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May 3, 2016

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

Dear Deputy Secretary Mayorkas:

Today, I wrote to Secretary Johnson to express my serious concerns about the allegation that you set forth to the Border Patrol a policy that requires Border Patrol agents to release unlawfully present aliens apprehended at the border and prohibits the agents from initiating removal proceedings against such aliens, if the aliens do not have a felony conviction and merely claim to have been in the United States since January 1, 2014. This information was provided by Border Patrol Agent Brandon Judd, President of the American Federation of Government Employees National Border Patrol Council, on March 21, 2016, in response to Questions for the Record, following his testimony before the House Judiciary Subcommittee on Immigration and Border Security on February 4, 2016. Agent Judd described in detail a meeting on August 26, 2015, in which he and other members of the National Border Patrol Council raised their concerns to you about this "catch and release" policy. Agent Judd stated that you acknowledged the policy at that meeting and, in response to the agents' concerns, you asked rhetorically, "Why would we NTA [issue a Notice to Appear for removal proceedings] those we have no intention of deporting?" According to Agent Judd, you also stated that Border Patrol agents should not initiate removal proceedings against such unlawfully present aliens because of the significant backlog of cases pending in the immigration courts.

The "catch and release" policy described by Agent Judd, which you allegedly endorsed, is particularly troubling because it undermines Secretary Johnson's written policy contained in his memorandum of November 20, 2014, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." Under that memorandum, all aliens apprehended at the border while attempting to unlawfully enter the United States are priorities for removal. Releasing aliens without placing them in removal proceedings upon the mere claim that they have been present in the U.S. since January 1, 2014, will obviously encourage massive fraud. Border Patrol agents have informed the Subcommittee that water-soaked aliens apprehended in the immediate vicinity of the Rio Grande River must be released upon making this claim.

To understand the current policies of the Department of Homeland Security regarding the detention and removal of unlawfully present aliens, please respond to the following questions on or before May 18, 2016:

1. Did you state to Agent Judd or any other person that (a) they should not issue Notices to Appear to aliens whom DHS has no intention of removing; or (b) Border Patrol agents should not initiate removal proceedings against aliens unlawfully present because of the backlog of cases pending in immigration courts – in response to Agent Judd’s concerns about the policy or practice of Border Patrol agents releasing unlawfully present aliens apprehended at the border and not initiating removal proceedings against them, if the aliens do not have a felony conviction and merely claim to have been in the United States since January 1, 2014?
2. Does a policy or practice exist within DHS or any of its components which requires or encourages Border Patrol agents to release unlawfully present aliens apprehended at the border and prohibits or discourages the agents from initiating removal proceedings against such aliens, if the aliens do not have a felony conviction and merely claim to have been in the United States since January 1, 2014? If so, who authorized such a policy and when was it authorized?
3. Does Priority 1(b) of Secretary Johnson’s memorandum of November 20, 2014, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” regarding aliens apprehended at the border or ports of entry while attempting to unlawfully enter the U.S., contain an implied or tacit temporal limitation? If so, what is the limiting date?

Thank you for your prompt attention to these matters. Please direct any questions to Tracy Short, Counsel, Subcommittee on Immigration and Border Security, at (202) 225-3926.

Sincerely,



Bob Goodlatte
Chairman

cc: Hon. John Conyers, Jr.
Hon. Jeh Johnson