

January 18, 2021

The Honorable Alejandro Mayorkas
Secretary-Designate of the Department of Homeland
Security

Biden-Harris Transition
1401 Constitution Avenue NW
Washington, D.C., 20230

Via email



National Political
Advocacy Department
915 15th St. NW, 6th FL
Washington, D.C. 20005
aclu.org

Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
*National Political
Director*

Dear Secretary-Designate Mayorkas:

Congratulations on your nomination to lead the U.S. Department of Homeland Security (DHS). At your confirmation hearing before the Senate tomorrow, we urge you to make clear that under your leadership DHS will advance our shared vision of the United States as a “country of welcome.”¹ This will require both unwinding the Trump administration’s anti-immigrant policies and embarking on policy reforms that address challenges that pre-dated Trump’s arrival.

In addition to matters we anticipate that you already plan to address, we urge you to make clear, on-the-record commitments regarding five critical issues: family separation; Immigration Customs and Enforcement (ICE) entanglement with state and local agencies; ICE detention; Customs and Border Protection’s (CBP) detention of asylum-seekers; and access to citizenship.²

Family Separation

As you know, the Trump administration engaged in the systematic separation of more than 5,500 families coming to the United States. Although the government can never fully undo these harms, it has an obligation to reunify all separated families (in the United States, if the family so chooses), end family separations moving forward, and provide redress and other support to repair the damage it inflicted.

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 The ACLU has published policy papers with further recommendations to the Biden administration on immigration matters. See ACLU Immigration Policy Recommendations to the Biden-Harris Administration, <https://www.aclu.org/aclu-immigration-policy-recommendations-biden-harris-administration>.

President-elect Biden has denounced the Trump administration's family separation practice, and indicated plans to form a task force to address these issues. Yet, these families cannot wait months or years for the task force to act, and the policy solutions are already fairly clear. If you are confirmed as DHS Secretary, your office will have the power to reunite these families in the United States, as well as the discretion to protect these families from detention and deportation. Your office will also be critical in conferring much-needed resources and support, such as trauma counseling, to these families.

Your agency will inherit the horrific legacy of family separation, and can begin to make amends. These families deserve citizenship, resources, care, and a commitment that family separation will never happen again. At this week's hearing, we urge you to commit to specific uses of your power as DHS Secretary to help make these families whole; every day without action makes it harder to find and reunite families, and deepens the stain on America's conscience.

ICE Entanglement with State and Local Agencies

We welcome the president-elect's commitment to issuing a 100-day moratorium on removals and interior civil immigration enforcement. This step will immediately begin to alleviate the fear and anxiety of millions of immigrants. And, the end of this 100-day moratorium period will provide an opportunity to announce a fundamental restructure of civil immigration enforcement. To succeed, this restructure must include new restrictions on ICE's past practice of diverting state and local law enforcement agencies from their traditional roles, to become force multipliers for ICE deportation operations.

In particular, we urge you to announce your intention to end the 287(g) program, eliminate ICE requests and demands that other agencies detain people for immigration enforcement, and order an agency review of all ICE programs and practices that entangle state and local law enforcement in federal immigration enforcement.³ Our recommendation is based on lessons learned from the Obama administration's Priority Enforcement Program, when ICE and some local law enforcement agencies colluded to flout the secretary's enforcement priorities.⁴ As long as ICE is able to conscript state and local governments into immigration enforcement, these types of abuses and excesses will occur, and local communities will struggle through problematic relations with local law enforcement authorities whose role should be to "protect and serve" all members of the community.

³ See ACLU Recommendations to the Biden-Harris Administration, "Ending ICE's Mass Detention System," <https://www.aclu.org/aclu-immigration-policy-recommendations-biden-harris-administration>.

⁴ See Immigration Impact, "Immigration Enforcement Still Missing the Mark on Detainers," Aug. 17, 2016; TRAC, "Reforms of ICE Detainer Program Largely Ignored by Field Officers," Aug. 9, 2016, <https://trac.syr.edu/immigration/reports/432/>.

ICE Detention

The COVID-19 pandemic has thrown the moral crisis of immigration detention into stark relief. This past year, the death toll in ICE custody reached levels not seen in 15 years, and the use of force, including pepper spray, physical force, and rubber bullets, also increased.⁵

ICE has now reduced the average daily population by nearly 70 percent from its peak level under the Trump administration, in part due to COVID-19-related lawsuits. This massive reduction shows that the vast majority of detained immigrants can be released immediately.

We urge you to announce that in conjunction with the 100-day moratorium, ICE will carry out a file review of every person in custody and release them unless it finds by clear and convincing evidence they are a danger or flight risk. We also urge you to announce your intention to close facilities with egregious records of rights abuses, including those with high death rates and those that are in remote locations where access to counsel and families is difficult, and to take more appropriate precautions for COVID-19.⁶

CBP Detention of Asylum-seekers

We urge the incoming administration to rescind Trump administration policies that eliminate access to asylum, including the CDC's "Title 42" border orders and the Migrant Protection Protocols.⁷ Moreover, at tomorrow's hearing we urge you to state that the administration's plans to expeditiously restart asylum processing at the border will not involve CBP detention of asylum-seekers.

CBP has established a record of systemic abuse of people in its custody, particularly under the Trump administration. In the past two years, at least seven children have died in CBP custody or shortly after being released, often after receiving delayed medical care or being denied care altogether. Border Patrol agents have subjected pregnant people to physical mistreatment, verbal abuse, and severe delays in medical care, if it is provided at all. In February 2020, a woman in Border Patrol custody was forced to give birth to her baby while standing up, holding on to the side of a trash can in a Border Patrol station near San Diego.⁸ Border Patrol stations are simply not suited for detention beyond a brief period for processing.

⁵ See Madhuri Grewal, "Biden can end the mass incarceration of immigrants," *Washington Post*, Dec. 11, 2020, <https://www.washingtonpost.com/opinions/2020/12/11/biden-end-ice-detention-migrants-mass-incarceration/>.

⁶ For further recommendations, see ACLU Recommendations to the Biden-Harris Administration, "Ending ICE's Mass Detention System," <https://www.aclu.org/aclu-immigration-policy-recommendations-biden-harris-administration>

⁷ See ACLU Recommendations to the Biden-Harris Administration, "Restoring Asylum at the Border," <https://www.aclu.org/other/restoring-asylum-border>.

⁸ See ACLU Recommendations to the Biden-Harris Administration, "Customs and Border Protection Accountability," <https://www.aclu.org/other/customs-and-border-protection-accountability>.

They lack even the most basic humane conditions, such as beds, showers and trained staff. Moreover, the agency's repeated failure to hold its personnel accountable has fostered an agency culture of impunity. CBP must not be in the business of custody and care of individuals.

Access to Citizenship

While not everyone will qualify, the Constitution and federal law require that those seeking citizenship be afforded fundamental fairness and due process. However, and especially under the Trump Administration, the government has frequently failed to honor these guarantees and has blocked pathways to citizenship, including through long delays in the application process and denying military members the expedited process provided to them through the Immigration and Nationality Act (INA).

Three substantial and undue impediments to citizenship, including for Black and Brown immigrants, are: (1) the indefinite delay of immigration benefits, including citizenship, through the Controlled Application Review and Resolution Program (CARRP), which has targeted Muslims or those from Muslim-majority countries since 2008; (2) the obstruction of the expedited path to citizenship for non-citizens serving in the military; and (3) escalated denaturalization efforts.⁹

At tomorrow's hearing, we urge you to pledge that if confirmed, you will end unfair barriers to citizenship by terminating discriminatory programs like CARRP, ensuring non-citizens serving in the military have access to an expedited path to citizenship, and dismantling the new infrastructure established to advance denaturalization efforts.

Thank you for your consideration. If you have any questions or need further detail, please feel free to contact senior policy counsel Naureen Shah (nshah@aclu.org) and senior legislative and advocacy counsel Manar Waheed (mwaheed@aclu.org).

Sincerely,



Ronald Newman
ACLU National Political Director

⁹ See ACLU Recommendations to the Biden-Harris Administration, "Restoring Access to Citizenship and Other Immigration Benefits," <https://www.aclu.org/other/restoring-access-citizenship-and-immigration-benefits>.