

Congress of the United States
Washington, DC 20515

May 11, 2015

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S Department of Homeland Security
3801 Nebraska Ave., NW
Washington, DC 20528

Dear Secretary Johnson:

We write to urge the U.S. Department of Homeland Security (DHS) to implement robust accountability mechanisms and provide information regarding its implementation of the department's new enforcement priorities. On November 20, 2014, you issued a series of memoranda outlining administrative fixes to our nation's broken immigration system. Among these was *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, which outlined DHS's new civil enforcement priorities for the removal of undocumented immigrants.¹ The memorandum incorporated a three-tiered system of enforcement priorities, each of which contained a prosecutorial discretion exception for U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection to apply.²

Unfortunately, community members, advocates, and media reports indicate that ICE fails to or inconsistently applies the exceptions within each of these enforcement priorities and, in some cases, even targeted individuals who fall *outside* the enforcement priorities.³ For example, NGOs collected close to three dozen cases of individuals targeted by ICE who fall outside the enforcement priorities, have cognizable claims for prosecutorial discretion, or are unfairly detained.⁴ Disturbingly, ICE seems to consider all priority categories equally and targets individuals based on the mere fact that they fall within *any* priority—contrary to your explicit instruction that priority categories 2 and 3 are lower priorities.⁵

In the spirit of ensuring that our immigration enforcement framework is just, fair, and takes into consideration the equities of each individual case, we provide the following recommendations and requests for clarification:

¹ Memorandum from Jeh Johnson, Secretary, U.S. Department of Homeland Security, on Policies for the Apprehension, Detention and Removal of Undocumented Immigrants to Thomas S. Winkowski et. al (Nov. 20, 2014), available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf [hereinafter "Enforcement Priorities Memorandum"].

² See *id.*

³ Dana Lind, *The Government Can't Enforce Every Law. Who Gets to Decide Which One it Does?*, VOX, March 31, 2015, <http://www.vox.com/2015/3/31/8306311/prosecutorial-discretion>; Tammy Alexander, *Worst of the Worst?* MENNONITE CENTRAL COMMITTEE, March 2015, available at http://mcc.org/sites/mcc.org/files/media/common/documents/worstoftheworstreport-march242015_0.pdf [hereinafter "Mennonite Central Committee Report"]; Carolina Canizales and Paromita Shah, *Prosecutorial Discretion Denied*, UNITED WE DREAM and NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, April 2015, available at <http://unitedwedream.org/wp-content/uploads/2015/04/PDDenied.compressed.pdf> [hereinafter "Prosecutorial Discretion Denied"].

⁴ Prosecutorial Discretion Denied, *supra* note 3, at 8.

⁵ Enforcement Priorities Memorandum, *supra* note 1.

1. What training and guidance materials is ICE employing to implement the enforcement priorities, especially the prosecutorial discretion exceptions? Specifically, what weight does ICE allocate to positive equities and negative factors? Will DHS commit to ensuring that convictions older than three years be given little to no weight in the prosecutorial discretion analysis?
2. Will DHS commit to instructing ICE officers and lawyers to implement an affirmative screening mechanism to identify positive equities instead of placing the burden on immigrants seeking prosecutorial discretion?
3. Advocates and community members report that, in many instances, ICE summarily denies a request for prosecutorial discretion with little or no review of a request. What safeguards and accountability mechanisms exist to ensure that ICE adequately reviews requests for prosecutorial discretion?
4. Media and advocates report a litany of cases where ICE removed individuals with overwhelming positive equities. Please provide statistics or information regarding the number of cases where ICE: (a) exercised prosecutorial discretion in accordance with one or more of the exceptions within the enforcement priorities memorandum; and (b) denied such requests.
5. Under priority categories 1(c), 1(d), 1(e), 2(a), and 2(b), DHS considers an individual with certain convictions an enforcement priority. Will DHS commit to exclude individuals who fall within these categories but who had their convictions expunged (or equivalent) from the enforcement priorities?
6. As you are aware, gang databases and other gang identification mechanisms are notoriously unreliable.⁶ What criteria does DHS use to determine whether someone “intentionally participated in an organized criminal gang” as defined by priority category 1(c) or is a gang “associate?” What safeguards are in place to contest erroneous gang identifications?
7. In light of media reports where ICE targeted individuals who merely overstayed their visa,⁷ what constitutes significant abuse of the visa or visa waiver programs as outlined by priority category 2(d)? Will DHS commit to excluding mere visa overstays from this priority category?
8. Advocates report that during its latest enforcement action, ICE officers undertook many questionable tactics, including enforcement operations at homes and in public spaces.⁸ In one instance, ICE offices pretended to be local law enforcement officers and even hid the “ICE” insignia on their uniforms. What accountability mechanisms will DHS implement to ensure ICE does not employ these tactics in future enforcement operations?

⁶ Joshua D. Wright, *The Constitutional Failure of Gang Databases*, 2 STAN. J. OF C.R. & C.L. 115, 118 (2005); Danielle Gordon, *The Usual Suspects*, CHI. REPORTER, Sept. 1998, available at <http://chicagoreporter.com/usual-suspects/>.

⁷ Phil Fairbanks, *Despite Hardship Plea by Wife, Man is Being Deported in Visa Case*, THE BUFFALO NEWS, March 25, 2015, available at <http://www.buffalonews.com/city-region/federal-court/despite-hardship-plea-by-wife-man-is-being-deported-in-visa-case-20150325> (ICE denied a stay of deportation for an individual who overstayed her visa by 22 days, citing significant abuse of the visa or visa waiver program); Chase Olivarius-McAllister, *Durango Nurse Facing Deportation*, THE DURANGO HERALD, March 10, 2015, available at <http://durangoherald.com/article/20150310/NEWS01/150319959/Durango-nurse-facing-deportation-> (ICE field officer stated that an individual who overstayed their visa by several months significantly abused the visa or visa waiver program).

⁸ Mennonite Central Committee Report, *supra* note 3, at 8.

We strongly support your efforts to exercise prosecutorial discretion for individuals with positive equities and your continued efforts to make our immigration system more fair and just. We look forward to receiving your answers to the above questions and collaborating on the successful implementation of these guidelines.

Thank you for your attention to this important matter. If you have any questions, please have your staff contact Norma Salazar at norma.salazar@mail.house.gov or 202-225-2435.

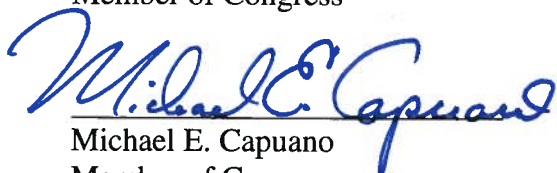
Sincerely,



Raúl M. Grijalva
Member of Congress



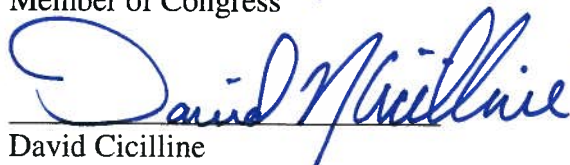
Donald S. Beyer Jr.
Member of Congress



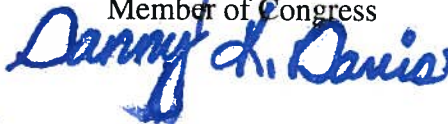
Michael E. Capuano
Member of Congress



Tony Cardenas
Member of Congress



David Cicilline
Member of Congress



Danny K. Davis
Member of Congress



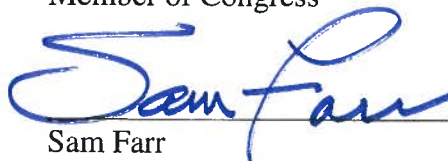
Mark DeSaulnier
Member of Congress



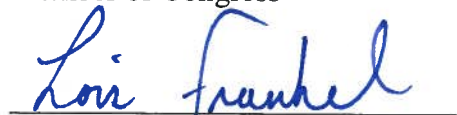
Lloyd Doggett
Member of Congress



Keith Ellison
Member of Congress



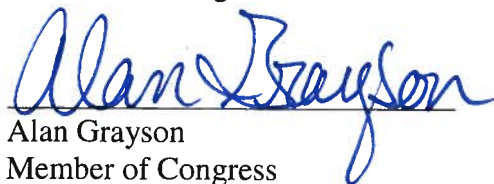
Sam Farr
Member of Congress



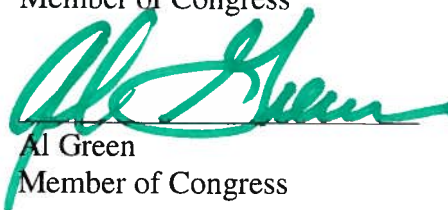
Lois Frankel
Member of Congress



Ruben Gallego
Member of Congress



Alan Grayson
Member of Congress



Al Green
Member of Congress



Luis V. Gutiérrez
Member of Congress



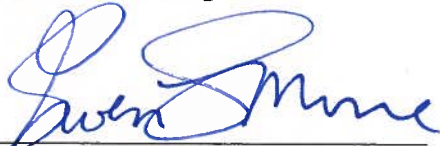
Michael M. Honda
Member of Congress



Rick Larsen
Member of Congress



Barbara Lee
Member of Congress



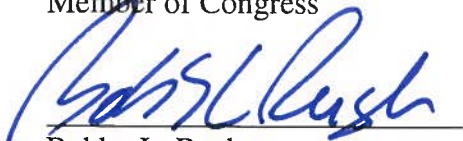
Gwen Moore
Member of Congress



Eleanor Holmes Norton
Member of Congress



Jared Polis
Member of Congress



Bobby L. Rush
Member of Congress



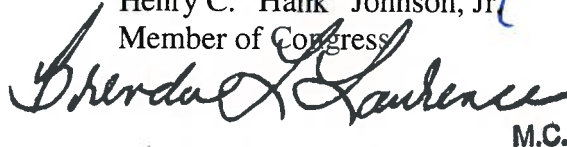
Jan Schakowsky
Member of Congress



Janice Hahn
Member of Congress

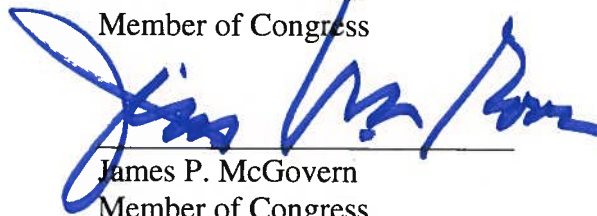


Henry C. "Hank" Johnson, Jr.
Member of Congress

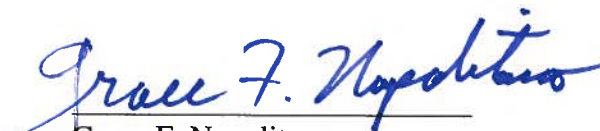


M.C.

Brenda L. Lawrence
Member of Congress



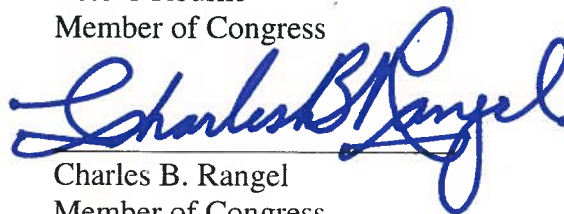
James P. McGovern
Member of Congress



Grace F. Napolitano
Member of Congress



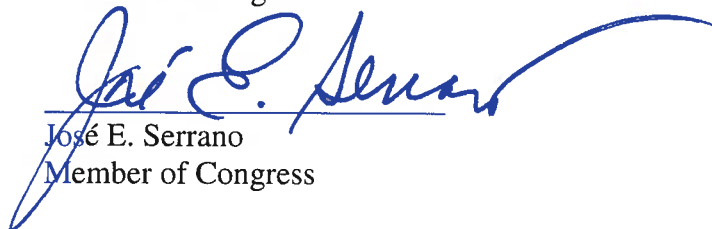
Beto O'Rourke
Member of Congress



Charles B. Rangel
Member of Congress



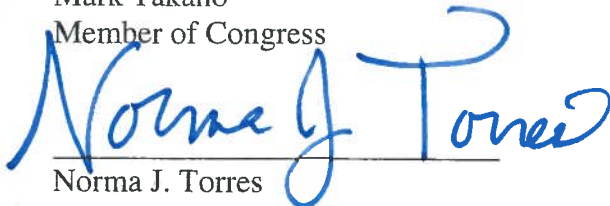
Loretta Sanchez
Member of Congress



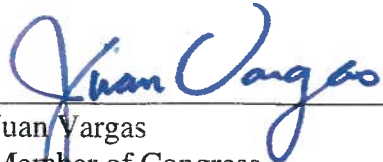
José E. Serrano
Member of Congress



Mark Takano
Member of Congress



Norma J. Torres
Member of Congress



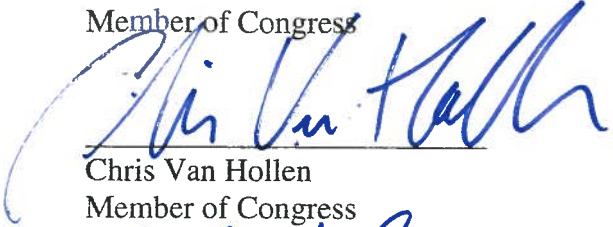
Juan Vargas
Member of Congress



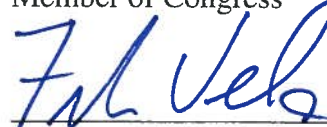
Bonnie Watson Coleman
Member of Congress



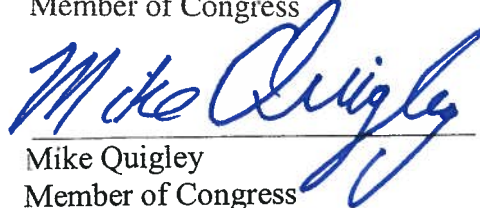
Dina Titus
Member of Congress



Chris Van Hollen
Member of Congress



Filemon Vela
Member of Congress



Mike Quigley
Member of Congress

CC: The Honorable Alejandro Mayorkas
Deputy Secretary of Department of Homeland Security

The Honorable Sarah Saldaña
Director of Immigration and Customs Enforcement

The Honorable R. Gil Kerlikowske
Commissioner of Customs and Border Protection