

Congress of the United States

Washington, DC 20515

February 17, 2021

Mr. Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street, S.W.
Washington, DC 20536

Dear Acting Director Johnson:

We have serious concerns about recent media reports that under the Biden Administration, U.S. Immigration and Customs Enforcement (ICE) will no longer aggressively enforce the immigration laws of the United States in the interior of the country. According to the *Washington Post*, ICE will no longer pursue aliens affiliated with dangerous criminal gangs or those previously arrested or convicted for serious criminal offenses, which raises troubling questions about the Biden Administration's commitment to the integrity of our immigration system. These reckless changes—allowing criminal aliens to remain in our communities—place Americans at risk and will undoubtedly lead to many preventable crimes.

On January 20, 2021, the Department of Homeland Security (DHS) issued a memorandum completely gutting interior enforcement priorities.¹ This memorandum 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 are convicted of an aggravated felony.²

Under a strict interpretation of this memorandum, individuals who entered the country prior to November 1, 2020 are not priorities for arrest and removal from the United States. Members of criminal gangs and aggravated felons who were released from custody prior to January 20, 2021 are also not priorities for the agency. Additionally, scores of individuals who have already proven themselves to be public safety threats by arrest or conviction for serious criminal offenses—such as driving under the influence of alcohol or drugs (DUI), simple assaults, or other crimes that are not considered aggravated felonies—are also *not* listed as priorities for enforcement.

¹ 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

² *Id.*

Illustrating the confusion this memorandum has caused, we are even aware of an incident where ICE removed detainees on three dangerous convicted sex offenders in Texas who preyed on children.³ Those dangerous child sex offenders were almost released into the community despite being enumerated priorities under the memorandum, and it appears that ICE only relented when alarmed Texas law enforcement officials intervened. ICE agents should never be put in the position of being confused about whether to enforce the law against aliens convicted of sexual abuse of a minor, which is an aggravated felony and demonstrates a clear risk to public safety.⁴

Although the memorandum included a caveat that “nothing in this memorandum prohibits the apprehension or detention of individuals unlawfully in the United States who are not identified as priorities herein,”⁵ we have learned that ICE is preparing interim guidance that will in fact limit its ability to arrest and detain aliens in the United States who have already proven themselves to be public safety threats through their criminal misconduct.⁶ This interim guidance will no longer prioritize many convicted criminal aliens for enforcement action.⁷ According to an email that you reportedly sent, “these convictions would not include drug based crimes . . . simple assault, DUI, money laundering, property crimes, fraud, tax crimes, solicitation, or charges without convictions . . .”⁸ DUIs in particular are especially insidious offenses, killing thousands of people in the United States every year and injuring hundreds of thousands.⁹ Tragically, there are many instances in which Americans have died due to an illegal immigrant driving under the influence of alcohol.¹⁰ These deaths could have been avoided had our immigration laws been enforced.

Inexplicably, under this new guidance, even gang tattoos or “loose affiliation with gang activity” would not be considered a priority for enforcement.¹¹ This is a particularly disturbing policy considering the terror that criminal gangs reign down on their communities both in the

³ Merchant, Nomaan & Paul J. Weber, *ICE nearly released child sex abuse convicts despite Biden memo*, AP NEWS (Feb. 13, 2021), available at <https://6abc.com/ice-prepared-to-release-child-sex-convicts-biden-immigration-memo-border-patrol/10336632/>.

⁴ See INA § 101(a)(43)(A)

⁵ *Id.*

⁶ Miroff, Nick & Maria Sacchetti, *New Biden rules for ICE point to fewer arrests and deportations, and a more restrained agency*, WASH. POST (Feb. 7, 2021), available at https://www.washingtonpost.com/national/new-biden-rules-for-ice-point-to-fewer-arrests-and-deportations-and-a-more-restrained-agency/2021/02/07/faccb854-68c6-11eb-bf81-c618c88ed605_story.html.

⁷ *Id.*

⁸ *Id.*

⁹ *Statistics*, Mothers Against Drunk Driving, available at <https://www.madd.org/statistics/> (last accessed Feb. 8, 2021) (“In 2017, 10,874 people died in drunk driving crashes... and more than 300,000 were injured...”).

¹⁰ See e.g. Bandur, Michelle, *Mother of victim in 2016 drunk driving crash reacts to one that parallels her daughter’s death*, KETV OMAHA ABC 7 NEWS (Jan. 3, 2018), available at <https://www.ketv.com/article/mother-of-victim-in-2016-drunk-driving-crash-reacts-to-one-that-parallels-her-daughters-death/14535147#>.

¹¹ Miroff, Nick & Maria Sacchetti, *New Biden rules for ICE point to fewer arrests and deportations, and a more restrained agency*, WASH. POST (Feb. 7, 2021), available at https://www.washingtonpost.com/national/new-biden-rules-for-ice-point-to-fewer-arrests-and-deportations-and-a-more-restrained-agency/2021/02/07/faccb854-68c6-11eb-bf81-c618c88ed605_story.html.

United States and abroad by conducting campaigns of extortion and murder. One such organization, La Mara Salvatrucha, or MS-13, is one of the largest street gangs in the United States and has as its motto to “kill, rape, control.”¹² The gang has committed numerous brutal murders in the United States, including in the New York area and National Capital Region.¹³

Despite the DHS memorandum’s lip service to the possibility of arresting non-enumerated priorities, it appears that arrests of nonpriority aliens—even those who clearly present public safety risks—will be actively discouraged. Any ICE officer who intends to arrest an alien not considered an enumerated priority would first need to go through a byzantine bureaucratic approval process, which requires the local Field Office Director—not the officer—to make a written request to ICE headquarters for senior officials to decide whether the action would serve a federal interest.¹⁴ To be clear, it should be the rule, not the exception, that ICE officers arrest inadmissible and removable aliens who have been implicated in serious criminal misconduct or gang activity. Efforts to reverse this commonsense policy are incomprehensible. We are concerned that despite ICE being the agency charged with “[s]ecuring our nation’s borders and safeguarding the integrity of our immigration system”¹⁵ these Biden Administration policy changes will prevent ICE from protecting the American people.

To assist us in understanding why this policy was implemented as well as ICE’s abilities to protect the public from inadmissible or removable aliens who have been arrested or convicted of serious criminal misconduct, please provide the following documents and information, covering the time period January 20, 2021 to the present unless otherwise noted, no later than March 3, 2021:

1. Any interim or final guidance relating to the implementation of the January 20, 2021 DHS priorities memorandum.
2. All documents and communications related to how ICE intends to prevent recidivism by removable aliens in the United States who have been arrested or convicted for serious crimes, but who are not considered enumerated priorities for enforcement.
3. All statistics regarding the number of aliens deemed inadmissible or removable from the United States encountered by ICE for each of the fiscal years beginning with FY2017 to present, who have been arrested or convicted of a DUI.

¹² U.S. Dep’t of Justice, Office of Public Affairs, Press Release, *Five Alleged MS-13 Members Charged Federally for their Participation in a Violent Racketeering Conspiracy Including Eight Murders and Four Attempted Murders*, (Oct. 20, 2020), available at <https://www.justice.gov/opa/pr/five-alleged-ms-13-members-charged-federally-their-participation-violent-racketeering>.

¹³ See Weiser, Benjamin, *14 Gang Leaders Directed MS-13 ‘Wave of Death,’ U.S. Says*, N.Y. TIMES (Jan. 14, 2021), available at <https://www.nytimes.com/2021/01/14/nyregion/ms-13-salvador-leaders-ranfla-nacional.html>.

¹⁴ Aleaziz, Hamed, *Trump Had a Mandate To Target All Undocumented Immigrants For Arrest. ICE Has A New Plan To Change That*. BUZZFEED NEWS (Jan. 27, 2021), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-arrests-priorities-memo>.

¹⁵ U.S. Immigration and Customs Enforcement, *ICE’s Mission*, available at <https://www.ice.gov/mission> (last visited Feb. 8, 2021).

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4. All statistics regarding the number of aliens deemed inadmissible or removable from the United States encountered by ICE for each of the fiscal years beginning with FY2017 to present who have gang tattoos or who have been identified as a member of or an affiliate of a criminal gang.
5. All documents and communications regarding how ICE defines “loose” affiliation with gang activity, as opposed to membership, rank, or other affiliation with a gang.
6. All documents and communications regarding any resource constraints that necessitated this policy change, and documents sufficient to show whether ICE or the DHS are requesting additional resources from Congress to be able to expand its enforcement priorities.

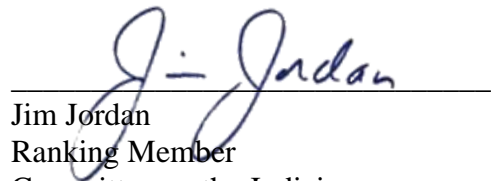
To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074 or Committee on the Judiciary staff at (202) 225-6906.

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. The Committee on the Judiciary has jurisdiction of immigration policy and non-border enforcement pursuant to House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Jim Jordan
Ranking Member
Committee on the Judiciary

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Jerrold Nadler, Chairman
Committee on the Judiciary