

Congress of the United States
Washington, DC 20515

February 11, 2021

The Honorable Alejandro Mayorkas
Secretary of the Department of Homeland Security

Via email

Re: Ending ICE Entanglement with State and Local Agencies in Federal Immigration Enforcement

Dear Secretary Mayorkas,

Congratulations on your recent confirmation to lead the U.S. Department of Homeland Security (DHS). We look forward to working with you to ensure that DHS embarks on a course of reform toward our shared vision of the United States as a “country of welcome.”¹ As a part of your 100 day, agency-wide review and resetting of immigration enforcement policies as promised in the recent January 20 DHS memorandum, we urge you to end DHS programs that entangle state and local agencies in federal immigration enforcement.² **Specifically, we request you terminate (1) the 287(g) program, (2) the Secure Communities program, and (3) the use of Immigration Customs and Enforcement (ICE) detainers.**

We welcomed President Biden’s commitment, as a candidate, to aggressively limit DHS programs that “force local law enforcement to take on the role of immigration enforcement” in recognition that they “undermine trust and cooperation between local law enforcement and the communities they are charged to protect.”³ Indeed, in 2015 the President’s Task Force on 21st Century Policing recommended that “whenever possible, state and local law enforcement should not be involved in immigration enforcement,” a change that would require DHS to “terminate the use of the state and local criminal justice system.”⁴ Law enforcement leaders across the country have urged that immigration enforcement should be solely a federal responsibility, particularly in light of strained local budgets and resources.⁵

Yet for four years, the Trump administration made these DHS programs a centerpiece of its xenophobic agenda. As a result, millions of people are living in fear that any interaction with

¹ “Biden’s Secretary of Homeland Security Nominee Alejandro Mayorkas Delivers Remarks,” NBC News, Nov. 24, 2020, https://www.youtube.com/watch?v=LAoZBRQLd2k&ab_channel=NBCNews.

² https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf

³ “The Biden Agenda for the Latino Community,” Aug. 20, 2020, <https://medium.com/@JoeBiden/the-biden-agenda-for-the-latino-community-4d7329c2644b>.

⁴ See Final Report of the President’s Task Force on 21st Century Policing, Recommendation 1.9 and 1.9.1 Action Item, May 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁵ See, e.g., Nat’l Imm. Law Ctr., Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement (August 2013), <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement).

local law enforcement could lead to their deportation and separation from their families. Numerous studies show that people experiencing domestic violence, sexual assault, human trafficking and other crimes are afraid to access urgently needed police protection, serve as witnesses and support law enforcement investigations—undermining public safety for all.⁶ Other studies emphasize that when cities adopt aggressive immigrant control programs such as 287(g) they not only fail to decrease crime, but they in fact make communities less safe and undermine local economies.⁷

Immigrant community members are also afraid to seek basic government services. They justifiably fear that ICE will gain access to their information and use it to track and detain them. During the pandemic, that has meant that frontline immigrant workers and their families are afraid to get tested, vaccinated and treated for COVID-19, with a devastating effect on public health.⁸ These DHS programs also increase racial profiling and harassment of immigrant communities and communities of color nationwide. Local police often make pretextual arrests alleging state or local criminal charges, but with an actual goal of identifying immigrants to detain for ICE. There are also thousands of cases of U.S. citizens held on erroneous ICE detainers, underscoring that these DHS programs are based on unreliable information and administered unjustly.⁹ Cities and counties have been left vulnerable to costly damages lawsuits for constitutional rights violations.¹⁰

(1) End Trump-era 287(g) Agreements and Dismantle the Program Entirely

It is time to discard these broken programs of yesteryear. **In particular, we urge you to immediately fulfill the president’s commitment to end 287(g) agreements entered into by the Trump administration, and to go further by dismantling the 287(g) program altogether.** Under 287(g), local law enforcement officers act directly as federal immigration officers, interpreting complex federal immigration laws and policies—exposing them and their agencies to significant liability.¹¹ Justice Department investigations in North Carolina and Arizona also

⁶ See Kathryn Finley, “Access to Justice in a Climate of Fear: New Hurdles and Barriers for Survivors of Human Trafficking and Sexual Violence,” Center for Migration Studies, Jan. 29, 2019 https://cmsny.org/publications/finley-climate-of-fear/#_ftn8.

⁷ “Immigrants’ Deportations, Local Crime, and Police Effectiveness,” IZA Institute of Labor Economics, <http://ftp.iza.org/dp12413.pdf>.

⁸ See Marco della Cava, Daniel Gonzalez and Rebecca Plevin, “As COVID-19 vaccine rolls out, undocumented immigrants fear deportation after seeking dose,” USA Today, Dec. 20, 2020, <https://www.usatoday.com/story/news/nation/2020/12/19/covid-19-vaccine-undocumented-immigrants-fear-getting-dose/3941484001/>; Tori Bedford, “Fear of Deportation Prompts Undocumented Immigrants to Resist COVID-19 Vaccine,” WGBH News, Jan. 5, 2021, <https://www.wgbh.org/news/local-news/2021/01/05/fear-of-deportation-prompts-undocumented-immigrants-to-resist-covid-19-vaccine>; Michael Herzenberg, “How Fear of Deportation Compounds COVID-19 Infection Rates and Compromises Recovery for Undocumented Immigrants,” Spectrum News NY1, Aug. 25, 2020, <https://www.ny1.com/nyc/all-boroughs/news/2020/08/25/how-fear-compounds-covid-19-infection-rates-and-compromises-recovery-for-undocumented-immigrants>.

⁹ See, e.g., Spencer Amdur, “Florida Sheriff Worked With ICE to Illegally Jail and Nearly Deport US Citizen,” ACLU, Dec. 3, 2018, <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/florida-sheriff-worked-ice-illegally-jail-and>; David J. Bier, “U.S. Citizens Targeted by ICE,” CATO Institute, Aug. 29, 2019, <https://www.cato.org/sites/cato.org/files/pubs/pdf/irpb-8.pdf>.

¹⁰ See ACLU, “Recent ICE Detainer Damages Cases,” <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases>.

¹¹ “Assumption of Risk: Legal Liabilities for Local Governments That Choose to Enforce Federal Immigration Laws,” National Immigrant Justice Center, March 2018, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf.

raised significant civil rights concerns with the program, including rampant racial profiling and use of unlawful police practices in violation of constitutional standards.¹²

(2) End the Racist Secure Communities Program

For similar reasons we also urge you to end the Secure Communities program, which was terminated in 2014 after receiving widespread criticism for racial profiling, undermining local community policing efforts, and countless cases of unlawful detention of American citizens.¹³ Despite its well-documented injustices, the Trump administration reinstated the program in 2016.

(3) Terminate the use of ICE Detainers

Furthermore, we urge you to terminate the use of ICE detainers. Even with the termination of both 287(g) and Secure Communities programs, local law enforcement agencies will remain entangled in federal immigration enforcement unless the new administration ends ICE detainers altogether. Courts have made clear that ICE detainers have serious legal flaws and expose local law enforcement agencies to enormous liability.¹⁴ Just this year, Los Angeles County paid out \$14 million to settle a class-action lawsuit against the LA Sheriff's Department for routinely holding people in jail beyond their release dates because of detainer requests from ICE.¹⁵

Despite this, in fiscal year 2019, ICE lodged more than 160,000 detainers with local law enforcement agencies nationwide.¹⁶ In states with anti-sanctuary laws, local law enforcement agencies often believe that they are required to enforce these ICE detainers, even though doing so is against their interests and not required by law.

The current immigration enforcement regime depends on the time and resources of local law enforcement agencies—at the expense of public safety for all and in particular for immigrant communities. The 287(g) and Secure Communities programs and the use of detainers turn local law enforcement agencies into a gateway to deportation, co-opt local resources into questionable, racially discriminatory purposes, strip communities of safety and public trust, and subject localities and the federal government to liability.

¹² U.S. Dep't of Homeland Security, Statement by Secretary Napolitano on DOJ's Findings on Discriminatory Policing in Maricopa County (Dec. 15, 2011), <https://www.dhs.gov/news/2011/12/15/secretary-napolitano-doj-s-findings-discriminatory-policing-maricopa-county>; U.S. Dep't of Justice, Letter to Bill Montgomery, County Attorney, Maricopa County from Thomas E. Perez, Assistant Attorney General (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf; U.S. Dep't of Justice, Letter to Clyde B. Albright, County Attorney, Alamance County from Thomas Perez, Assistant Attorney General (Sept. 18, 2012), <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>; Compl., *United States v. Johnson*, No. 1:12cv-1329 (M.D.N.C. Dec. 20, 2012), <https://www.justice.gov/iso/opa/resources/55620121220953110360.pdf>.

¹³ See Assumption of Risk: Legal Liabilities for Local Governments That Choose to Enforce Federal Immigration Laws, National Immigrant Justice Center, March 2018, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf.

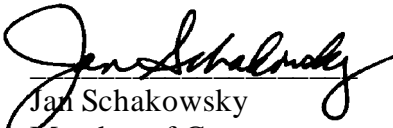
¹⁴ See *Gonzalez v. ICE*, 416 F. Supp. 3d 995 (C.D. Cal. 2019); *Gonzalez v. ICE*, 975 F.3d 788 (9th Cir. 2020).

¹⁵ Alene Tchekmedyan, "LA county to payout \$14 million over unlawful immigration holds," *Los Angeles Times*, October 13, 2020, <https://www.latimes.com/california/story/2020-10-13/sheriffs-department-immigration-holds-settlement>.

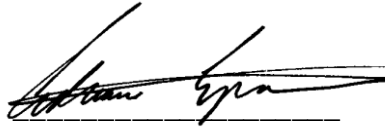
¹⁶ Brittny Mejia, Joel Rubin, "A bad day for Trump administration on immigrant front as it suffers three legal defeats in one day," *Los Angeles Times*, September 28, 2019, <https://www.latimes.com/california/story/2019-09-27/federal-judge-issues-ruling-upending-how-ice-targets-people-for-being-in-the-country-illegally#>.

For these reasons, we respectfully urge you to end these programs and practices—and launch a new era of a more just and welcoming immigration enforcement system divorced from local law enforcement agencies.


Sincerely,



Jan Schakowsky
Member of Congress



Adriano Espaillat
Member of Congress



Mike Quigley
Member of Congress

/s/
Nanette Diaz Barragán
Member of Congress

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Donald S. Beyer Jr.
Member of Congress

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Earl Blumenauer
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Suzanne Bonamici
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