

United States Senate

WASHINGTON, DC 20510

October 6, 2021

Hon. Alejandro Mayorkas
Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-0525

Dear Secretary Mayorkas:

We are writing to inquire about DHS's response to the recent surge of migrants into Del Rio, Texas. While we applaud the Administration's original stated intent to expel the majority of migrants under the CDC's Title 42 order or to expeditiously remove them, we are concerned that DHS did not actually carry out this plan, deployed resources in a manner that weakened border security, and undermined the deterrent effect of any future statements that the Biden Administration will enforce our immigration laws at the border.

The recent influx of migrants into Del Rio is exactly the kind of situation the CDC's Title 42 order is meant to address. The *New York Times* described the conditions under the Del Rio International Bridge as "squalid,"¹ and there is a significant risk of COVID-19 transmission in a migrant population of this size and concentration. You have described 42 U.S.C. 265 as "a public health authority to protect the American public, to protect the communities along the border, and to protect the migrants themselves."² We were thus pleased that the Administration secured a stay pending appeal of U.S. District Court Judge Emmet Sullivan's recent preliminary injunction on the use of the CDC's Title 42 order with respect to family units.³ It is vital that DHS preserve this important authority as we continue to battle the COVID-19 pandemic. However, the extent to which migrants in Del Rio were expelled under Title 42 remains unclear. On Friday September 24, when you announced that the area under the Del Rio International Bridge had been cleared, you stated that only 2,000 migrants had been placed on expulsion flights to Haiti.⁴ Reports indicate that single adults—which formed only a minority of the population under the

¹ James Dobbins, Eileen Sullivan & Edgar Sandoval, *Thousands of Migrants Huddle in Squalid Conditions Under Texas Bridge*, NEW YORK TIMES (Sept. 20, 2021, 7:30 a.m.), <https://www.nytimes.com/2021/09/16/us/texas-migrants-del-rio.html>.

² *Secretary Mayorkas Delivers Remarks in Del Rio, TX*, DEPARTMENT OF HOMELAND SECURITY (Sept. 20, 2021), <https://www.dhs.gov/news/2021/09/20/secretary-mayorkas-delivers-remarks-del-rio-tx>.

³ *Huisha-Huisha v. Mayorkas*, Case No. 21-5200 (D.C. Cir. Sept. 30, 2021), ECF No. 1916334.

⁴ *Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas*, THE WHITE HOUSE (Sept. 24, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/24/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas-september-24-2021/>.

Del Rio International Bridge—were prioritized, and that many migrant families were released into the interior.⁵

According to the strategy you released on September 18, 2021, those migrants “who cannot be expelled under Title 42 and do not have a legal basis to remain will be placed in expedited removal proceedings.”⁶ Expedited removal is a very effective tool, as DHS demonstrated in June 2005 when it was used to respond to a massive influx of Brazilian nationals in the Rio Grande Valley (RGV) Sector. Following implementation in 2005 in RGV, the number of apprehensions per day dropped precipitously, and it created a strong deterrent effect. Significantly, however, then-U.S. Border Patrol Chief David Aguilar noted that “aliens processed in expedited removal are required to be detained by law.”⁷ Media reports suggest that DHS has not followed through on its stated strategy of using expedited removal to address the surge of migrants into Del Rio. According to these reports, senior Executive Branch officials have stated that Haitian migrants have been released into the United States and freed on a “very, very large scale” in recent days, and that many have been released with a Notice to Report, or with parole and a requirement to enroll in Alternatives to Detention.⁸ Releasing large numbers of migrants into the interior with the request that they later report to ICE to commence their removal proceedings will only further incentivize illegal migration.⁹ And failing to follow through on a promise to expel or expeditiously remove migrants will only further convince them and the smuggling organizations that exploit them that the Biden Administration is not serious about enforcing our immigration laws at the southwest border.

DHS has openly admitted that the rapid influx of Haitian migrants into the interior was orchestrated by smuggling organizations, which only makes some aspects of the agency’s response more puzzling. On September 20, 2021, U.S. Border Patrol Chief Raul Ortiz stated that “smugglers are significant drivers of the misinformation that gets people to undertake these dangerous journeys.”¹⁰ And Administration officials have communicated to congressional staff that smuggling organizations strategically bused migrants into Ciudad Acuña in order to

⁵ Elliot Spagat, Maria Verza, Juan A. Lozano, & Sara Blake Morgan, *Many migrants staying in US even as expulsion flights rise*, AP News (Sept. 23, 2021), <https://apnews.com/article/immigration-united-states-texas-el-paso-del-rio-3a8146cbcb47b9df7a31a19594df3ec6>.

⁶ *DHS Outlines Strategy to Address Increase in Migrants in Del Rio*, DEPARTMENT OF HOMELAND SECURITY (Sept. 18, 2021), <https://www.dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio>.

⁷ *Solving the OTM Undocumented Alien Problem: Expedited Removal for Apprehensions Along the U.S. Border: Hearing Before the Subcomm. on Economic Security, Infrastructure Protection, & Cybersecurity of the H. Comm. on Homeland Security*, 109th Cong. 11 (2005) (written statement of David Aguilar, Chief, U.S. Border Patrol), available at <https://www.govinfo.gov/content/pkg/CHRG-109hhr31962/pdf/CHRG-109hhr31962.pdf>.

⁸ Elliot Spagat, Maria Verza & Juan A. Lozano, *Many migrants staying in US even as expulsion flights risk*, WASHINGTON POST (Sept. 22, 2021, 6:03 p.m.), https://www.washingtonpost.com/national/officials-many-haitian-migrants-are-being-released-in-us/2021/09/22/32943770-1b5b-11ec-bea8-308ea134594f_story.html.

⁹ We further note that the Department’s new proposed credible fear screening rule would dramatically expand the use of parole to release aliens from custody during the expedited removal process, and that the Department is also considering whether such aliens should be given employment authorization documents. Such changes would only further undermine the deterrent effect of expedited removal. See *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 86 Fed. Reg. 46906, 46913-14 (Aug. 20, 2021).

¹⁰ *Secretary Mayorkas Delivers Remarks in Del Rio, TX*, DEPARTMENT OF HOMELAND SECURITY (Sept. 20, 2021), <https://www.dhs.gov/news/2021/09/20/secretary-mayorkas-delivers-remarks-del-rio-tx>.

concentrate migrants at a single location and overwhelm the Border Patrol. Despite knowing this, however, DHS shut down Border Patrol checkpoints in the Del Rio Sector and reassigned those agents to process migrants under the Del Rio International Bridge.¹¹ DHS also reassigned agents from neighboring sectors in order to handle processing. This approach seems to play directly into the smuggling organizations' hands, reducing operational control in the area and making it easier to move narcotics and other contraband into the interior.

Finally, the Administration's response to the ongoing border crisis only makes it more likely that we will continue to experience surges like the one in Del Rio. In August, despite the summer heat, encounters along the southwest border stood above 200,000 for the second month in a row. Until DHS consistently enforces our immigration laws to swiftly remove migrants with weak or nonexistent asylum claims, smuggling organizations will continue to prey on these individuals and convince them to undertake the treacherous journey to our southwest border.

In order to better understand DHS's response to the recent influx of migrants in Del Rio, we ask that you respond to the following questions by October 19, 2021:

1. Exactly how many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were expelled pursuant to the CDC's Title 42 order? Of those migrants, how many were expelled between September 1 and September 24, and how many were expelled after that time? Does DHS anticipate expelling additional migrants encountered at the Del Rio International Bridge using Title 42? Please break down the totals by single adults, family units, and unaccompanied minors.
2. Exactly how many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were processed under one of the exceptions to Title 42? Of those who were processed under an exception to Title 42, how many migrants placed claims under the Convention Against Torture, how many were processed under the capacity exception to Title 42, and how many were processed under the humanitarian/medical exception to Title 42? Please break down the totals for each exception by single adults, family units, and unaccompanied minors.
3. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were placed into expedited removal proceedings? Of these, how many claimed credible fear or another form of protection? Were any of these migrants subsequently released within the United States, and if so, at what stage in their proceedings were they released? How many migrants placed into expedited removal proceedings have been removed, and how many are currently being detained? Please break down the totals by single adults and family units.

¹¹ Cody King, *Checkpoints in Laredo left unmanned after Border Patrol agents redirected to Del Rio, report says*, KSAT (Sept. 18, 2021, 3:37 p.m.), <https://www.ksat.com/news/local/2021/09/18/checkpoints-in-laredo-left-unmanned-after-border-patrol-agents-redirected-to-del-rio-report-says/>.

4. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were processed through the Electronic Nationality Verification Pilot?
5. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge whose removal proceedings have commenced have been placed onto the dedicated docket for families who arrive between ports of entry at the Southwest Border?
6. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were apprehended and transferred to the custody of the Department of Health and Human Services as unaccompanied minors?
7. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were issued a Notice to Report and released (as opposed to the Notice to Report Plus process described below)? Of these, how many have reported to U.S. Immigration and Customs Enforcement in order to commence removal proceedings? Please break down the totals by single adults and family units.
8. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were processed through the so-called Notice to Report Plus process, where they are released with parole, enrolled in Alternatives to Detention and asked to report to an ICE field office in order to commence removal proceedings? Of these, how many have reported to ICE? Please break down the totals by single adults and family units.
9. How many migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge were issued a Notice to Appear? Please break down the totals by single adults and family units.
10. How many Border Patrol agents were transferred to process migrants or otherwise respond to the situation at the Del Rio International Bridge, and what locations were they transferred from? What was the average length of time such agents were away from their primary duty stations?
11. Why did DHS decide to shut down checkpoints in the Del Rio Sector? Were any actions taken to maintain operational control in areas from which Border Patrol agents were transferred?
12. Of the migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge, how many were Haitian nationals who resided in another country immediately prior to migrating to the United States? If these migrants make asylum claims, does DHS intend to assert evidence of an offer of firm resettlement in their immigration court proceedings?

13. Of the migrants encountered between September 1 and September 24, 2021 at the Del Rio International Bridge, how many were transported to other sectors for processing? Please break down the totals by sector, and within that, by the authorities under which they were processed (i.e., Title 8, Title 42).

Thank you for your prompt attention to this matter, and we look forward to your response.

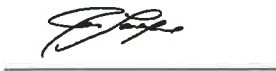
Sincerely,



John Cornyn
United States Senator



Mitch McConnell
United States Senator



James Lankford
United States Senator



Roger F. Wicker
United States Senator



Kevin Cramer
United States Senator



M. Michael Rounds
United States Senator



Susan M. Collins
United States Senator



Marsha Blackburn
United States Senator



Chuck Grassley
United States Senator



Rick Scott
United States Senator



Roger Marshall, M.D.
United States Senator



Cindy Hyde-Smith
United States Senator



Thom Tillis
United States Senator



Joni K. Ernst
United States Senator



John Thune
United States Senator



Jerry Moran
United States Senator



Steve Daines
United States Senator



Tom Cotton
United States Senator



Mike Crapo
United States Senator



Todd Young
United States Senator



James E. Risch
United States Senator



John Hoeven
United States Senator



Lindsey O. Graham
United States Senator



Tommy Tuberville
United States Senator



Bill Hagerty
United States Senator



John Boozman
United States Senator



Shelley Moore Capito
United States Senator



Tim Scott
United States Senator



John N. Kennedy
United States Senator



Mike Braun
United States Senator



Josh Hawley
United States Senator



Deb Fischer
United States Senator



James M. Inhofe
United States Senator



Michael S. Lee
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Ben Sasse
United States Senator



Ted Cruz
United States Senator



John Barrasso, M.D.
United States Senator



Rob Portman
United States Senator