

January 22, 2021

The Honorable David Pekoske  
Acting Secretary  
U.S. Department of Homeland Security  
246 Murray Lane, SW  
Washington, D.C. 20528

Dear Acting Secretary Pekoske:

I write to request immediate clarification on the scope of your January 20, 2021, directives to the acting leadership of three U.S. Department of Homeland Security (DHS) components, including Immigration and Customs Enforcement (ICE), titled, “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities.”

In that memorandum, you direct relevant acting agency leadership to “conduct a review of policies and practices concerning immigration enforcement.” I am concerned that such directives will prevent the removal of illegal immigrants with existing removal orders, including those with serious criminal records and convicted of violent crimes such as rape, sexual assault, and other aggravated felonies.

It is deeply troubling that one of the first actions taken by the Biden Administration could undermine the safety and security of all Americans, including immigrants here lawfully. It is important that that the meaning and intent of several provisions in this directive be clarified immediately, specifically:

- Section B of the memorandum, “Interim Civil Enforcement Guidelines,” notes that DHS “must implement civil immigration enforcement based on sensible priorities and changing circumstances” and lists, in numbered sequential order “National Security,” “Border Security,” and “Public Safety” as removal priorities. With regard to “Public Safety” removals, the memorandum includes as a priority the removal of “[i]ndividuals incarcerated within federal, state, and local prisons and jails released on or after the issuance of this memorandum who have been convicted of an “aggravated felony,” as that term is defined in section 101(a) (43) of the Immigration and Nationality Act at the time of conviction, and are determined to pose a threat to public safety.”

Does this mean someone convicted of an “aggravated felony,” including rape or sexual abuse of a minor, is not a priority for removal if they were released from jail on or before January 19, 2021?

- Section C of the memorandum, the “Immediate 100-Day Pause on Removals,” mandates “an immediate pause on removals of any noncitizen with a final order of removal,” with four exceptions. The fourth exception enables the “Acting Director of ICE, following consultation with the General Counsel, [to make] an individualized determination that removal is required by law.”

Does the “pause” on removals apply to someone convicted of an “aggravated felony” such as rape or sexual abuse of a minor, who was released from jail on or before January 19, 2021 unless the Acting Director makes an individualized determination that “removal is required by law?”

- The memo further notes that the Acting Director of ICE “shall issue written instructions with additional operational guidance” by February 1, 2021. This guidance “shall include a process for individualized review and consideration of the appropriate disposition for individuals who have been ordered removed for 90 days or more, to the extent necessary to implement this pause,” and “shall provide for assessments of alternatives to removal including, but not limited to, staying or reopening cases, alternative forms of detention, custodial detention, whether to grant temporary deferred action, or other appropriate action.”

For individuals who have previously been ordered removed, what is the intent behind considering “reopening cases,” and what would “other appropriate action” be?

Thank you in advance for providing clear and detailed responses to these inquiries, which are critically important to the safety and security of people we are sworn to protect.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Rubio', written in a cursive style.

Marco Rubio  
U.S. Senator

CC:

Mr. Troy Miller, Senior Official Performing the Duties of the Commissioner, U.S. Customs and Border Protection

Acting Director Tae Johnson, U.S. Immigration and Customs Enforcement

Ms. Tracey Renaud, Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services