

# United States Senate

WASHINGTON, DC 20510

July 14, 2022

## VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security

Dear Secretary Mayorkas:

We are writing to you today regarding your Department's implementation of an April 3, 2022, memorandum issued by Kerry E. Doyle, the Principal Legal Advisor within the U.S. Immigration and Customs and Enforcement (ICE) Office of the Principal Legal Advisor (OPLA).<sup>1</sup> The memorandum, entitled "*Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*" (the Doyle Memorandum), went into effect on April 25, 2022. Commentators from multiple sides of this issue have estimated that the policies and procedures directed by the Doyle Memorandum could result in the dismissal of 700,000 cases from immigration court.<sup>2</sup>

The Doyle Memorandum stated that its purpose was to "guide [OPLA Attorneys] in appropriately executing DHS' enforcement priorities," which were articulated in the civil immigration enforcement priorities discussed in your September 30, 2021, memorandum entitled, *Guidelines for the Enforcement of Civil Immigration Law*" (Mayorkas Memorandum).

As you are aware, the Mayorkas Memorandum was vacated by a federal court in Texas on June 10, 2022.<sup>3</sup> On June 25<sup>th</sup>, DHS posted a header on the Mayorkas Memorandum stating that "...ICE will not apply or rely upon the Mayorkas Memorandum in any manner."<sup>4</sup> Given that the Doyle Memorandum relied on the Mayorkas Memorandum, we ask for responses to the following questions and data requests no later than August 4, 2022. If the data requests will be delayed, please send the answers to questions 1, 2, and 5 separately:

1. When do you plan to rescind the Doyle Memorandum, given that the primary stated authority<sup>5</sup> for that memorandum – the Mayorkas Memorandum – has been vacated?
2. Page 1 of the Doyle Memorandum cites as authority an April 3, 2022, Memorandum from Jonathan E. Meyer, DHS General Counsel, entitled *Exercising Prosecutorial*

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<sup>1</sup> KERRY E. DOYLE – PRINCIPAL LEGAL ADVISOR, OFFICE OF THE PRINCIPAL LEGAL ADVISOR – U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *Memorandum – Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (April 3, 2022), available at [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf).

<sup>2</sup> Eileen Sullivan, *ICE Lawyers Directed to Clear Low-Priority Immigration Cases*, NEW YORK TIMES (April 4, 2022), <https://www.nytimes.com/2022/04/04/us/politics/ice-immigration-cases.html>.

<sup>3</sup> The injunction was stayed for a total of 14 days – until June 24, 2022. *State of Texas et al. v. The United States et al.*, 6:21-cv-00016 (S.D. Texas, June 10, 2022), available at [ruling-in-texas-and-louisiana-lawsuit-regarding-biden-deportation-policies.pdf](https://www.courthousenews.com/ruling-in-texas-and-louisiana-lawsuit-regarding-biden-deportation-policies.pdf) ([courthousenews.com](https://www.courthousenews.com)).

<sup>4</sup> SECRETARY ALEJANDRO N. MAYORKAS, U.S. DEPARTMENT OF HOMELAND SECURITY, *Memorandum – Guidelines for the Enforcement of Civil Immigration Law* (September 30, 2021), available at <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

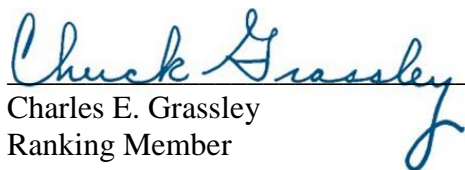
<sup>5</sup> Doyle Memorandum, *supra* note 1, at p.1.

*Discretion in the Enforcement of Civil Immigration Law*. However, DHS has not released this memorandum. Please provide a copy of this memorandum.

3. Since the implementation of the Doyle Memorandum, how many requests for all forms of Prosecutorial Discretion (PD) have been made nationwide in immigration court proceedings? How many have been granted?
  - a. How many requests for PD have been made in cases of aliens deemed to be priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?
  - b. How many requests for PD have been made in cases of aliens deemed to be non-priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?
  
4. Since 12:01AM on June 25, 2022, how many requests for all forms of PD have been made nationwide in immigration court proceedings pursuant to the Doyle Memorandum? How many have been granted?
  - a. How many requests for PD have been made in cases of aliens deemed to be priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?
  - b. How many requests for PD have been made in cases of aliens deemed to be non-priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?
  
5. Has DHS developed any memoranda, legal opinion, or other guidance regarding the use of the Doyle Memorandum in light of Judge Tipton's vacatur of the Mayorkas Memorandum? If so, please provide a copy of the memoranda, opinion, or other guidance.

Should you have questions, please contact Drew Robinson of Ranking Member Grassley's staff at 202-224-5225. Thank you for your attention to this important matter.

Sincerely,

  
Charles E. Grassley  
Ranking Member  
Senate Judiciary Committee

  
James Lankford  
Ranking Member  
Senate Homeland Security & Govt. Affairs Committee,  
Subcommittee on Govt. Operations & Border Mgmt.

cc: The Honorable Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

The Honorable Kerry E. Doyle  
Principal Legal Advisor  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement