

February 16, 2021

Secretary Alejandro Mayorkas
Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C., 20016

RE: Letter to Secretary Urging Immediate Disapproval of Two January 19th Memoranda of Agreements Between U.S. Immigration and Customs Enforcement and ICE Council 118 American Federation of Government Employees

Dear Secretary Mayorkas,

The undersigned immigrant justice and democracy protection organizations urge the Department of Homeland Security (DHS) to immediately disapprove of the agreements made between the U.S. Immigration and Customs Enforcement (ICE) and ICE Council 118 American Federation of Government Employees (the ICE union) signed on January 19, 2021. These agreements, entered into in the final hours of the Trump administration, are unlawful, a politically-motivated abuse of authority, and, if allowed to go into effect, will hamper efforts to make urgently needed changes to immigration enforcement policies and practices that put asylum seekers, immigrants in detention, workers and the public at risk of harm.

On February 1, 2021, the *New York Times* reported on a complaint filed by the Government Accountability Project on behalf of a whistleblower who reported that former DHS political appointee Kenneth T. Cuccinelli entered into agreements with the ICE union on January 19, 2021, the last full day of the Trump presidency.¹ According to the complaint, the agreement conferred “extraordinary power and benefits far more than what DHS agreed upon with its other employee unions which did not endorse President Trump.” Most concerning, the whistleblower complaint alleges “that the agreements confer on the union the ability to indefinitely delay changes to immigration enforcement policies and practices as well” ... and “attempt to prohibit any challenge to their validity for *eight years*.”

This agreement is concerning for three reasons.

First, Mr. Cuccinelli was determined by five federal district courts and the Government Accountability Office (GAO) to have no legal authority to bind ICE.²

¹ Zolan Kanno-Youngs and Charlie Savage, *Trump Official's Last-Day Deal With ICE Union Ties Biden's Hands*, *New York Times*, (Feb. 1, 2021), <https://www.nytimes.com/live/2021/02/01/us/biden-administration#bidens-hands-are-tied-by-a-trump-officials-last-minute-deal-with-ice-union>; *See also* Government Accountability Project, *Protected Whistleblower Disclosures of Gross Mismanagement, Gross Waste of Government Funds, and Abuse of Authority by Former DHS Political Appointee Kenneth T. Cuccinelli*, (Feb. 1, 2021), <https://int.nyt.com/data/documenttools/whistleblower-complaint-on-cuccinelli-and-ice-union-employment-agreements/1ace69fe8ae349e1/full.pdf>.

² After unlawfully serving as the Acting Director of U.S. Citizenship Immigration Services, *see* LLM v. Cuccinelli, No. 19-cv-0276-RDM (D.D.C. Mar. 1, 2020) (ECF # 34), Mr. Cuccinelli began serving unlawfully as the purported “Senior Official Performing the Duties of the Director of USCIS” and the “Senior Official Performing the Duties of the Deputy Secretary.” Even if those positions could lawfully take the actions Mr. Cuccinelli attempted here, Mr.

Second, the last-hour agreement is a politically motivated abuse of authority that seeks to cement the policies of the last administration by conferring sweeping contract benefits on a union supportive of Trump’s “zero-tolerance” immigration policies, in stark contrast to how Cuccinelli historically treated unions, such as those representing asylum officers who overtly protested the Trump administration’s policies and practices. The agreements were clearly politically motivated attempts to disrupt efforts by the current administration to change course on immigration policies enforced and implemented by ICE.

Finally, if the agreements go into effect, they will give the ICE union unprecedented power to veto the Biden administration’s changes to the ICE agency, including changes to immigration enforcement policies and practices. Since its inception, ICE’s budget has increased by more than 40%, fueling a system-wide escalation of ICE’s capacity to apprehend, detain, and deport noncitizens. Under the Trump administration, an increased budget and a series of new policies escalated aggressive enforcement tactics by the agency and expanded indiscriminate enforcement.³ ICE carried out President Trump’s mass immigration enforcement agenda launching indiscriminate ICE raids and subjecting asylum seekers and immigrants to prolonged detention in inhumane conditions. ICE’s medical neglect and failure to address COVID-19 in detention led to the highest annual death toll for individuals in ICE custody in fifteen years.⁴ The immigration system is in urgent need of reform and DHS’s last-minute agreement with the ICE union severely compromises the Biden administration’s ability to address the well-documented and ongoing abuses carried out by ICE. The Cuccinelli labor agreements are part of a concerted strategy to restrict the Biden administration from enacting changes to the cruel Trump-era immigration enforcement policies.⁵

According to the whistleblower complaint, the Secretary has the right to dismiss the agreements, but must do so within 30 days of the date of the agreements, which would be on or before February 18, 2021. In the event of no dismissal, the agreements will take effect.

The politically motivated, unlawful, last-minute agreements of the prior administration must not dictate the future of these federal agencies or further insulate them from oversight and

Cuccinelli could not because he served in those positions pursuant to an appointment by Chad Wolf. Five district courts have unanimously determined Mr. Wolf held that position unlawfully. *See also* GAO Decision, *Matter of Department of Homeland Security — Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security*, File No. B-331650 (Aug. 14, 2020), available at <https://www.gao.gov/assets/710/708830.pdf>.

³ Defund Hate, *Understanding the Finances Behind ICE and CBP*, <https://defundhate.org/how-to/#ICE-and-CBP-budget>.

⁴ Catherine Shoichet, The death toll in ICE custody is the highest it’s been in 15 years, CNN, (Sept. 30, 2021), <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html>.

⁵ Prior to Biden taking office, DHS signed unprecedented [agreements](#) with several states requiring DHS to provide 180 days’ advance notice to the state before enacting certain immigration policy changes. These agreements have compromised the implementation of the [DHS memo](#) issued by the Biden administration on January 20, 2021 that among other things, temporarily paused most deportations for 100 days. A lawsuit brought by the state of Texas led to Federal Judge Tipton [temporarily halting](#) the administration’s categorical, across the board, deportation pause. Even though ICE officers are permitted to use their discretion to grant stays of removal, this temporary restraining order seemed to result in ICE officers [rushing deportations](#), particularly to majority Black countries such as Jamaica, Haiti, the Democratic Republic of Congo, Cameroon and Angola.

accountability in the Biden administration. The destructive immigration system must be addressed with alacrity. The new administration must be able to implement its own priorities and undo nearly two decades of these agencies' harmful and destructive actions by creating new policies that treat immigrants with dignity and provide a fair process.

To the extent these agreements would hinder the Biden administration's ability to implement reforms to correct past abuses, we urge you, as the head of the agency, to act promptly and disapprove them before the February 18, 2021 deadline.

Sincerely,

Adelante Alabama Worker Center
Advocate Visitors with Immigrants in Detention
Advocates for Basic Legal Equality, Inc.
African Communities Together
African Public Affairs Committee
African Services Committee
Alianza Americas
Alianza Nacional de Campesinas
America's Voice
American Muslim Empowerment Network (AMEN)
American Oversight
American-Arab Anti-Discrimination Committee (ADC)
Americans for Immigrant Justice
APACE
Asian Americans Advancing Justice-Atlanta
Asian Pacific Institute on Gender-Based Violence
Bridges Faith Initiative
Casa Latina
Catholic Legal Immigration Network, Inc.
Center for Gender & Refugee Studies
Center for Victims of Torture
Centro Legal de la Raza
Church World Service
Citizens for Responsibility and Ethics in Washington
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Colorado Immigrant Rights Coalition
Columbia Law School Immigrants' Rights Clinic
Community Asylum Seekers Project
Congregation Beth Shalom
Conversations with Friends (MN)

Council on American-Islamic Relations, Washington Chapter
Daily Kos
Detention Watch Network
DSA SF - Immigrants' Rights and International Solidarity Committee
Entre Hermanos
Equality California
Fair Immigration Reform Movement (FIRM)
Farmworker Association of Florida
Florence Immigrant & Refugee Rights Project
Government Information Watch
Hispanic Federation
ICNA CSJ
Immigrant Action Alliance
Immigrant Defenders Law Center
Immigrant Defense Project
Immigrant Justice Alliance, a Texas Non-profit
Immigrant Legal Advocacy Project
Immigrant Legal Defense
Immigration Hub
Indivisible
Inland Coalition for Immigrant Justice
Intercommunity Justice and Peace Center
Interfaith Council for Peace & Justice
Jewish Coalition for Immigrant Justice Northwest
La Casa Hogar
Leadership Conference of Women Religious
Legal Aid Justice Center
LIFT ORCAS
Louisiana Advocates for Immigrants in Detention
Mainers for Accountable leadership
Mid-South Immigration Advocates
Mijente
National Immigrant Justice Center
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project (NIPNLG)
National Network for Immigrant & Refugee Rights
National Queer Asian and Pacific Islander Alliance
Neighbors Link
New Jersey Alliance for Immigrant Justice

No Border Wall Coalition
North Carolina Justice Center
Northern Illinois Justice for Our Neighbors
Northwest Immigrant Rights Project
NYU Immigrant Rights Clinic
OneAmerica
Oregon Justice Resource Center
Plymouth Church, UCC, Immigration Ministry Team
Poder Latinx
Project South
Protect Democracy
Puentes
RCHP-AHC Still Waters Anti-trafficking Program
RefugeeOne
Rural Coalition
San Bernardino Community Service Center
Sanctuary and Resistance to Injustice
Seattle Immigrant Rights Action Group
Seattle Indivisible
Silver State Equality-Nevada
South Asian Americans Leading Together (SAALT)
Strengthening Sanctuary Alliance
The Advocates for Human Rights
The Conversation
Transformations CDC
Tri-Cities Immigrant Coalition
UndocuBlack Network
United We Dream
University Unitarian Church
UnLocal
Wallingford Indivisible
Washington Coalition of Sexual Assault Programs (WCSAP)
Washington Defender Association
Wind of the Spirit Immigrant Resource Center
Witness at the Border

CC: Angela Kelley, Senior Counselor on Immigration, DHS
David Shahoulian, Assistant Secretary, Border Security and Immigration, DHS
Tae D. Johnson, Acting Director, ICE
Timothy Perry, Chief of Staff, ICE