

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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October 26, 2021

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

Dear Secretary Mayorkas:

The “Guidelines for the Enforcement of Civil Immigration Law”¹ that you issued on September 30, 2021, which go into effect on November 29, 2021, are an affront to the rule of law and demonstrate the Biden Administration’s intent to misuse prosecutorial discretion in order to avoid enforcing the immigration laws of this country. This dereliction of duty in the interior of the country is particularly grotesque considering the crisis on the southern border.

On January 20, 2021, DHS issued interim guidance completely gutting interior enforcement priorities.² That guidance limited enforcement priorities to national security risks, those who entered the U.S. after November 1, 2020, and those released from criminal custody after January 20, 2021, who were convicted of an aggravated felony.

U.S. Immigration and Customs Enforcement (ICE) officials predicted that “there would be a 50% reduction of arrests of illegal immigrants if new guidance that severely limits ICE arrests was enforced[.]”³ After the interim guidance took effect, arrests and removals did plummet, falling by more than 60 percent.⁴ In May ICE agents averaged one arrest every two months.⁵ This decrease in enforcement is unacceptable, and demonstrates that the Biden

¹ Memorandum to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement from Alejandro N. Mayorkas, Secretary, Department of Homeland Security, *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021), available at <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

² See Memorandum from Acting Secretary David Pekoske to Troy Miller, et. al., *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021), available at https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf.

³ Shaw, Adam, *ICE predicted 50% drop in illegal immigrant arrests under new DHS guidance, email shows*, FOX NEWS (Apr. 28, 2021), available at <https://www.foxnews.com/politics/ice-50-drop-illegal-immigrant-arrests-new-dhs-guidance-email>.

⁴ Miroff, Nick & Maria Sacchetti, *Immigration arrests have fallen sharply under Biden, ICE data show*, WASH. POST (Mar. 9, 2021), available at https://www.washingtonpost.com/national/ice-deportations-immigration-arrests/2021/03/09/af27b164-80fa-11eb-bb5a-ad9a91faa4ef_story.html.

⁵ Miroff, Nick & Maria Sacchetti, *Biden administration reins in street-level enforcement by ICE as officials try to refocus agency mission*, WASH. POST (May 25, 2021), available at https://www.washingtonpost.com/national/ice-street-arrests-immigrants-fall-biden/2021/05/25/58681782-b972-11eb-bb84-6b92dedcd8ed_story.html

Administration does not intend to use the resources appropriated by Congress to duly enforce the law.

Unfortunately, the final guidance – to the extent which it can be understood without defining many of the vague terms it uses – appears to be even more restrictive than the interim guidance. Immigration officers are now prohibited from taking enforcement action against a removable alien, even public safety threats, without first conducting a “complicated” analysis requiring additional “investigative work” to elucidate information on a variety of factors – none of which have any bearing on the legal question of whether an alien is amenable to be charged as removable in immigration proceedings. This intentional imposition of bureaucratic red tape will most likely lead to an even greater decrease in enforcement actions.

The Biden Administration’s policies have already created a crisis at our border, and the final enforcement guidelines will now exacerbate this crisis. Your direction to ICE not to enforce immigration law, except in very limited circumstances and after expending substantial resources investigating extraneous information will only serve as an additional pull factor that will lead to even more illegal immigration into the United States. And rightly so, because under your direction, illegal border crossers know that they will not face consequences if they are released into the United States.

To assist the Republicans on the Committee on Oversight and Reform in understanding why this policy was necessary and how it will be implemented, please provide the following documents and information, covering the time period January 20, 2021, to the present unless otherwise noted, no later than November 9, 2021:

1. The names of all outside organizations that were consulted during the development of the September 30, 2021 guidelines.
2. All correspondence with outside organizations regarding the development of the January 20, 2021, and September 30, 2021 guidelines.
3. Any analysis conducted by ICE or any other DHS component regarding the impact that the January 20, 2021, and September 30, 2021 guidelines will have on enforcement operations.
4. All documents and correspondence explaining the definitions of non-statutory terms used in the January 20, 2021, and September 30, 2021 guidelines.
5. All guidance or training materials provided to ICE Enforcement and Removal Operations officers or ICE Office of the Principal Legal Advisor attorneys interpreting the January 20, 2021, and September 30, 2021 guidelines.

Secretary Mayorkas

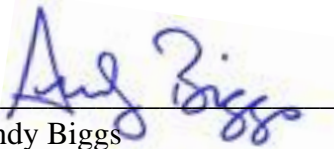
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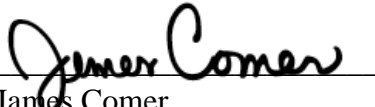
6. The number of interior civil immigration enforcement arrests made by ICE per week beginning October 1, 2020.
7. The number of aliens removed under Title 8 by ICE from the United States each week since October 1, 2020.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



Andy Biggs
Member of Congress



James Comer
Ranking Member
Committee on Oversight & Reform

cc: The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight & Reform