

**United States Senate**  
WASHINGTON, DC 20510

December 4, 2024

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave. NW  
Washington, D.C. 20016

Mr. Patrick J. Lechleitner  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street SW  
Washington, D.C. 20536

Dear Secretary Mayorkas and Director Lechleitner,

We urge you to make permanent the warrantless arrest and vehicle stop policy for Immigration and Customs Enforcement (ICE) set out in the *Castañón Nava v. Department of Homeland Security* settlement agreement. This policy protects immigrant communities from unlawful arrests and ensures that ICE is operating within statutory and constitutional guidelines. However, the settlement agreement is set to expire in 2025.

Under ICE guidelines, agents may only execute an arrest without a warrant if the ICE agent has “reason to believe” the individual in question is unlawfully in the United States and is likely to escape before the agent can get a warrant for arrest.<sup>1</sup> However, the “reason to believe” standard has created ambiguity that allows officers to arrest individuals based on assumptions regarding immigration status or race. In the first two years of then-President Trump’s administration, warrantless arrests tripled, in part because of a broader interpretation of the standard for these arrests.<sup>2</sup>

During the first Trump Administration, ICE executed a series of warrantless arrests and traffic stops in the Chicago area as a part of “Operation Keep Safe.” The operation resulted in 156 arrests,<sup>3</sup> many through false pretextual traffic stops and racial profiling. After Operation Keep Safe, ICE stated that the arrests were in reaction to Chicago’s status as a sanctuary city, rather than a response to a legitimate threat to public safety.<sup>4</sup> The widespread use of these tactics, in

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<sup>1</sup> Congressional Research Service, *Immigration Arrests in the Interior of the United States: A Primer* (Nov. 30, 2021) (LSB10362) (online at <https://crsreports.congress.gov/product/pdf/LSB/LSB10362>), 2.

<sup>2</sup> *Under Trump arrests of undocumented immigrants with no criminal record have tripled*, NBC News (Aug. 13, 2018) (online at <https://www.nbcnews.com/politics/immigration/under-trump-arrests-undocumented-immigrants-no-criminal-record-have-tripled-n899406>).

<sup>3</sup> U.S. Immigration and Customs Enforcement, *Press Release: ICE arrests 156 criminal aliens and immigration violators during Operation Keep Safe in Chicago Area* (May 25, 2018) (online at <https://www.ice.gov/news/releases/ice-arrests-156-criminal-aliens-and-immigration-violators-during-operation-keep-safe>).

<sup>4</sup> *Id.*

violation of federal law<sup>5</sup> and the Fourth Amendment,<sup>6</sup> highlighted the need for uniform standards that protect individuals and immigrant families.

Operation Keep Safe's warrantless arrests led to a class action lawsuit against ICE and the Department of Homeland Security (DHS) due to ICE's failure to state an individualized reason to believe the individual was a flight risk and for failure to promptly bring individuals arrested without a warrant before an immigration judge.<sup>7</sup> In 2022, the plaintiffs reached a settlement agreement with DHS that required ICE to issue a new nationwide policy for warrantless arrests and vehicle stops, and provide additional training to officers to comply with the new policy.<sup>8</sup>

Under the policy detailed in the *Castañon Nava* settlement, ICE must consider individual factors, such as employment or family ties, when making a warrantless arrest. Additionally, an ICE agent must be able to identify specific and articulable facts for suspecting an individual does not have a legal status when conducting a traffic stop.<sup>9</sup> The settlement also requires ICE officers to document the facts that led to a reasonable suspicion for making a traffic stop and document the facts that support probable cause that an individual lacks legal status and is a flight risk justifying a warrantless arrest, along with monthly reports of all warrantless arrests and traffic stops to ensure ICE agents are following the new policy.<sup>10</sup>

This settlement applies nationwide and ensures ICE complies with statutory and constitutional requirements. ICE has not announced plans to keep the policy in place after the settlement expires in 2025. Without the policy, ICE would be free to conduct warrantless arrests and vehicle stops like those in Operation Keep Safe. For two years now, the settlement from the *Castañon Nava* has protected immigrant communities across the country, but when the settlement period ends the threat of unlawful arrests remain.

We strongly urge ICE to take the necessary steps to make this policy permanent. The clear standards for warrantless arrests and documentation requirements provide protection for families and serve as an accountability mechanism to ensure compliance. Without these protections, individuals and families are at risk from the same policies that precipitated the settlement. ICE should make the settlement policy permanent to define the limits of arrest clearly for agents, protecting the agency from lawsuits and individuals from harmful, unwarranted arrests.

Thank you for your attention to this critical matter.

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<sup>5</sup> See 18 U.S.C. §§ 1357(a)(4), (a)(5) (lasted the specific circumstances in which ICE officers can make a criminal arrest without a warrant).

<sup>6</sup> See *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

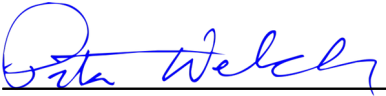
<sup>7</sup> First Amended Complaint, *Castañon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757 (ND Ill. 2018) at 5.

<sup>8</sup> Settlement Agreement and Release, *Castañon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757 (ND Ill. 2021) at 5-6.

<sup>9</sup> National Immigrant Justice Center, *Final Settlement Regarding ICE Warrantless Arrests and Vehicle Stops: Overview of Settlement Requirements and Remedies* (online at <https://immigrantjustice.org/NavaSettlement>).

<sup>10</sup> *Id.*

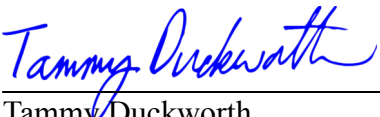
Sincerely,



Peter Welch  
United States Senator



Richard J. Durbin  
United States Senator



Tammy Duckworth  
United States Senator

/s/


George S. Helmy  
United States Senator



Chris Van Hollen  
United States Senator



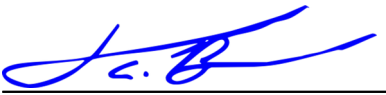
Mazie K. Hirono  
United States Senator



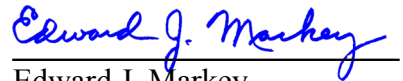
Elizabeth Warren  
United States Senator



Alex Padilla  
United States Senator



Cory A. Booker  
United States Senator



Edward J. Markey  
United States Senator



Bernard Sanders  
United States Senator