

United States Senate

June 30, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528

Dear Secretary Mayorkas:

We write to request that the Department of Homeland Security join U.S. veteran Howard Bailey's motion to reopen his immigration proceedings and grant him humanitarian parole so that he can return to the United States.

Mr. Bailey joined the U.S. Navy after high school. During his subsequent four years of service, he served on a critical supply ship often in danger zones as a part of Operation Desert Storm and Project Comfort. After he left the Navy, he started a trucking business, purchased his home with a V.A. loan, and built a stable life for his family. He was living the American Dream in every sense of the phrase.

Soon after his honorable discharge, Mr. Bailey was arrested after a package of marijuana was mailed to his home for a friend. Despite not knowing the contents of the package, he pled guilty to a marijuana charge based on counsel from his attorney, who also failed to advise him of the immigration consequences of his plea. Fifteen years later, when Mr. Bailey applied for citizenship, he disclosed that he had a marijuana conviction from 1995. ICE learned of his conviction only when Mr. Bailey himself brought it to the agency's attention as he applied for U.S. citizenship. ICE then initiated deportation proceedings against him on the basis of this sole marijuana conviction—arresting him on his front lawn with his daughter, son, and wife as witnesses.

In the years after his deportation to Jamaica, the U.S. Supreme Court ruled that such convictions no longer render people like Mr. Bailey deportable or make them ineligible for discretionary relief from deportation.¹ More recently, in 2017, former Virginia governor Terry McAuliffe issued a pardon for Mr. Bailey's marijuana conviction in light of his service to the U.S. Navy and the increasing decriminalization of marijuana nationwide. Today, the conviction that led to his deportation is no longer a part of his record, and the law makes clear that he is eligible for relief from deportation.

On May 27, 2021, a memorandum was issued by DHS headquarters to ICE OPLA attorneys explicitly encouraging DHS to join motions to reopen cases like Mr. Bailey's where "an individual is eligible for relief under the law and merits relief as a matter of discretion."² The

¹ *Moncrieffe v. Holder*, 569 U.S. 184 (2013)

² [Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities \(ice.gov\)](https://www.ice.dhs.gov/interim-guidance-to-opla-attorneys-regarding-civil-immigration-enforcement-and-removal-policies-and-priorities)

memo lists factors that should be taken into account in joining a motion and that weigh in favor of his case. These include his prior military service, his prior lawful permanent residence status, decades of residency in the U.S. with significant family ties, the length of time since his conviction (26 years) and the compelling humanitarian circumstances in his case such as the severe mental health challenges suffered by his daughter.

As the Secretary of Homeland Security, you have the authority under current law to grant humanitarian parole for cases like Mr. Bailey's where urgent humanitarian considerations and significant public benefit apply.³ In addition to the public benefit of bringing home a U.S. veteran who has proudly served his country, paroling Mr. Bailey into the United States is also an appropriate next step to address the profoundly devastating impact of his deportation on his two U.S. citizen children. His daughter, only 11-years-old at the time ICE officers took her father away, continues to face significant mental health challenges and has been unable to attend college, a dream both her and her father shared for her. His son—traumatized by the loss of his father and the subsequent economic challenges including suffering from hunger—has had trouble with the criminal legal system.

The Biden administration has committed to honoring family unity and redressing racial injustices where possible. Returning Mr. Bailey to the U.S., in light of his overwhelming positive equities and the injustice of his deportation, honors these priorities and is a small step toward restoring humanity to the U.S. immigration system. We urge you to join his motion to reopen his immigration proceedings and grant his application for humanitarian parole.

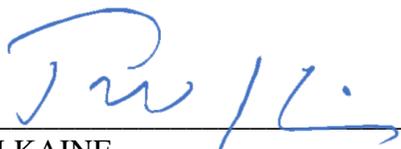
Sincerely,



ALEX PADILLA
United States Senator



MARK R. WARNER
United States Senator



TIM KAINE
United States Senator

CC: ICE OPLA\

³ INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)