

# United States Senate

WASHINGTON, DC 20510-0908

May 24, 2022

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

Dear Secretary Mayorkas:

The crisis created by the Biden administration on the United States' southern border is raging like never before. Not only has President Biden ordered the dismantlement of successful border policies implemented under the last administration, resulting in record-high illegal border crossings in 2021, but deportations under the Biden administration have also dropped to the lowest levels in U.S. Immigration and Customs Enforcement (ICE) history<sup>1</sup>. During FY 2021, ICE recorded only 59,011 deportations, compared with 185,884 deportations in FY 2020, and 267,258 illegal aliens removed in FY 2019. The Biden administration's repeated actions to incentivize illegal immigration by refusing to fully enforce our laws and secure our southern border are nothing short of a dereliction of its duty to the American people.

As part of our fight to hold this administration accountable for its reckless failure to uphold our nation's laws and secure the border, we write today in reference to and with grave concern for the April 3, 2022, ICE memorandum directed to all Office of the Principal Legal Advisor (OPLA) attorneys entitled *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* ("Doyle Memorandum"). This memorandum alarmingly instructs ICE prosecutors to consider dismissing older cases of illegal aliens who are deemed to not pose public safety threats, rather than continuing enforcement actions against those individuals who are unlawfully present in the United States. This misguided policy prioritizes artificially lowering the backlog of immigration court cases above enforcing our immigration laws enacted by Congress, and represents a gross abuse of prosecutorial discretion.

The recently issued Doyle Memorandum will only worsen the already historic and deadly crisis on our southern border. At the end of the first quarter of 2022, the Executive Office for Immigration Review reported a backlog of 1,503,931 pending

---

<sup>1</sup> [\\*ICE Annual Report Fiscal Year 2021](#)

cases.<sup>2</sup> Under the guise of exercising “prosecutorial discretion,” the Doyle Memorandum proposes the mass dismissal of these pending deportation cases against aliens who are unlawfully present in the United States and otherwise subject to removal for violating our immigration laws. Turning a blind eye to willful and continued violations of the immigration laws that your agency is statutorily charged with enforcing is undeniably an *abuse* of such discretion that will encourage further illegal immigration and embolden criminal aliens already unlawfully present in our communities.

As members of the U.S. Senate Committee on Homeland Security and Governmental Affairs, which is dutifully charged with oversight of your agency, we request the following:

1. Please provide an un-redacted version of the April 3, 2022, memorandum entitled *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (“Doyle Memorandum”).
  - a. Provide any related records and materials that pertain to the internal consideration and drafting of the Doyle Memorandum, including emails, notes, memoranda, and text messages.
2. Regarding the application and operation of the Doyle Memorandum:
  - a. Please explain all objective and subjective metrics to be used in identifying pending deportation cases as “nonpriority,” and thus subject to “non-filing” of a Notice to Appear, summary dismissal, or administrative closure.
    - i. Will “nonpriority” cases include individuals who have been previously deported or removed from the United States?
    - ii. Will “nonpriority” cases include individuals who have one or more prior failures to appear at immigration court proceedings, or who have a history of absconding from immigration detention or removal orders?
    - iii. Will “nonpriority” cases include individuals who have been convicted of one or more serious misdemeanors or felonies?
  - b. Please explain the legal effect upon the immigration status of a deportable alien whose case is dismissed or administratively closed.
    - i. Does dismissal or administrative closure confer upon the alien a lawful immigration status?
      1. If so, how long is such lawful presence valid?
      2. If not, does the individual remain in a deportable status?

---

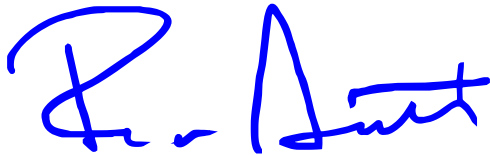
<sup>2</sup> <https://www.justice.gov/eoir/page/file/1242166/download>

The Honorable Alejandro Mayorkas  
March 24, 2022  
Page Three

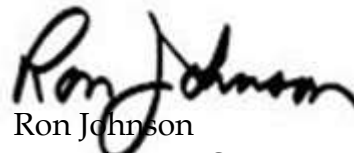
- ii. Does dismissal or administrative closure prevent a future removal case from being prosecuted against the alien?
- c. Will ICE maintain a means to identify and track individuals whose cases are subject to “non-filing” of a Notice to Appear, summary dismissal, or administrative closure?
  - i. Are such individuals required to regularly report to ICE to ensure the agency maintains accurate location and contact information for each individual?
  - ii. Are such individuals subject to any geographic restrictions to limit their movements within the United States until they attain a lawful immigration status?

Please respond in an expeditious manner, but no later than July 7, 2022.

Sincerely,



Rick Scott  
United States Senator



Ron Johnson  
United States Senator



Josh Hawley  
United States Senator



Rand Paul M.D.  
United States Senator