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The Honorable Alejandro Mayorkas
Nominee, Secretary of the Department of Homeland Security
Via email
January 21, 2021

Dear Mr. Mayorkas,

We, the undersigned immigrant justice, civil rights, social justice groups congratulate you on your recent nomination to lead the U.S. Department of Homeland Security (DHS). Under your leadership, DHS has the opportunity to transform into an agency that furthers our shared vision of the United States as 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 the 287(g) program, 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. The escalation of these programs is in direct contradiction to the President’s Task Force on 21st Century Policing’s 2015 report that concluded that “whenever possible, state and local law enforcement should not be involved in immigration enforcement.”² Ending these programs would signal to our communities that under your leadership, DHS will decisively break from this xenophobic legacy.

We write to share our experiences with these programs in Wisconsin and illustrate why ending them is imperative as a matter of public safety and welfare. ICE collaboration 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 immigrants.

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.”³ The COVID-19 pandemic has placed

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 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.

³ American Public Health Association, “Opposing the DHS-ICE Secure Communities Program”, Policy Number: 20128, Oct. 30, 2012,

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.⁴

Moreover, ICE collaboration programs make people experiencing domestic violence, sexual abuse and human trafficking far less likely to seek urgently needed police protection and local services, out of fear of deportation and separation from their children.⁵ In response to Milwaukee County's 2018 decision not pursue an 287(g) agreement with ICE, Jasmine Gonzalez, a spokeswoman for the Wisconsin immigrant rights organization Voces de la Frontera, stated "[f]olks were terrified to report crimes when they needed help from law enforcement."⁶ Milwaukee County's decision, in the view of Gonzalez, was a step towards rebuilding a trusting relationship between the County Sheriff's Office and Milwaukee's immigrant communities.⁷ Sheriffs, police chiefs and prosecutors 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.⁸ As Dane County Sheriff Dave Mahoney stated, the 287(g) program can often make a community less safe "[t]he real danger to that is you empower the predators who are preying on the non-documented who fear coming forward to law enforcement."⁹ Sheriff Mahoney continued that when "[y]ou empower the oppressors, you empower the predator, and then it becomes less safe for U.S. citizens because they become victims."¹⁰

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 participating in the 287(g) program are responsible for all salaries and benefits, including overtime, for officers designated under the agreement; travel, housing and a per diem for the training required under the agreement; and administrative costs. In fact, in 2017, Waukesha County Sheriff Eric Severson, a current proponent of the 287(g) program, stated the program's

<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).

⁴ 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, <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>.

⁵ 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.

⁶ Corrinne Hess, "Milwaukee County Sheriff's Office No Longer Working With ICE," Wisconsin Public Radio, Mar. 4, 2019, <https://www.wpr.org/milwaukee-county-sheriffs-office-no-longer-working-ice>.

⁷ *Id.*

⁸ 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).

⁹ Steven Elbow, "ICE steps up presence in Madison," The Capitol Times, Jul. 26, 2018, <https://www.wpr.org/milwaukee-county-sheriffs-office-no-longer-working-ice>.

¹⁰ *Id.*

costs were a limitation to his county's participation in the program prior to 2019 when the county signed a 287(g) with ICE.¹¹ Local agencies are reimbursed for only a small fraction of the costs of detention pursuant to ICE detainers.¹² Milwaukee County estimated in 2017 that it was incurring \$900,000 per year in unreimbursed expenses for honoring ICE detainers before that practice was ended.¹³ Los Angeles County spent more than \$60 million to detain people at ICE's request.¹⁴ 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.¹⁵

Although the 287(g) program and detainers are voluntary, states like Texas and Florida have passed "anti-sanctuary" laws requiring local police to participate in federal immigration enforcement. These laws "have caused local police agencies to adopt policies that in many cases contradict their public safety and community policing priorities."¹⁶ As Art Acevedo, chief of police in Houston, Texas, explained, Texas' law has undermined efforts to combat transnational cartels: "[T]he passage of this legislation has undoubtedly made the immigrant communities less willing to talk to us. Without the cooperation of all our residents, we are less effective locally and internationally, allowing the cartels to operate with impunity."¹⁷ Years of evidence show that in addition to diverting police resources, ICE collaboration programs do not decrease local crime rates.¹⁸

Furthermore, ICE collaboration programs have led to rights violations and abuses. Being in the business of immigration enforcement incentivizes local police to make pretextual arrests on state or local criminal grounds—with the actual goal of identifying immigrants to detain for ICE. It emboldens law enforcement officers across the country to use immigration enforcement as a means of threatening and harassing people in immigrant communities. Our organizations

¹¹ Testimony of Sheriff Eric Severson, "The Effects of Border Insecurity and Lax Immigration Enforcement on American Communities: Hearing Before the Senate Comm. on Homeland Security and Governmental Affairs," 115th Cong. (2017), available at: <https://www.hsgac.senate.gov/the-effects-of-border-insecurity-and-lax-immigration-enforcement-on-american-communities>.

¹² 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).

¹³ Affidavit of Margaret Daun, Milwaukee County Corp. Counsel, dated June 27, 2017

¹⁴ See UC Irvine School of Law, "Misplaced Priorities: The Failure of Secure Communities in Los Angeles County," https://www.law.uci.edu/academics/real-life-learning/clinics/MisplacedPriorities_aguilascho-rodwin-ashar.pdf.

¹⁵ See ACLU, "Recent ICE Detainer Damages Cases," <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases>.

¹⁶ Police Executive Research Forum, "Local Police Perspectives on State Immigration Policies," July 2014, https://www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/Local%20police%20perspectives%20on%20state%20immigration%20policies.pdf.

¹⁷ Statement of Art Acevedo for the Record, Chief of Police, City of Houston, Texas, Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, Dec. 11, 2018, <https://leitf.org/wp-content/uploads/2018/12/Statement-of-Art-Acevedo-Senate-Committee-on-the-Judiciary-Subcommit...pdf>.

¹⁸ 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.

have documented thousands of cases of U.S. citizens held on erroneous detainers.¹⁹ These abuses are one reason why communities across the country have recently elected sheriffs who pledged to end their localities' 287(g) agreements,²⁰ and why one-fourth of all counties have adopted so-called sanctuary measures that limit ICE collaboration.²¹ In 2017, for instance, the Milwaukee County Board of Supervisors passed a resolution declaring the county a "sanctuary county."²² Under the resolution, the Board of Supervisors declared that Milwaukee County "will prioritize keeping families together and will remain a safe place for immigrants, who contribute to the richness and vibrancy of the community."²³

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--and notwithstanding the intentions of the new administration--law enforcement officers are likely to continue exploiting them to engage in racial profiling and harassment.

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 Wisconsin

Black Leaders Organizing for Communities (BLOC)

Brown Berets

DSA

First Unitarian Society - Madison - Justice Ministry

Hanan Refugees Relief Group

Hmong American Women's Association, Inc.

(more)

¹⁹ See, e.g., Spencer Amdur, "Florida Sheriff Worked With ICE to Illegally Jail and Nearly Deport US Citizen," ACLU, Dec. 3, 2018, <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/florida-sheriff-worked-ice-illegally-jail-and>; David J. Bier, "U.S. Citizens Targeted by ICE," CATO Institute, Aug. 29, 2019, <https://www.cato.org/sites/cato.org/files/pubs/pdf/irpb-8.pdf>.

²⁰ Brain Tashman, "As Sheriffs Quit ICE, Joe Biden Can Lead the Way in Restoring Trust," ACLU, Jan. 12 2021, <https://www.aclu.org/news/immigrants-rights/as-sheriffs-quit-ice-joe-biden-can-lead-the-way-in-restoring-trust/>.

²¹ Immigrant Legal Resource Center, Growing the Resistance: How Sanctuary Laws and Policies Have Flourished During the Trump Administration (2019) (at least 23 percent of counties in the United States have such policies), <https://www.ilrc.org/growing-resistance-how-sanctuary-laws-and-policies-have-flourished-during-trump-administration>.

²² Don Behm, "County Board action on undocumented immigrants jeopardizes federal funds," Milwaukee Journal Sentinel, Feb. 2, 2017, <https://www.jsonline.com/story/news/local/milwaukee/2017/02/02/county-board-action-undocumented-immigrants-jeopardizes-federal-funds/97392404/>.

²³ Milwaukee County Board Resolution 16-387, available at, <https://milwaukeecounty.legistar.com/View.ashx?M=M&ID=530995&GUID=FD9C3698-A810-4447-9999-259AB491AEBF>.

Kids Forward

League of United Latin American Citizens - WI

League of Women Voters of Wisconsin

Lutheran Office for Public Policy in Wisconsin

Milwaukee Action Intersection

Milwaukee County Human Rights Commission

Milwaukee Turners

Mothers for Justice United

NAACP - Milwaukee Branch

National Association of Social Workers, Wisconsin Chapter

National Lawyers' Guild Madison Chapter

National Lawyers' Guild Milwaukee Chapter

RidRacism Milwaukee

Task Force on Criminal Justice Reform

Voces de la Frontera

Wisconsin Faith Voices for Justice

Wisconsin Justice Initiative

Wisconsin Network for Peace and Justice

WISDOM