



February 10, 2021

Thomas Decker  
Director, Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
201 Varick Street  
New York, NY 10014

Dear Mr. Decker:

The Rapid Response Legal Collaborative, made up of Make the Road New York, UnLocal, and the New York Legal Assistance Group (NYLAG), together with the other undersigned organizations, writes to urge your office to fully and faithfully implement the January 20, 2021 memorandum from Acting Secretary Pekoske. While we appreciate the efforts made thus far, much more is required to effectively and fully implement the new binding enforcement priorities.

The January 20, 2021 memo, issued by Acting Secretary David Pekoske (“Pekoske Memo”) and setting out limited priorities for enforcement actions, remains in effect. Although a court in Texas has enjoined that portion of the memo which bars a moratorium on *all* removals for 100 days, that decision leaves untouched the portion of the memo requiring DHS to consider new priorities in all of its enforcement actions, from raids to detention and charging decisions. Those who should be prioritized under the memo are very limited: only (1) recent arrivals to the U.S., (2) national-security risks, and (3) individuals with aggravated felony convictions released after January 20 who pose a threat to public safety are to be targeted. The memo states clearly that these enforcement priorities apply to all discretionary enforcement actions, including new raids or decisions to detain.

Even for individuals facing removal, the Texas decision does not bar stays of removal in the exercise of discretion. Rather, such decisions to stay removal, on a case-by-case basis and in accordance with the priorities in Section B of the memo, are just what the Pekoske Memo requires. Confirming this, the [attached letter](#) from 120 law professors explains that DHS retains

discretion in these cases and should utilize the priorities in Section B of the memo to halt removals as appropriate under the memo.

RRLC represents many individuals who should not be prioritized for enforcement action under this memo but for whom, to date, DHS has not exercised its discretion in accordance with the memo or not done so proactively. Below we enumerate several cases that demonstrate our concerns and call for appropriate action by your office.

**New raids:** On January 28, a small business owner in Babylon, New York was detained in a raid at his place of business. He is at high risk of COVID-19 due to preexisting health conditions; he has also requested a Reasonable Fear Interview. Because he does not fall under a priority category in the Pecoske Memo, he should be released to prepare for this interview at home, yet he remains detained at Orange County Jail. On the same day, a mother was arrested outside of her house in Queens and detained. It is unclear how she came to the attention of ICE or why she was apprehended as she had no recent criminal history and had lived without incident for more than 15 years in the U.S. She also does not fall into a priority category in the Pecoske Memo, and yet she remains detained in Orange County Jail and is being threatened with removal. Raids like these should not take place now that the memo is in effect.

**Detention:** On January 28, a longtime New York resident who has no criminal convictions and is DACA eligible sought release on parole from the New York Field Office to allow him to apply to return home to his family and renew his DACA. Although he does not fall under the priority categories in the Pecoske Memo, he remains detained at Hudson County Correctional Center. As the three public defender organizations in the NYIFUP program and other advocates highlighted in their February 3 [letter](#), ICE should immediately release all individuals in its custody who do not fall under the priorities in the Pecoske Memo. Such action requires urgency given the ongoing COVID-19 pandemic and the threat it poses to individuals in a custodial setting.

**Call-in and Bag & Baggage Letters:** In January, prior to the Pecoske Memo, a longtime Bronx resident and grandfather with no criminal record was ordered to report to your office for removal in mid-February. ICE did not proactively rescind this call-in letter pursuant to the Pecoske Memo, but it did agree to rescind the letter when contacted by counsel, for which we are appreciative. However, we are concerned that other individuals without representation may not be able to conduct this proactive outreach to ICE. We ask that your office affirmatively review all call-in or “bag and baggage” letters; rescind those that do not fall under the new priorities; and contact respondents to notify them.

**Detainers:** From July 19, 2019 through June 30, 2020, ICE lodged 270 civil immigration detainers with the New York City Department of Corrections and 20 individuals were transferred into ICE custody. The City’s detainer law differs from the Pecoske Memo: individuals need not fall within the Pecoske Memo priorities in order to be transferred to ICE custody under that law. In addition, individuals detained at jails outside New York City regularly do not fall within these

priorities. ICE should cancel all applicable detainers and halt transfers and pickups in New York City and throughout New York State, in line with the priorities memo.

**Reinstatement of removal:** Just in the last few weeks, ICE has reinstated or is in the process of reinstating previous orders of removal for several New York-area respondents who do not fall under the Pecoske Memo. ICE should review its previous decisions to reinstate removal orders in cases where individuals are not priorities, withdraw or rescind the reinstatement decisions in those cases, and either decline to take further action or issue a Notice to Appear. Moving forward, ICE should refrain from reinstating removal orders where the individual is not considered a priority.

Sincerely,

Make the Road NY

NYLAG

UnLocal

Brooklyn Defender Services

The Bronx Defenders

Catholic Charities NY

Catholic Migration Services

Center for Popular Democracy

Churches United for Fair Housing

The Federal Defenders of NY

Kathryn O. Greenberg Immigration Justice Clinic, Benjamin N. Cardozo School of Law

The Legal Aid Society

Legal Services NYC

New York Communities for Change

Rapid Defense Network

Safe Horizon

S.T.O.P.- The Surveillance Technology Oversight Project