

United States Senate

WASHINGTON, DC 20510

August 12, 2021

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

Dear Secretary Mayorkas:

We write to request information related to the implementation of removal guidance issued in February and its impact on the enforcement operations of U.S. Immigration and Customs Enforcement (ICE). Such information is critical for congressional oversight of the Department, especially as it pertains to the Department's mission of securing our nation's borders and properly enforcing immigration law throughout the United States.

This information is vital for public accountability but also for public safety. We are aware of several cases from the field in which ICE officers were directed not to apprehend previously-deported aliens that have been convicted of felonies, such as sex crimes against minors. This follows public reporting that interior arrests by ICE dropped to the lowest level on record following the implementation of new enforcement guidance.¹ In order to uphold immigration law and keep our communities safe, we need transparency into which criminal aliens are being allowed to walk free and why.

As you are aware, on February 18, 2021, Acting Director Johnson issued a memorandum entitled "Interim Guidance: Civil Immigration Enforcement and Removal Priorities."² This new guidance, which became effective that same day, applied to all of ICE's directorates and concerned changes to custody decisions, execution of final orders of removal, and apprehensions. Under this guidance, officers conducting interior enforcement operations to apprehend a criminal alien outside a narrow list of priority categories are required to "obtain preapproval" from leadership.

Pursuant to this new guidance, we understand that the Department has developed a pre-clearance system for apprehensions by ICE Enforcement and Removal Operations (ERO). This system, the Arrest Authorization Request Tool (AART), is used by ICE officers in the field to request permission to make an apprehension. The operation of this pre-clearance system, and the degree to which it has impacted ICE ERO's enforcement operations, merits congressional

¹ Nick Miroff, *ICE deportations fell in April to lowest monthly level on record, enforcement data shows*, Wash. Post (May 5, 2021), https://www.washingtonpost.com/national/biden-ice-deportations-record-low/2021/05/05/522ee35c-adb8-11eb-8109-f8ba1ea2eeab_story.html

² Memorandum from Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, re Interim Guidance: Civil Immigration Enforcement and Removal Priorities (Feb. 18, 2021), available at https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf

oversight to ensure that federal law enforcement officers are not stripped of the ability to do their jobs.

In practice, the new requirements of the AART system may be discouraging officers from conducting lawful enforcement operations. Anecdotal evidence we have heard from the field indicates that the new system is time-consuming, is not standardized across field offices, requires exhaustive collection of documentation by officers, and requires the submission of mitigating factors about the criminal alien for consideration, such as “medical factors” or “ties to the community.”³ In some instances, we have heard that officers are discouraged by their supervisors from even making submissions through new system unless they are likely to be approved by leadership.

We believe that transparency with respect to these new policies at ICE is essential for upholding the integrity of our immigration system. Therefore, we request the following information from the Department and ICE:

1. All internal documents, memoranda, and reports concerning the February 18, 2021 enforcement guidance and its implementation.
2. All internal documents related to the AART system, its operation, and the criteria with which decisions to authorize arrests are made.
3. The number of cases, per month, for which ICE ERO officers submitted authorization for arrests through the AART system, broken down by NCIC code.
4. The number of cases, per month, for which ICE ERO officers were denied authorization for arrests through the AART system, broken down by NCIC code.
5. In a manner that protects the identities of the requesting officers, the justifications provided by each officer requesting an arrest for each case that was denied, and the justification provided by ICE leadership for refusing the request, including the NCIC code for each denial.
6. Any documents directing supervisors to discourage officers to make submissions to the AART system.
7. Topline numbers of arrests and apprehensions by ICE ERO per month by each priority category included in the February 18, 2021 guidance, broken down by NCIC code.

As you may know, 5 U.S.C § 2954 requires:

An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Governmental Affairs of the Senate, or any five members thereof, **shall** submit any information requested of it relating to any matter within the jurisdiction of the committee.

³ *Ibid.*

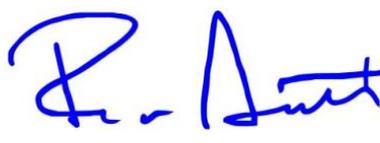
Further, pursuant to S.Res.445, the Senate Committee on Homeland Security and Governmental Affairs has jurisdiction over the Department of Homeland Security, of which U.S. Immigration and Customs Enforcement is a major operational component.⁴

Pursuant to these authorities, please provide the information requested in this letter no later than August 31, 2021. Thank you for your attention to this important matter of congressional oversight.

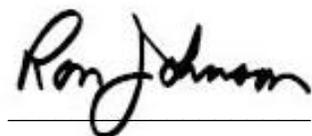
Sincerely,



Josh Hawley
U.S. Senator



Rick Scott
U.S. Senator



Ron Johnson
U.S. Senator



James Lankford
U.S. Senator



Rand Paul
U.S. Senator

CC:

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement
Washington, D.C. 20536

⁴ <https://www.hsgac.senate.gov/imo/media/doc/117thJurisdiction.pdf>