned for the safety and well-being of the thousands of people who remain in ICE detention, deprived of their liberty and separated from their families, even as COVID continues to ravage congregate settings like jails and prisons. A large portion of people in ICE detention do not fall within the DHS interim enforcement priorities. We urge you to initiate a file review of all people in ICE custody, applying a presumption of release and the interim enforcement priorities. The review should prioritize for urgency the release of those for whom detention poses a heightened risk, including people at risk of serious illness or death from COVID, transgender people, all families and children, pregnant people, and HIV+ individuals. In addition, all persons outside the interim enforcement priorities should be released.

Finally, [nothing](#) in the Temporary Restraining Order compels DHS to remove anyone. And yet, DHS [continues to deport](#) hundreds of people every day. Specifically, since January 20, about 2,000 people have been deported or expelled to Haiti, despite the country's ongoing constitutional crisis and political instability. We urge the administration [to stop deportations](#) to Haiti immediately. Furthermore, the TRO prevents DHS from implementing a blanket moratorium on deportations, but as 120 law professors and legal experts have explained, [the agency can and must immediately and proactively grant stays of removal](#) to permit the agency more time to review individuals' cases. As the Supreme Court has repeatedly stated, DHS has always had the discretion to stay the removal of individuals, including people who have final orders.

ADDITIONAL PRIORITIES FOR THE FIRST 100 DAYS

In addition to the recommendations above, we urge DHS to take the following actions in the next 100 days as part of the agency's commitment to revise policies concerning immigration enforcement to "serve the Department's mission in line with our values."

PRIORITY 1: IMMEDIATELY CLOSE DETENTION FACILITIES AND END THE USE OF PRIVATE PRISONS AND STATE AND LOCAL JAILS

Despite efforts under the Obama Administration to improve conditions standards for detention, the shift from a punitive model never took place. Immigration jails remained jails, and new conditions standards did not effectively curtail rampant human rights abuses. There is now overwhelming consensus within the immigrants' rights movement that even ambitious conditions reform is insufficient. After decades of steadily increasing detention levels, with no discernable positive policy outcomes, it is time to dramatically shrink the size of the system itself.

ICE should begin by announcing an end to family detention and the closure of all three family detention facilities, as well as the closure of those detention facilities with the most egregious records of rights abuses, including those with high death rates, in remote locations, and those that lack adequate access to counsel. Closures should be managed through release of detained individuals via the comprehensive file review described above, rather than through costly and harmful transfers.

The vast majority of people in ICE custody nationwide are held in facilities [owned or managed](#) by private prison companies, companies driven [not by health and safety concerns](#) but by the [hundreds of millions of dollars](#) that flow from ICE's incarceration system. [Along with 70 congressional offices](#), we express our disappointment that the January 26 [Executive Order](#) directing DOJ not to renew contracts with private prison companies failed to include DHS. Nonetheless, DHS can take action itself, by directing ICE to develop and implement a plan to phase out contracts with private prison companies, as well as contracts between ICE and state and local jails and prisons for detention bed space. Such contracts result in perverse financial incentives for state and local jurisdictions to incarcerate, and fuel the expansion of immigration detention under life-threatening conditions.

PRIORITY 2: TERMINATE 287(g), SECURE COMMUNITIES, AND ICE DETAINERS

Throughout the twentieth century, states and localities generally had little if any role in immigration enforcement. However, under President George W. Bush, federal immigration authorities embarked on a strategy, championed by Kris Kobach, to draft state and local actors into federal immigration enforcement. The entanglement of local law enforcement and DHS has served to import the racial disparities and defects of criminal systems into the already-biased arena of federal civil immigration enforcement. DHS should [end its reliance on state and local actors](#) to enforce federal immigration law.

We urge you to end the 287(g) program, which deputizes state or local law enforcement officers to serve as *de facto* immigration agents. [As of January 2021](#), ICE had 72 "jail enforcement model" 287(g) agreements and 76 Warrant Service Officer 287(g) agreements. We also urge DHS to end the Secure Communities program, which drafts local criminal legal system actors into civil immigration enforcement by making contact with local police an automatic trigger for DHS intervention. DHS must terminate Secure Communities in practice, not just in name, by dismantling the electronic interoperability that redirects tens of thousands of routine FBI fingerprint submissions from local police to DHS for civil immigration enforcement every day. Finally, the new Administration should end the use of ICE detainers without a judicial warrant and retract all outstanding detainers. [Sixty members of the U.S. House of Representatives recently wrote to you](#) echoing the call for termination of 287(g) agreements, Secure Communities, and the use of detainers.

PRIORITY 3: CONDUCT COMPREHENSIVE EOIR REVIEW TO CLOSE NON-PRIORITY CASES

DHS files and pursues removal proceedings against people who have viable forms of relief available to them, and even against people who have applications for relief pending before USCIS. Extreme enforcement policies combined with this narrow, punitive focus have led to the current immigration court backlog: an [unprecedented 1.3 million cases](#). The average wait time to get a hearing before an

immigration judge is now [1,600 days](#) - more than four years. The Biden-Harris Administration can immediately address this issue - as it has committed to doing - by identifying categories of immigration cases [to close now](#), beginning with the cases of people who can pursue relief outside of immigration court and whose cases have been pending for more than five years. Together, these two categories comprise more than 600,000 cases. ICE OPLA attorneys should be given clear guidelines and instructed to identify and move to dismiss all cases that are no longer enforcement priorities, while ensuring that all people who wish to have their cases quickly adjudicated so they can obtain long-sought protection are able to do so.

DHS must also work closely with DOJ to ensure that EOIR policy-making is consistent with the new orientation of DHS. More than 150 organizations [recently wrote](#) to the President making this point, encouraging DOJ to issue its own Department-wide guidance to align with the January 20 Pekoske memo, and to conduct a comprehensive database-driven docket review to systematically remove non-priority cases, unless deferral would prejudice the parties.

PRIORITY 4: ADOPT GENEROUS PROSECUTORIAL DISCRETION PRIORITIES WITHOUT CATEGORICAL EXCLUSIONS

DHS should adopt a holistic approach to prosecutorial discretion that flips the framework of previous administrations: rather than enumerating the categories of people the agency intends to target for enforcement, it should set out a non-exclusive, non-exhaustive list of positive factors that indicate a *grant* of prosecutorial discretion. This new framework should advance the goals of keeping families together, countering racial injustice in the criminal legal system, declining to pursue charges that are stale via a policy akin to a five-year statute of limitations, and allowing people who are eligible for affirmative pathways to legal status a fair chance to comply with the law. We also urge you to ensure that “national security” and “border security” categories are construed narrowly, to avoid abuses in the name of counterterrorism and ensure that asylum seekers who enter between ports are not punished for fleeing harm and seeking safety in the U.S.

New guidelines should not include categorical exclusions, which will inevitably deprive many people of the ability to remain with their families and communities, notwithstanding compelling equities in their cases. Moreover, targeting particular categories of people for enforcement based on past convictions or interaction with the criminal legal system defies the lessons of criminal justice reform. No person should be [punished twice](#); every person is more than the worst thing they have done; and systemic racism permeates the criminal legal system. DHS should not [import the racism and inequities of the criminal legal system](#) into its equitable and discretionary decision-making. Indeed, given the extreme punitive nature of criminal bars to permanent immigration relief, individuals who have disqualifying convictions are a group especially in need of and deserving of prosecutorial discretion.

PRIORITY 5: WELCOME ASYLUM SEEKERS AT THE SOUTHERN BORDER WITHOUT DETENTION

The Administration must reinstate access to asylum at the border, without the use of detention and in partnership with community-based organizations. Almost 100 organizations [have already detailed the policies](#) that must be rescinded and adopted in order to ensure that the U.S. complies with its protection

obligations under U.S. and international law and follows the [recommendations of public health experts](#). Asylum seekers and other migrants should never be placed into detention. Instead, they should be released to the safety of homes and community during their immigration court proceedings, with community-based support programs available as needed.

Thank you for your attention. We look forward to working together to reduce the harm of enforcement in immigrant communities and create a system that is fair, functional, and humane and respects all people regardless of race, religion, or birthplace.

Sincerely,

Adelante Alabama Worker Center
Advancement Project, National Office
Advocate Visitors with Immigrants in Detention
Aldea - The People's Justice Center
Alianza Americas
Alianza Nacional de Campesinas
America's Voice
American Friends Service Committee
American Immigration Council
Americans for Immigrant Justice
Arkansas United
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice | AAJC
Asian Americans Advancing Justice-Atlanta
Bridges Faith Initiative
California Immigrant Policy Center
CASA
Center for Disability Rights
Center for Gender & Refugee Studies
Center for Popular Democracy
Church World Service
Coalition for Humane Immigrant Rights (CHIRLA)
Community Asylum Seekers Project
Community Change Action
Community Justice Exchange
Corazon Latino
Desert Support for Asylum Seekers
Detention Watch Network
Doctors for Camp Closure
Faith in Action
Faith in Public Life
Families for Freedom
First Focus on Children

Florence Immigrant & Refugee Rights Project
Freedom for Immigrants
Government Information Watch
H-CAN Immigration and Refugee group
Haitian Bridge Alliance
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Action Alliance
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
Immigrant Legal Defense
Immigrant Legal Resource Center
Immigration Hub
Indivisible
Inland Coalition for Immigrant Justice
International Detention Coalition
Justice Strategies
Kathryn O. Greenberg Immigration Justice Clinic at Cardozo School of Law
Las Americas Immigrant Advocacy Center
Latin America Working Group (LAWG)
Legal Aid Justice Center
Louisiana Advocates for Immigrants in Detention
Make the Road New York
Maryland Against ICE Detention
Memphis United Methodist Immigrant Relief Fund
Mi Familia Vota
Mid-South Immigration Advocates
Mijente
Minnesota Interfaith Coalition on Immigration
National Association of Social Workers
National Council of Churches of Christ in the USA (NCC)
National Council of Jewish Women
National Domestic Workers Alliance
National Immigrant Justice Center
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project (NIPNLG)
National Korean American Service & Education Consortium (NAKASEC)
National Network for Immigrant and Refugee Rights
National Partnership for New Americans
Nebraska Appleseed
New York Immigration Coalition
Northern Illinois Justice for Our Neighbors
NYU Immigrant Rights Clinic
Operation Restoration

Pennsylvania Immigration and Citizenship Coalition
Physicians for Human Rights
Poder Latinx
POWER Live Free Immigration Group
Queer Detainee Empowerment Project
Rocky Mountain Immigrant Advocacy Network
Sanctuary DMV
Save the Children Action Network
Service Employees International Union (SEIU)
Sisters of Mercy of the Americas - Justice Team
South Carolina Appleseed Legal Justice Center
Southern Border Communities Coalition
Southern Poverty Law Center
Still Waters Anti-trafficking Program
Takoma Park Mobilization
The Advocates for Human Rights
UndocuBlack Network
UnidosUS
United Farm Workers
United We Dream
UnLocal
Voces de la Frontera
Wind of the Spirit Immigrant Resource Center
Women's Refugee Commission
Young Center for Immigrant Children's Rights