United States Senate
WASHINGTON, DC 20510

April 11, 2022

The Honorable Alejandro Mayorkas
Secretary
United States Department of Homeland Security
Washington, D.C. 20016

Dear Secretary Mayorkas:

We write today to express our grave concerns with actions taken by the Biden administration and the Department of Homeland Security (DHS) and the effect they will have on our ability to secure our southern border. These concerns are exacerbated as it becomes more likely every day that this year we will surpass the record-breaking number of encounters at the southern border experienced last year.

In Fiscal Year (FY) 2021, U.S. Customs and Border Protection (CBP) recorded 1.7 million encounters with individuals attempting to cross the border illegally, the highest single year total ever recorded.[1] Even more troubling is the fact that this year is on pace to far exceed the record-breaking numbers from last year. In February, CBP recorded nearly 165,000 encounters, setting a record for that particular month and marking the twelfth month in a row in which encounters exceeded 150,000.[2]

Securing the southern border and deterring the sustained, record-breaking flow of illegal and irregular migration should be a top priority for DHS. Unfortunately, the Biden administration has done the opposite by instituting policies that encourage individuals to make the dangerous trek north and entrust their safety to dangerous drug cartels at the risk of being murdered, assaulted or trafficked.

In September of last year, you issued new guidance to Immigration and Customs Enforcement (ICE) for its enforcement and removal operations which dramatically limited the scope of individuals ICE prioritizes for enforcement. With the publication of the ICE Annual Report last month, we learned the results of this policy and, as expected, they are extremely disconcerting as both arrests and removals reached the lowest levels ever recorded. Even more troubling is the fact that arrests and removals of those convicted of a crime were down 48% and 63%, respectively.[3]

More recently, your department has moved to dramatically alter America's system for granting asylum by striping immigration judges of decision-making authority and giving it to United States Citizenship and Immigration Services (USCIS) asylum officers. Such a move raises serious red flags, given that 85% of determinations of credible fear by a USCIS asylum officers are later overturned by an immigration judge.[4]

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[1] U.S. CUSTOMS & BORDER PROT., Southwest Land Border Encounters (March 30, 2022), https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.
[2] Ibid.
[3] Jon Feere, *Insiders Leak ICE Enforcement Data Covered Up by Biden Administration,* Center for Immigration Studies (March 17, 2022), https://cis.org/Feere/Insiders-Leak-ICE-Enforcement-Data-Covered-Biden-Administration
[4] Andrew R. Arthur, *Asylum Grant Rate in 'Credible Fear' Cases Fell in FY 2021,* Center for Immigration Studies (January 8, 2022), https://cis.org/Arthur/Asylum-Grant-Rate-Credible-Fear-Cases-Fell-FY-2021

Finally, the Biden administration's decision to terminate the Title 42 public health order that provided border agents the authority to perform expedited removals is the latest example of troubling policy moves. Last year, Title 42 was used more than 1 million times to quickly expel individuals who crossed the border illegally. Such a move will undoubtedly leave CBP and law enforcement along the border vulnerable to being overwhelmed in the face of sustained record levels of illegal crossings. It has been reported that there are some 25,000 individuals already waiting in Mexico for Title 42 to be lifted and US intelligence estimates an influx of more than 170,000 total.[5]

It's clear that the humanitarian and national security crisis at our southern border will not slow in the coming months and is on pace to be even worse. We understand DHS is actively preparing to respond to the increased illegal and irregular migration, but more details of the plans are needed. We ask that you answer the following questions by April 27, 2022.

1. Currently, how many daily encounters does DHS estimate can be expected in the days following the termination of Title 42? And how many total encounters does DHS estimate for FY 2022?
2. How many additional personnel do you anticipate will need to be surged to the southern border in response to the increased encounters? Please provide a breakdown of the specific personnel (*i.e.*, officers, agents, and DHS Volunteer Force) and the anticipated roles they will be filling.
3. What effect will this repositioning of personnel have on DHS's mission elsewhere around the country?
4. To what extent does the DHS contingency plan rely on alternatives to detention?
5. To what extent does the DHS contingency plan rely on the use of Notices to Report and Notices to Appear?
6. Has DHS requested support or resources from other federal agencies, including the Department of Justice, to respond to circumstances that may follow on the end of the Title 42 order?

Addressing the problems facing our broken immigration system in order to provide an effective and efficient legal pathway for those who wish to share in and contribute to the success of our great nation is, as it should be, a priority. However, this cannot be accomplished until we are able to properly secure our borders. Thank you for your attention to this request, and we look forward to your reply.

Sincerely,

Jerry Moran
United States Senator

Thom Tillis
United States Senator

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[5] Jonathan Swan & Stef W. Kight, *Scoop: Biden officials fear "mass migration event" if COVID polices end*, AXIOS (Mar. 17, 2022), https://www.axios.com/biden-border-mexico-migrants-title-42-a91b6441-2197-463f-ab1f-2435824a9566.html.

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