

# United States Senate

April 13, 2021

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

Dear Secretary Mayorkas,

As you work to finalize new enforcement guidelines for U.S. Immigration and Customs Enforcement (ICE) — in accordance with the “Johnson Memo”<sup>1</sup> — we write to urge you to consider the unique circumstances of many refugees who, years ago, were funneled into a “prison-to-deportation pipeline,” and now face possible removal from the United States based on old criminal convictions, which often resulted from over-policing and systemic racism. These convictions should not now warrant blanket deportations of refugees who have long since been rehabilitated.

Since the passage of the Refugee Act in 1980, the United States has admitted more than 3.1 million refugees.<sup>2</sup> Through the U.S. Refugee Admissions Program, refugees receive placement assistance and can begin rebuilding their lives in the United States.<sup>3</sup> Although there are countless success stories, many refugees unfortunately were resettled into under-resourced neighborhoods, resulting in systemic marginalization and numerous struggles, including mental health issues, poverty, language barriers, and challenging school environments.<sup>4</sup> Coupled with over-policing, punitive immigration laws, and systemic racism, many refugees from these communities ended up in the criminal justice system.

That also placed them — often unknowingly — on a pathway to deportation.<sup>5</sup> It was not until 2010, when the U.S. Supreme Court decided the case of *Padilla v. Kentucky*,<sup>6</sup> that criminal defense attorneys were obligated to advise their clients about the immigration consequences of a guilty plea. Before, and unfortunately even after *Padilla*, many refugees pled guilty to or were convicted of crimes, without understanding the impact on their immigration status.<sup>7</sup>

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<sup>1</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* (Feb. 18, 2021),

[https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf)

<sup>2</sup> U.S. Department of State, Bureau of Population, Refugees, and Migration, *About Refugee Admissions*, <https://www.state.gov/refugee-admissions/about/>.

<sup>3</sup> U.S. Department of State, Bureau of Population, Refugees, and Migration, *Reception and Placement*, <https://www.state.gov/refugee-admissions/reception-and-placement/>.

<sup>4</sup> Human Rights Watch, *A Price Too High: Detention and Deportation of Immigrants in the US for Minor Drug Offenses* (June 16, 2015), <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>.

<sup>5</sup> *Id.*

<sup>6</sup> 559 U.S. 356 (2010).

<sup>7</sup> Human Rights Watch, *A Price Too High: Detention and Deportation of Immigrants in the US for Minor Drug Offenses* (June 16, 2015), <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>.

This prison-to-deportation pipeline has now created an inhumane immigration crisis within the Southeast Asian community. Southeast Asian Americans, one of the largest refugee communities in the United States,<sup>8</sup> came here to escape decades of war, genocide, and extreme instability that destroyed families and uprooted lives. Large waves of migration from Cambodia, Vietnam, and Laos began in the 1970s. Against long odds over many decades, these Southeast Asian refugees have added much dynamism to the multicultural landscape and economy of the United States.

But forty-five years later, many Southeast Asian community members are facing deportations to countries that they fled, and with which they have little to no connection. From 2017 to 2018, under the Trump administration, deportations increased by 279 percent for Cambodian nationals, 71 percent for Vietnamese nationals, and 60 percent for Laotian nationals.<sup>9</sup> Many of these community members, who are still vulnerable to deportation based on old convictions for crimes they committed as teenagers and young adults, have rebuilt their lives in the United States, formed families, found community, and stayed out of the criminal justice system.<sup>10</sup>

The Trump administration aggressively pursued these deportations,<sup>11</sup> which are governed by repatriation agreements between countries establishing who is deportable. But the United States entered into repatriation agreements with Cambodia and Vietnam only relatively recently — in 2002 and 2008, respectively,<sup>12</sup> and long after many Southeast Asian refugees had committed their crimes and been rehabilitated. An agreement with Laos has yet to be formalized. Under the agreement with Vietnam, it does not accept immigrants who entered the United States before 1995, but the Trump administration re-interpreted it to deport some Vietnamese people who came to the United States before then.<sup>13</sup>

Many Southeast Asian refugees are therefore now in a state of limbo, not knowing if or when they may be deported. As you address this issue, humanitarian considerations must be central.

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<sup>8</sup> Ryan Baugh, U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: Refugees and Asylees 2019* (Sept. 2020), [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee\\_and\\_asylee\\_2019.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee_and_asylee_2019.pdf).

<sup>9</sup> U.S. Customs and Immigration Enforcement, *Fiscal Year 2018 ICE Enforcement and Removal Operations Report*, <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>

<sup>10</sup> See, e.g., Kimberly Yam, *The U.S. Just Quietly Deported The Largest Group Of Cambodians Ever*, Huff Post (Apr. 6, 2018), [https://www.huffpost.com/entry/cambodians-deported-trump-immigration\\_n\\_5ac77dd9e4b07a3485e3da6c](https://www.huffpost.com/entry/cambodians-deported-trump-immigration_n_5ac77dd9e4b07a3485e3da6c).

<sup>11</sup> See, e.g., David Boyle, Kann Vicheika, *US, Cambodia Agree on Deportations*, VOA (Feb. 10, 2018), <https://www.voanews.com/east-asia-pacific/us-cambodia-agree-deportations>.

<sup>12</sup> Memorandum Between the Government and the United States and the Royal Government of Cambodia for the Establishment and Operation of a United States-Cambodia Joint Commission on Repatriation (Apr. 27, 2000), <http://searaid.org/wp-content/uploads/2018/08/US-Cambodia-Repatriation-Agreement.pdf>; U.S. Department of State, *Agreement Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese Citizens*, <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>.

<sup>13</sup> John Bowden, *Trump admin reinterprets 2008 agreement to allow deportation of Vietnam War refugees: report*, The Hill (Dec. 12, 2018), <https://thehill.com/homenews/administration/421094-trump-administration-reinterprets-2008-agreement-to-allow-deportation>.

The 2008 repatriation agreement with Vietnam reflects that, by recognizing that “repatriation should take into account the humanitarian aspect, family unity and circumstances of each person in each individual case.”<sup>14</sup> ICE must not ignore this principle by continuing to deport Southeast Asian and other refugees who have in many cases called the United States home for more than four decades. These refugees have served their time and have transformed their lives. Deporting them now would punish them twice for their actions.

As you finalize new enforcement guidelines for ICE, please ensure that the unique circumstances of the Southeast Asian community are considered and put an end to the prison-to-deportation pipeline for refugees with decades-old or minor criminal convictions. In the interim, we respectfully ask that you halt deportations of refugees with such convictions, and reassess cases in which refugees were deported during the past four years without assessing these humanitarian considerations.

We applaud your commitment to a humane and just immigration system. Taking into account the lived experiences of the refugee community is vital to that commitment. We look forward to working with you in this effort.

Thank you in advance for your attention to this matter. If you have any questions, please contact Karlee Popken of Senator Markey’s office at [karlee\\_popken@markey.senate.gov](mailto:karlee_popken@markey.senate.gov).

Sincerely,



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Edward J. Markey  
United States Senator



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Elizabeth Warren  
United States Senator



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Alex Padilla  
United States Senator

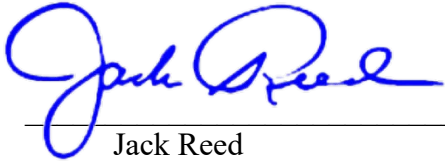


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Sheldon Whitehouse  
United States Senator

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<sup>14</sup> U.S. Department of State, *Agreement Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese Citizens*, <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>.



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Jack Reed  
United States Senator



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Tina Smith  
United States Senator



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Cory A. Booker  
United States Senator



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Mazie K. Hirono  
United States Senator