

# United States Senate

Washington, DC, 20510

November 17, 2021

The Honorable Carla Hayden  
Librarian of Congress  
101 Independence Avenue SE  
Washington, DC 20540

Dear Dr. Hayden:

As the largest library in the world, which contains the preeminent collection of books, recordings, photographs, and manuscripts in the United States, the Library of Congress (“LOC”) serves as a pivotal resource to scholars of every discipline, background, and profession. To efficiently and effectively navigate its wealth of source materials, researchers often rely upon LOC Subject Headings—the world’s most widely adopted indexing language—to search through the LOC’s catalog. An indexing language serves a vital purpose: to describe the contents of the catalog in a neutral, usable way in order to assist users with retrieval of information. The terms and vocabulary of an indexing language are therefore logically tied to the terms and vocabulary of the information, data, source materials, etc. contained in the catalog. These are basic premises of the information sciences discipline, that indexing language should match the vocabulary and language of the indexed sources. This principle ultimately serves the function of making the LOC’s contents searchable, and therefore accessible, to the public.

In 2016, the LOC sought to replace the term “aliens” with “noncitizens” and replace “illegal aliens” with “noncitizens” and “illegal immigration” as subject headings.<sup>1</sup> “Aliens” and “illegal aliens” would be retained as ‘*see references*’ notations to the updated terms.<sup>2</sup> In response, one of the signatories to this letter, Senator Cruz, led a bicameral letter to the LOC “strongly object[ing]” to this change,<sup>3</sup> and Congress later made several directives to the LOC on its process for changing subject headings. In the House Report accompanying Public Law 115-31, which provided appropriations to the LOC, Congress directed the LOC to make the process of changing any subject headings publicly available to stakeholders, including both providing an online forum to detail the proposed changes and allow for public comments, and to “consider appropriate sources of common terminology used to refer to a concept, including current statutory language and other legal reference sources; and other sources, such as reference materials; websites; and, titles in the Library of Congress’ collection” before implementing the changes.<sup>4</sup>

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<sup>1</sup> *Report of the Policy and Standards Division on the Disposition of the LC Subject Headings Aliens and Illegal Aliens, 2021 Update from the Policy, Training, and Cooperative Programs Division*, LIBRARY OF CONGRESS (Aug. 6, 2021) (hereinafter “LOC Report”).

<sup>2</sup> *Id.*

<sup>3</sup> Letter from Sen. Ted Cruz to the Honorable David Mao, Acting Librarian of Congress (May 19, 2016), *available at* <https://twitter.com/SenTedCruz/status/733368739534622721>.

<sup>4</sup> *Explanatory Statement Submitted by Mr. Frelinghuysen of New Jersey, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendments on H.R. 244*, Cong. Rec. H3949-

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Now, after the Biden administration has made the political decision to order U.S. immigration agencies to stop using the term “illegal alien,”<sup>5</sup> the LOC has followed suit and released a report stating that “the time has come” to make the changes that we strenuously objected to five years ago. This decision is nothing but a politically-motivated and Orwellian attempt to manipulate and control language.<sup>6</sup>

Dating back over 100 years, “aliens” is one of the oldest headings used by LOC, and for a clear reason: the term “alien” has appeared in the original sources contained in the LOC catalog created across centuries. “Alien” has been used as a non-derogatory term to describe a foreigner since the Fourteenth Century, originating from the Latin word “*alius*,” meaning “another.”<sup>7</sup> In the Fifteenth Century, “alien” became the primary English term to denote an individual who is not a naturalized citizen of the country in which he or she resides. Sir William Blackstone, a forefather of our American legal order, authored an entire chapter on the difference between “aliens and natural-born subjects” in his iconic common law treatise, *Commentaries on the Laws of England*. In that treatise, Blackstone clearly distinguishes these terms: “Natural-born subjects are such as are born within the dominions of the crown of England...and aliens, such as are born out of it.”<sup>8</sup> Blackstone’s treatises played a significant role in shaping our national legal system,<sup>9</sup> including some of the earliest Congresses who codified the term “alien” as the official term for foreign persons in the Naturalization Act of 1790.<sup>10</sup>

Hundreds of years later in 2021, “alien” remains the official term for such persons as codified in federal laws governing citizenship, nationality, and immigration. It is defined in the opening section of the Immigration and Nationality Act (“INA”) as “any person not a citizen or national of the United States.”<sup>11</sup> Congress chose to separately define the more specific term “immigrant” in our system as an alien who completes the application process for lawful permanent residency, is granted permission to reside in our country, and is issued an official document to confirm this

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H4112 (May 3, 2017), available at <https://www.congress.gov/congressional-record/2017/5/3/house-section/article/H3949-2>.

<sup>5</sup> Sacchetti, Maria. *ICE, CBP to stop using 'illegal alien' and 'assimilation' under new Biden administration order*, WASHINGTON POST (April 19, 2021), [https://www.washingtonpost.com/immigration/illegal-alien-assimilation/2021/04/19/9a2f878e-9ebc-11eb-b7a8-014b14aeb9e4\\_story.html](https://www.washingtonpost.com/immigration/illegal-alien-assimilation/2021/04/19/9a2f878e-9ebc-11eb-b7a8-014b14aeb9e4_story.html)

<sup>6</sup> LOC Report.

<sup>7</sup> Matt O’Brien, Spencer Raley, and Casey Ryan, *Why “Illegal Alien” is the Correct Term*, FEDERATION FOR AMERICAN IMMIGRATION REFORM (July 2018), [https://www.fairus.org/issue/border-security/why-illegal-alien-correct-term#\\_edn1](https://www.fairus.org/issue/border-security/why-illegal-alien-correct-term#_edn1).

<sup>8</sup> Sir William Blackstone, *Of the People, Whether Aliens, Denizens, or Natives*, *Commentaries on the Laws of England*, Book 1, Chapter 10 (1765).

<sup>9</sup> Amanda L. Tyler, *Suspension As an Emergency Power*, 118 YALE L.J. 600, 614-615 (2009).

<sup>10</sup> Matt O’Brien, Spencer Raley, and Casey Ryan, *Why “Illegal Alien” is the Correct Term*, FEDERATION FOR AMERICAN IMMIGRATION REFORM (July 2018), [https://www.fairus.org/issue/border-security/why-illegal-alien-correct-term#\\_edn1](https://www.fairus.org/issue/border-security/why-illegal-alien-correct-term#_edn1).

<sup>11</sup> 8 U.S.C. §1101 (a)(3).

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status.<sup>12</sup> Further, Congress has not decided to afford the term “noncitizen”—a euphemism or culturally preferred term in some partisan circles for “alien”—with a controlling definition in our laws. Indeed, although some members of Congress have recently introduced various legislation to replace the term “alien” in the U.S. Code and other legal documents, these bills have not reached a committee vote, have not passed, and are not law.<sup>13</sup> Additionally, the Supreme Court of the United States routinely has used and continues to use the official term “alien” when deciding cases.<sup>14</sup>

Several related terms have also been adopted by Congress and appear frequently in the U.S. Code and Supreme Court decisions. The term “illegal alien” appears in the INA as part of its section titles and operative provisions thirty-three times,<sup>15</sup> *by far* the most used term to describe an individual of such status in the INA.<sup>16</sup> The next most commonly used term is “unauthorized alien,” which appears twenty-one times, followed by “undocumented alien,” which appears eighteen times.<sup>17</sup> As with the term “alien,” the Supreme Court has regularly used the term “illegal alien” for decades.<sup>18</sup> A simple database search of “illegal alien” in Westlaw’s legal database turns up tens of thousands of articles and sources from a wide cross-section of publications and law schools.<sup>19</sup>

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<sup>12</sup> 8 U.S.C. §1101 (a)(15).

<sup>13</sup> See Correcting Hurtful and Alienating Names in Government Expression (CHANGE) Act, H.R. 457, 117th Cong. § 1 (2021-2022); see also Correcting Hurtful and Alienating Names in Government Expression (CHANGE) Act, H.R. 3776, 116<sup>th</sup> Cong. § 1 (2019-2020).

<sup>14</sup> See, e.g., *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021) (Alito, J.); *Fed. Republic of Germany v. Philipp*, 141 S. Ct. 703 (2021) (Roberts, C.J.); *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021) (Kagan, J.); *U.S. v. Sineneng-Smith*, 140 S. Ct. 1575 (2020) (Ginsburg, J.); *DHS v. Thuraissigiam*, 140 S. Ct. 1959 (2020) (Alito, J.).

<sup>15</sup> Alex Nowrasteh, “*Illegal Alien*” Is One of Many Correct Legal Terms for “*Illegal Immigrant*”, CATO INSTITUTE: CATO AT LIBERTY (Oct. 14, 2019), <https://www.cato.org/blog/illegal-alien-one-many-correct-legal-terms-illegal-immigrant>; see, e.g., 8 U.S.C. §1365 (instructing the Attorney General to “reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien... who is convicted of a felony by such State”); 8 U.S.C. §1252c (entitled “Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens”); 8 U.S.C. §1366 (requiring an annual report from the Attorney General detailing “the number of illegal aliens” convicted or incarcerated for felonies in state and federal prisons).

<sup>16</sup> Alex Nowrasteh, “*Illegal Alien*” Is One of Many Correct Legal Terms for “*Illegal Immigrant*”, CATO INSTITUTE: CATO AT LIBERTY (Oct. 14, 2019), <https://www.cato.org/blog/illegal-alien-one-many-correct-legal-terms-illegal-immigrant>.

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g., *Kansas v. Garcia*, 140 S. Ct. 791, 797 (2020) (Alito, J.) (“As initially enacted, the INA did not prohibit the employment of illegal aliens.”); *DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1918 (2020) (Thomas, J., concurring) (“The three-page DACA memorandum made it possible for approximately 1.7 million illegal aliens to qualify for temporary lawful presence.”); *Arizona v. U.S.*, 567 U.S. 387, 397 (2012) (invoking the terms “alien” and “illegal alien” over 200 hundred times) (Kennedy, J.) (“ICE officers are responsible ‘for the identification, apprehension, and removal of illegal aliens from the United States.’”); *Chamber of Commerce v. Whiting*, 563 U.S. 582, 633 (2011) (Sotomayor, J., dissenting) (repeatedly citing precedent referring to “illegal aliens”); *De Canas v. Bica*, 424 U.S. 351 (1976) (Brennan, J.) (invoking the terms “illegal alien” 17 times and “alien” 36 times in the majority opinion); *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976) (invoking the terms “illegal alien” 25 times and “alien” 25 times in the majority opinion).

<sup>19</sup> See, e.g., *Search Results, illegal alien*, WESTLAW EDGE, <https://tinyurl.com/ppfza592> (last visited Nov. 5, 2021)

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The LOC’s report does not and cannot dispute that these terms are used consistently in source material and continue to be used today in legal texts. Instead, the report cites to the recently updated *Black’s Law Dictionary* definition of “illegal alien,” which merely remarks that, “[a]lthough the term was originally a clinical legalism, today it is often viewed as a snarl-phrase. Many writers therefore prefer *undocumented immigrant*, which others object to as a euphemism. The nomenclature has become a political battleground.”<sup>20</sup> This definition proves that the LOC’s proposed replacement has nothing to do with Congress’s original instruction—that the LOC “consider appropriate sources of common terminology used to refer to a concept, including current statutory language and other legal reference sources; and other sources”—and everything to do with a progressive preference to control language and take up arms on a “political battleground.”

The political nature of this decision is underscored by the LOC’s failure to comply with Congress’s explicit instruction to “consider appropriate sources of common terminology used to refer to a concept, including current statutory language and other legal reference sources.”<sup>21</sup> As detailed above, common terminology, statutory language, and other legal reference materials are replete with references to the term “illegal alien.” But the report does not list any current statutory language, legal reference sources, or even titles in the LOC catalog that support the heading change. The report simply makes the conclusory assertion that the LOC did consider these kind of sources, and then points only to changing dictionary definitions and trend data to support its preferred action.<sup>22</sup>

Replacing words in search terms, indexes, or indexing language for political reasons is an abuse of the trust that Congress has placed in the Library to accurately and neutrally compile original sources and make them easily accessible to the public. If the LOC is concerned that new users conditioned on new language are increasingly searching for immigration euphemisms and having difficulty finding relevant sources,<sup>23</sup> the LOC is welcome to add those new terms in “*see reference*” notations to help direct users to the underlying source materials. But what is entirely unacceptable is elevating politically-motivated phrases above legally accurate and historically-based phrases actually used in source material.

We strongly urge the LOC not to make politically-motivated changes to the neutral indexing language and search functions that are so vital to accessing the information held in the Library and

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<sup>20</sup> *Id.*

<sup>21</sup> *Explanatory Statement Submitted by Mr. Frelinghuysen of New Jersey, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendments on H.R. 244*, Cong. Rec. H3949-H4112 (May 3, 2017), available at <https://www.congress.gov/congressional-record/2017/5/3/house->

<sup>22</sup> *Id.* The LOC’s reference to the 11th Edition of *Black’s Law Dictionary* is also misplaced, as it chooses to rely on the remarks and opinion by the editors about the cultural and political connotation of the term regarding the recently revised entry for “illegal alien.” As the LOC is aware, this edition nevertheless points to the legal understanding of “illegal alien”: “An alien who enters a country at the wrong time or place, eludes an examination by officials, obtains entry by fraud, or enters into a sham marriage to evade immigration laws.” Garner, Bryan A., ed., *Black’s Law Dictionary*, “Illegal Alien” (Thompson Reuters 2019).

<sup>23</sup> Despite relying on trend data from several databases to conclude that “illegal alien” is “not the preferred term for writers, publishers, and users,” thus warranting these subject heading revisions, the report itself acknowledges that this data “does not provide a clear picture of a significant trend.” *Id.*

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the Library's reputation as a non-political institution. At the very least, the LOC must comply with Congress's explicit instructions rather than hand-waving them away. Thank you for your attention, and we look forward to your prompt response.

Sincerely,



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Ted Cruz  
United States Senator



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Mike Braun  
United States Senator