

United States Senate

WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

January 28, 2022

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

Secretary Mayorkas,

We write today regarding the alarming news that illegal immigrants are being permitted to use Immigration and Customs Enforcement (ICE) arrest warrants as an acceptable form of identification by the Transportation Security Administration (TSA) to board airplanes. The Department of Homeland Security (DHS) is tasked with both enforcing our nation's immigration laws and with keeping our nation safe. Permitting the use of ICE arrest warrants as travel documents is at best illogical, and at worst a serious threat to our nation's homeland security.

As DHS Secretary, you are responsible for setting policy not only for the Department as a whole, but for its component parts – including ICE and TSA. The decision to allow ICE arrest warrants to serve as permissible travel documents inherently places one component of the Department in unacceptable tension with another component. This tension threatens the safety and well-being of hardworking American citizens.

In response to a letter from our colleagues in the House of Representatives, TSA Administrator David Pekoske confirmed that the agency would accept, among others, ICE Form I-200 (Warrant for Arrest of Alien) and ICE Form I-205 (Warrant of Removal/Deportation). The following language in each form is crystal clear:

- ICE Form I-200: **“YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.” (Emphasis in original)
- ICE Form I-205: “I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien . . .”

By the plain text of these documents, the only flights these dangerous, criminal illegal immigrants should be boarding are those returning them to their home country.

We are deeply concerned that the use of ICE arrest warrants is driven by either the inability or unwillingness of the Biden Administration to address the border crisis. Since President Biden took office, Customs and Border Protection (CBP) has had nearly 2 million encounters with illegal immigrants since President Biden took office. In December 2021 alone, CBP had 178,840 encounters compared to 73,994 in December 2020 – a 141% increase in encounters with illegal immigrants. This staggering increase is driven by the decision by President Biden to systematically dismantle successful enforcement policies which helped to secure our southern border and deter illegal immigrants.

This is not simply about securing our southern border to prevent illegal immigration. This is also about the danger to public safety which comes from an uncontrolled border. For example in June 2021, ICE reported that operation Sex Offender Arrest and Removal led to 302 criminal aliens being arrested for sex offenses.¹ However, the Biden Administration’s immigration policies continue to make our communities less safe.

In 2021, there were various news reports from across the country of criminal aliens committing crimes in our communities. In June 2021, a student at Columbia High School was fatally shot by dangerous criminal alien Yohan Hernandez who was living in the country illegally.² In October, 2021, a Congolese national living in the United States with an expired visa was arrested for raping a woman on a train.³ In another tragic instance in October 2021, Yery Noel Medina, who falsely claimed to be an unaccompanied minor, was arrested and charged with murdering a father-of-four who had taken him in.⁴

In 2014, TSA confirmed that the agency had begun accepting Form I-862 (Notice to Appear) as acceptable identification for travel. This occurred during your tenure as Deputy Secretary of the Department of Homeland Security. We anticipate that your service under the Obama Administration means you will be able to provide greater insight into the development of the practice of permitting ICE arrest warrants as acceptable documentation.

This is an urgent matter, and we request a timely response to the following questions by no later than February 25, 2022:

- (1) When did TSA first begin to accept the use of ICE Form I-200 and ICE Form I-205 as acceptable forms of identification for travel?

¹ Adam Shaw, *ICE nabs more than 300 illegal immigrant sex offenders since June as part of national operation*, Fox News, (July 26, 2021), <https://www.foxnews.com/politics/ice-300-illegal-immigrant-sex-offenders-june-nationwide-effort>.

² Rebecca Panico, *20-year-old accused of fatally shooting Maplewood student was defending younger brother, attorney says*, NJ Advance Media for NJ, (August 11, 2021), <https://www.nj.com/essex/2021/08/20-year-old-accused-of-fatally-shooting-maplewood-student-was-defending-younger-brother-attorney-says.html>.

³ Alex Pfeiffer, Adam Shaw, *Man accused of raping woman on crowded train was released from immigration detention, never deported*, Fox News, (October 9, 2021), <https://www.foxnews.com/politics/congolese-man-accused-rape-train-visa-terminated-deported>.

⁴ Adam Shaw, *Honduran illegal immigrant charged with murder entered US falsely claiming to be unaccompanied minor: report*, Fox News, (November 4, 2021), <https://www.foxnews.com/politics/honduran-illegal-immigrant-charged-murder-entered-us-unaccompanied-minor>.

- (2) What is the justification for permitting the use of ICE arrest warrants as identification by TSA officers?
- (3) Was the decision to permit the use of ICE arrest warrants made by TSA or by the Department? If TSA made this decision, was the policy also approved by DHS?
- (4) Was ICE consulted before the decision was made to permit the use of ICE arrest warrants? If so, what concerns did ICE raise about permitting the use of arrest warrants? Did DHS and TSA consider those concerns when implementing this policy?
- (5) Did DHS, ICE, or TSA consider the threat to public safety which is created by allowing illegal immigrants to use ICE arrest warrants as travel documents? If so, why did the Department and component agencies proceed with this misguided policy?
- (6) More broadly, why are those who have received an ICE arrest warrant being permitted to fly throughout the country rather than being deported for illegally crossing the border? Under what authority are they being permitted to remain in the country?
- (7) The TSA Administrator is quoted with also saying that these “alternate IDs are required and they are subject to additional screening.” What does this additional screening mean and how does it keep the flying public safe from illegal immigrants with ICE arrest warrants?
- (8) While using this practice, what additional steps has ICE taken to ensure that fraudulent ICE arrest warrants or other DHS forms are not being used to travel?
- (9) TSA stated that 44,957 non-citizens and non-U.S. nationals had their DHS-issued documents validated before being permitted to fly. Of these nearly 45,000 individuals, how many were using ICE Form I-200 and ICE Form I-205?
- (10) How is the current policy of accepting Form I-200 and Form I-205 as valid identification consistent with the recommendations of the 9-11 Commission, which makes positive identification of every flyer a priority for homeland security?
- (11) How does DHS confirm the identification of an individual traveling with an I-200 or I-205 document if they do not contain photo identification?
- (12) What information does DHS provide TSA officers on the ground when they are presented with I-200 or I-205 documents at a security check in airports? Does that information include other outstanding arrest warrants, criminal activity, or other information relevant to an individual’s potential threat to air travel?

We struggle to understand why TSA would permit dangerous, criminal illegal aliens to use ICE arrest warrants to fly. This policy appears not only to be misguided, but also to defy the purpose of these arrest warrants in the first place. Please respond to these critical questions as soon as possible.

Sincerely,



Senator Thom Tillis



Senator Cindy Hyde-Smith



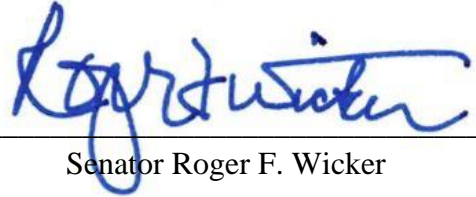
Senator Jerry Moran



Senator Roger Marshall, M.D.



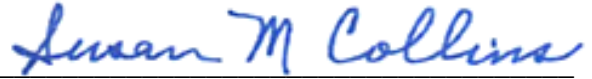
Senator Marsha Blackburn



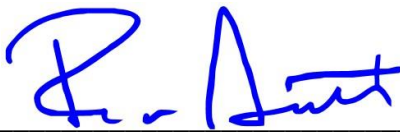
Senator Roger F. Wicker



Senator Mike Braun



Senator Susan M. Collins



Senator Rick Scott



Senator James M. Inhofe

cc: David Pecoske, Administrator, Transportation Security Administration
Tae D. Johnson, Acting Director, Immigration and Customs Enforcement