



U.S. Is Now a ‘Sanctuary Country’ for Alien Domestic Abusers

Unacceptable, paternalistic, and dangerous

Andrew R. Arthur

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In an October 4 [post](#), I analyzed a [September 30](#) guidance memo issued by DHS Secretary Alejandro Mayorkas that significantly limits immigration enforcement. Shockingly, one passage in that memo calls on ICE to make the United States a “sanctuary country” for aliens who engage in domestic violence.

As I explained in that post, this is the third such guidance memo issued under the Biden administration in just over eight months. Like the first, issued by then-acting DHS Secretary David Pekoske on [January 20](#), and the second, authored by acting-ICE Director Tae Johnson on [February 18](#), the Mayorkas memo restricts most ICE immigration enforcement in the United States under the guise of “prioritizing” the agency’s enforcement efforts to preserve its “limited resources”.

That is a load of baloney, of course, because each memo has required ICE officers to waste more resources figuring out whether they are even allowed to act against removable aliens (and in particular, aliens removable on criminal grounds) than they allow ICE to expend removing such aliens from the United States.

The Mayorkas memo contains a laundry list of aggravating and mitigating factors that ICE officers must consider before they are allowed to question, arrest, detain, prosecute, or remove criminal aliens (collectively known as “enforcement actions”).

Directly following those lists of aggravating and mitigating factors is the following passage:

*The above examples of aggravating and mitigating factors are not exhaustive. ... The broader public interest is also material in determining whether to take enforcement action. **For example, a categorical determination that a domestic violence offense compels apprehension and removal could make victims of domestic violence more reluctant to report the offense conduct.** The specific facts of a case should be determinative. [Emphasis added.]*

There is a lot to unpack in that single paragraph, and a lot that could be said about each sentence therein. For purposes of this analysis, I am just going to focus on the highlighted passage.

As a retired career government employee, I speak the dialect of “bureaucratese” indigenous to D.C. and its environs, so let me translate that passage into the vernacular: Deporting aliens who have engaged in domestic violence could make their victims less likely to call the cops, so don’t do it.

Of course, the secretary could not simply give a free pass to alien abusers, so he has couched that statement in what is known as the “conditional tense” using the verb “could”. Mayorkas gives away the game, though, by making that condition applicable not to an individual victim in a specific case, but to domestic violence victims generally (“could make victims of domestic violence more reluctant”).

If that highlighted sentence sounds vaguely familiar, it’s because the possibility that victims might not call the police where ICE officers are taking “enforcement actions” is the same rationale used by many so-called “sanctuary jurisdictions” to justify their refusals to assist ICE in taking criminal aliens off the street.

Consider the following, from the CATO Institute: “Sanctuary policies help police, allowing them to secure cooperation from crime victims and witnesses who don’t wish to disclose their immigration status or the immigration status of a friend, spouse, or family member.” That is a questionable proposition, as the Center has shown, but it is an excuse states and localities often rely on when adopting sanctuary policies.

Mayorkas’s formulation of this reasoning, however, takes it in a disturbing and dangerous and paternalistic direction.

One form of domestic violence, known as “intimate partner violence” (IPV), involves “abuse or aggression that occurs in a romantic relationship”. According to CDC, IPV “affects millions of people in the United States each year”, and that agency’s statistics are shocking:

*About 35% of female IPV survivors and more than 11% of male IPV survivors experience some form of physical injury related to IPV. IPV can also result in death. Data from U.S. crime reports suggest that about 1 in 5 homicide victims are killed by an intimate partner. **The reports also found that over half of female homicide victims in the U.S. are killed by a current or former male intimate partner.** [Emphasis added.]*

Another form of domestic violence is child abuse. The American Society for the Positive Care of Children estimates that “1,840 children died from abuse and neglect in 2019” and, according to CDC, one in seven children were subject to abuse or neglect in the past year.

In June 2009, DOJ reported: “Domestic-violence-related police calls have been found to constitute the single largest category of calls received by police, accounting for 15 to more than 50 percent of all calls.”

One of the biggest problems with domestic violence is the fact that victims often don’t report it. According to that DOJ report, 29 percent of victims later denied being assaulted, contradicting police reports. Among the reasons given for not reporting domestic violence were:

[A] belief that the abuse was a private or personal matter (22 percent for females, 39 percent for males), fear of reprisal (12 percent for females, 5 percent for males), a desire to protect the suspect (14 percent for females, 16 percent for males), and a belief that police won’t do anything (8 percent for females and for males).

Mayorkas appears to be proving that latter 8 percent of respondents correct.

In any event, as an immigration judge, I saw hundreds of aliens who had been arrested by ICE for domestic violence offenses (almost all men), and in many cases the victim came to court to deny that the abuse was serious or had occurred at all.

That is the pernicious thing about domestic violence: The control that the abuser has over the victim is itself a form of abuse, and one that allows many of them to walk free to reoffend,

serially (and sometimes lethally). Consequently, many prosecutors have adopted what are known as “no-drop” prosecutions, in which cases where there is evidence of abuse go forward even if the victim recants.

The Obama DOJ held the line on those prosecutions, stating:

Prosecutors should not allow victim opposition to automatically stop them from prosecuting cases. If prosecutors find that the overwhelming majority of victims consistently oppose prosecution, they should examine both their and law enforcement’s interaction with victims to increase support of prosecution from victims that is more in line with that found across the rest of the country.

It also advised judges to “not assume that allowing cases to proceed over victim objections will necessarily embitter victims or jeopardize their safety.”

Even when the Obama DHS cut slack to other alien criminal offenders, it still held the line when it came to domestic violence. In his November 2014 immigration enforcement priorities memo, Obama’s DHS Secretary Jeh Johnson deemed offenses of domestic violence “a significant misdemeanor”, and thus a priority for ICE enforcement.

That was then. Now, Biden’s DHS secretary is backing away from such characterizations, and implicitly downplaying both the public safety interest in removing alien domestic abusers and the dangers those criminals pose to their victims.

“Sanctuary policies” at the state and local level, which only protect alien criminals, are bad enough. A DHS “sanctuary country” policy for domestic abusers is unacceptable, paternalistic, and dangerous.