

March 31, 2021

**The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528**

Re: Ending Immigration and Customs Enforcement Collaboration Programs in Utah

Dear Secretary Mayorkas,

We, the undersigned immigrant justice, civil rights, and community organizations from throughout Utah congratulate you on your confirmation to lead the U.S. Department of Homeland Security (DHS). Under your leadership, DHS has the opportunity to depart from the painful legacy of your predecessors whose impact continues to affect BIPOC communities today in furtherance of the shared vision that the United States has the capacity to become a “country of welcome.”¹

Among your initial reforms, we urge you to prioritize ending Immigration and Customs Enforcement (ICE) collaboration programs and practices that entangle state and local agencies in federal immigration enforcement, including Secure Communities and ICE detainers. For four years, the Trump administration made these ICE collaboration programs a centerpiece of its anti-immigrant, fear-based agenda. Through the existence of these programs, ICE has deepened its entanglement with the criminal legal system and perpetuated and benefited from the mass incarceration of Black and Brown individuals in this country. Ending these programs would signal to our communities that under your leadership, DHS will decisively break from this xenophobic and racist legacy.

We recognize the February 18, 2021 *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* (“Johnson Memorandum”) instructs local ERO field offices to narrow the use of ICE Detainers. We welcome this as an important first step, but urge you to end the practice at large. Ending these programs is imperative as a matter of public safety and welfare. These programs spread fear and anxiety in our communities, making immigrants and their family members afraid to access public services, protection, and assistance from local government agencies that they justifiably fear are working with ICE to track and deport individuals.

The American Public Health Association, in a statement opposing Secure Communities, explained: “Immigrants’ health is indirectly undermined by fear of seeking medical care, or relief from domestic abuse, sexual assault, stress and trauma.”² The COVID-19 pandemic has placed these concerns in sharp relief, as immigrants and their family members fear that they may be asked to provide identifying information during testing, treatment and vaccinations that could be shared with ICE and lead to their deportation.³ This fear created a barrier in resource access for these families.

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 American Public Health Association, “Opposing the DHS-ICE Secure Communities Program”, Policy Number: 20128, Oct. 30, 2012, <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/18/11/24/opposing-the-dhs-ice-secure-communities-program> (internal citations omitted).

³ See Marco della Cava, Daniel Gonzalez and Rebecca Plevin, “As COVID-19 vaccine rolls out, undocumented immigrants fear deportation after seeking dose,” USA Today, Dec. 20, 2020,

Throughout Utah, Community Health Workers reported that although many people qualify for resources such as rent relief, food, utility assistance and experienced a financial loss due to the pandemic, many of them did not want to seek out this assistance out of fear that it would be used against them and shared with ICE. Numerous immigrants reached out to Comunidades Unidas (CU), a local nonprofit devoted to empowering the Latinx community, and expressed fear that their lack of documentation would be used against them and they would be turned away at vaccine sites. During conversations CU had with those hesitant to obtain the vaccine, community members frequently mentioned that they would rather choose not to obtain the vaccine as opposed to taking a risk that their information will be shared with unknown entities. They shared hesitation in attending vaccine events with police presence due to their ties with ICE. For some, although eligible and able to receive the vaccine sooner at general sites, hundreds opt to be placed on vaccine waitlists at community clinics for possible future events because they do not trust the government entities at other sites and fear being turned away or having their information shared with ICE.

Moreover, ICE collaboration programs can contribute to people experiencing domestic violence, sexual abuse and human trafficking being far less likely to seek urgently needed police protection and local services, out of fear of deportation and separation from their children.⁴ Through stories collected by local community organizations, it is evident that members of our community fear contacting local law enforcement because of the knowledge that these collaborations exist. Sheriffs, police chiefs and prosecutors throughout the country are some of the leading critics of these programs because they make people less likely to seek police protection, report crimes and serve as witnesses.⁵ That is why the 2015 report of the President’s Task Force on 21st Century Policing concluded that “whenever possible, state and local law enforcement should not be involved in immigration enforcement.”⁶ Multiple studies have confirmed that there is no correlation between honoring ICE detainees and crime rate reduction.⁷ Years of

<https://www.usatoday.com/story/news/nation/2020/12/19/covid-19-vaccine-undocumented-immigrants-fear-getting-dose/3941484001/>; Tori Bedford, “Fear of Deportation Prompts Undocumented Immigrants to Resist COVID-19 Vaccine,” WGBH News, Jan. 5, 2021, <https://www.wgbh.org/news/local-news/2021/01/05/fear-of-deportation-prompts-undocumented-immigrants-to-resist-covid-19-vaccine>; Michael Herzenberg, “How Fear of Deportation Compounds COVID-19 Infection Rates and Compromises Recovery for Undocumented Immigrants,” Spectrum News NY1, Aug. 25, 2020, <https://www.ny1.com/nyc/all-boroughs/news/2020/08/25/how-fear-compounds-covid-19-infection-rates-and-compromises-recovery-for-undocumented-immigrants>.

⁴ See Kathryn Finley, “Access to Justice in a Climate of Fear: New Hurdles and Barriers for Survivors of Human Trafficking and Sexual Violence,” Center for Migration Studies, Jan. 29, 2019 https://cmsny.org/publications/finley-climate-of-fear/#_ftn8.

⁵ See, e.g., Nat’l Imm. Law Ctr., Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement (August 2013), <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement).

⁶ Final Report of the President’s Task Force on 21st Century Policing, Recommendation 1.9 and 1.91 Action Item, May 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁷ https://www.washingtonpost.com/national/sanctuary-city-study-immigration-crime/2020/10/21/5810d13a-12fa-11eb-82af-864652063d61_story.html; Amuedo-Dorantes, Catalina, Deza, Monica, *Can Sanctuary Policies Reduce Domestic Violence*, Center for Growth and Opportunity, Utah State University, May 2020, available at <https://www.thecgo.org/wp-content/uploads/2020/09/Can-Sanctuary-Policies-Reduce-Domestic-Violence.pdf>; Light, He, Robey, *Comparing crime rates between undocumented immigrants, legal immigrants, and native-born US citizens in Texas*, 117 PNAS 51, 32340, (Dec. 20, 2020), available at <https://www.pnas.org/content/pnas/117/51/32340.full.pdf>.

evidence show that in addition to diverting police resources, ICE collaboration programs do not decrease local crime rates.⁸

These programs also divert local resources and strain local budgets at a time when they are already under stress due to the pandemic and its economic impacts. Local agencies assume the costs of detention pursuant to ICE detainees. For example, between 2017-20, 2,561 individuals were subject to detainees⁹ in Salt Lake County Metro Jail, not including individuals in Federal U.S. Marshals' custody housed inside the facility pursuant to IGSA's.¹⁰ Participation in ICE collaboration programs has inadvertently exposed spending up to \$540,000 of local taxpayer funds in furtherance of these partnerships.¹¹ Local governments also bear the burden of financial liability for constitutional violations arising from these programs, as numerous cases and settlements in recent years show.¹²

The negative impact of these programs extends beyond police and medical services. The trepidation caused by these programs can make immigrants and their families choose not to apply for public benefits--such as the Supplemental Nutrition Assistance Program--causing immediate and long-term damage to the health of immigrant and U.S. citizen children.¹³ Utah's uninsured rate for children is one of the highest in the nation. During the past four years, we saw a significant increase of children's uninsured rate with more families opting out of the programs their families were eligible because of fear deportations and the public charge rule. Additionally, the stress and anxiety caused by the prospect of detention and deportation have long-lasting negative mental health effects for children and their communities. Utah is a better place for all of us when every community member feels safer and their families are not facing a constant fear of deportation.

We welcome the changes announced in the Johnson Memorandum, but urge the agency to end the practice of ICE detainees at large. While the use of detainees is now limited to public safety, national security, and border security, they still perpetuate the problems that plague our criminal legal system. Most alarming of these concerns is the disproportionate targeting of Black and Brown people. Over the years, we've seen that while systems using these kinds of criteria are ostensibly neutral, they result in law enforcement stereotyping and singling out Muslim, Arab, Middle Eastern, and South Asian community members as "national security threats." Similarly, a focus on individuals that are convicted of "aggravated felonies", a misleading designation in the world of immigration law, may result in unjustified detentions because of the complexities associated with this category which encompasses numerous criminal convictions, including

⁸ For a summary of studies concerning Secure Communities and crime rates, see Alex Nowrasteh, "Trump Executive Order Reestablishes 'Secure Communities,'" Jan. 25, 2017, <https://www.cato.org/blog/trump-executive-order-reestablishes-secure-communities>. See also Nick Miroff, "Study finds no crime increase in cities that adopted 'sanctuary' policies, despite Trump claims," Washington Post, Oct. 21, 2020, https://www.washingtonpost.com/national/sanctuary-city-study-immigration-crime/2020/10/21/5810d13a-12fa-11eb-82af-864652063d61_story.html.

⁹ Salt Lake County Sheriff's Office, *Jail ICE Dashboard*, http://slsheriff.org/page_jail_ICE_dashboard.php.

¹⁰ In 2017, it was reported that it costs \$106 per day to house each inmate in Salt Lake County Jail. By continuing a policy of honoring detainees, Salt Lake County risks spending over \$200 for each person subject to a detainer (the cost of the extra 48 hours in custody).

¹¹ See Niskanen Center, "287(g) Agreements: A Costly Choice for Localities," Oct. 19, 2020, <https://www.niskanencenter.org/287g-agreements-a-costly-choice-for-localities/> (calculating more than \$2,000 per detainer, based on the average length of stay in jail for individuals transferred to ICE custody compared to individuals released, at a cost of \$113/day).

¹² See ACLU, "Recent ICE Detainer Damages Cases," <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases>.

¹³ See Marcella Alsan and Crystal Yang, "Fear and the Safety net: Evidence from Secure Communities," National Bureau of Economic Research, July 2019, <https://www.nber.org/papers/w24731>.

misdeemeanors, and often results in ICE incorrectly detaining an individual under this category. We've also witnessed the impact that "public safety" and allegations of gang membership have on young Black and Brown members of our communities. That is, BIPOC youth are often wrongly listed as "gang members" in flawed gang databases because police engage in oversurveillance of their communities and make determinations using racial and cultural stereotypes. Being designated as a "gang member" can have lasting effects on a person in a variety of areas, including in the immigration context. Lastly, it cannot be ignored that the focus on "border security" and the criminalization of individuals entering the country through 8 USC §§ 1325 and 1326 prosecutions contribute to the high rates of prosecutions and incarceration of Black and Brown individuals that are immigrants.

We urge the new administration to heed lessons from the Obama administration, when DHS issued enforcement priorities and limited reforms to ICE collaboration programs. ICE and some local law enforcement agencies colluded to flout these enforcement priorities. As long as these ICE collaboration programs continue to exist in some form, local law enforcement agencies are likely to continue exploiting them to engage in racial profiling and harassment, notwithstanding the good intentions of the new administration.

We urge you to act decisively to end these programs and look forward to engaging with you on a new path forward.

Sincerely,



ACLU of Utah



Voices for Utah Children



Comunidades Unidas



Utah Coalition of La Raza



Rape Recovery Center



La Red de Solidaridad



Black Lives Matter Utah

Utah Muslim Civic League



Utah Muslim Civic League