

DHS SECRETARY  
ALEJANDRO MAYORKAS'  
DERELICTION OF DUTY

PHASE 1 INTERIM REPORT

COMMITTEE ON  
HOMELAND SECURITY  
MAJORITY REPORT

JULY 19, 2023



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# INTRODUCTION: DERELICTION OF DUTY DEFINED

## **Introduction: Dereliction of Duty Defined**

Before taking office, the secretary of the U.S. Department of Homeland Security (DHS) must swear an oath to “well and faithfully discharge the duties of the office on which I am about to enter.”<sup>1</sup> On Feb. 2, 2021, incoming DHS Secretary Alejandro Mayorkas swore that oath.<sup>2</sup> The American people expected him to abide by his oath, defend the homeland, and uphold the Constitution. If Mayorkas has failed to uphold his oath, he should be considered derelict in his duty as secretary.

While no legal definition of “dereliction of duty” applies specifically to presidential Cabinet officials, other areas of the law are instructive. For example, in the military context, a person may be punished when he is “derelict in the performance of his duties.”<sup>3</sup>

The Manual for Courts-Martial provides the following criteria for determining whether a person has been derelict in the performance of his or her duties:

“A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person’s duties or when that person performs them in a culpably inefficient manner. ‘Willfully’ means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. ‘Negligently’ means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. Culpable inefficiency is inefficiency for which there is no reasonable or just excuse.”<sup>4</sup>

One obvious obligation inherent to the DHS secretary’s job is securing the nation’s border. Indeed, Section 103(a)(5) of the Immigration and Nationality Act (INA) charges the secretary with “the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens... .”<sup>5</sup>

The evidence documented throughout this report will demonstrate that Mayorkas has been, and continues to be, derelict in the solemn duty to secure the nation’s borders, not only by ending policies enacted to “control and guard” America’s borders, but by implementing policies that have actively encouraged and facilitated mass illegal immigration.

<sup>1</sup> 5 U.S.C. § 3331.

<sup>2</sup> U.S. Department of Homeland Security, News, *Alejandro Mayorkas Sworn in as Secretary of Homeland Security*, February 2, 2021, <https://www.dhs.gov/news/2021/02/02/alejandro-mayorkas-sworn-secretary-homeland-security>.

<sup>3</sup> 10 U.S.C. § 892(3).

<sup>4</sup> U.S. Department of Defense, Joint Service Committee on Military Justice, *Manual for Courts-Martial United States* (Washington, D.C., 2019), IV-28, ¶18.c.(3)(c), <https://www.marines.mil/Portals/1/Publications/MCM%202019.pdf?ver=HoYjQ-CcfGtm2qjZyaxIHg%3d%3d>.

<sup>5</sup> 8 U.S.C. § 1103(a)(5).

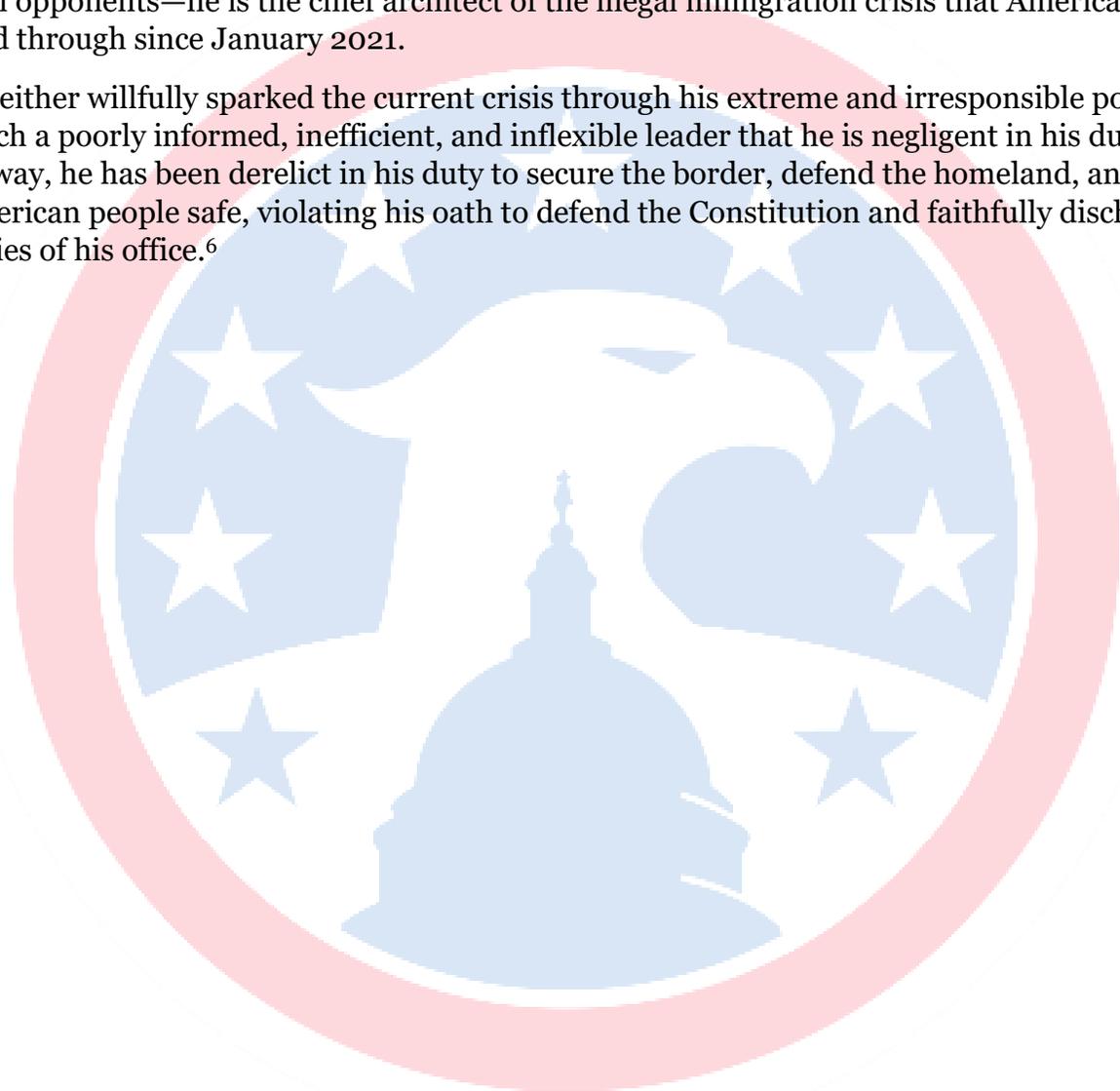


## INTRODUCTION: DERELICTION OF DUTY DEFINED

Over the past two years, Mayorkas has repeatedly ignored or refused to enforce immigration laws passed by Congress, ended commonsense, effective border security policies, implemented an open-borders agenda that has spread millions of illegal aliens throughout the United States, and continuously misled Congress and the American people about his actions and the nature of the border crisis sparked by his policies.

Mayorkas is not an innocent bystander at the mercy of the federal bureaucracy, global events, or political opponents—he is the chief architect of the illegal immigration crisis that Americans have suffered through since January 2021.

He has either willfully sparked the current crisis through his extreme and irresponsible policies, or is such a poorly informed, inefficient, and inflexible leader that he is negligent in his duties. Either way, he has been derelict in his duty to secure the border, defend the homeland, and keep the American people safe, violating his oath to defend the Constitution and faithfully discharge the duties of his office.<sup>6</sup>



<sup>6</sup> “Mayorkas takes oath as homeland security chief,” *Associated Press*, YouTube video, February 2, 2021, [https://www.youtube.com/watch?v=P\\_9Hrm9-S4Y](https://www.youtube.com/watch?v=P_9Hrm9-S4Y).



## INTRODUCTION: DERELICTION OF DUTY DEFINED

**Chairman’s Note:** Mayorkas’ dereliction of his duties as the leader of DHS is not surprising considering some of his actions in his prior role as the head of U.S. Citizenship and Immigration Services (USCIS) from 2009-2013.

In 2015, the DHS Office of the Inspector General (OIG) released a report finding that Mayorkas exerted “improper influence in the normal processing and adjudication of applications and petitions in a program administered by USCIS.”<sup>7</sup> The watchdog’s investigation found that Mayorkas had used his influence to secure EB-5 visas for foreign investors after lower-ranking USCIS officials denied the applications, and after Mayorkas was lobbied by powerful Democratic officials to grant the requests.<sup>8</sup>

The OIG concluded that while Mayorkas’ actions did not break the law, he “created significant resentment in USCIS,” created “an appearance of favoritism and special access,”<sup>9</sup> and acted in a way that USCIS officials perceived as “politically motivated.”<sup>10</sup> His actions led even the liberal media outlet Vox to call his behavior “extremely inappropriate.”<sup>11</sup>



(Source: Kevin Dietsch/Getty Images)

<sup>7</sup> U.S. Department of Homeland Security, Office of the Inspector General, *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services’ EB-5 Program* (Washington, D.C., 2015), 3, [https://www.oversight.gov/sites/default/files/oig-reports/OIG\\_mga-032415.pdf](https://www.oversight.gov/sites/default/files/oig-reports/OIG_mga-032415.pdf).

<sup>8</sup> *Ibid.*, 3-4.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, 9.

<sup>11</sup> Dara Lind, “How an Obama Appointee Helped Influential Democrats Get Visas for Rich Immigrants,” *Vox*, March 26, 2015, <https://www.vox.com/2015/3/26/8295381/mayorkas-scandal-eb5>.



## **Section 1: Laws and Court Orders Mayorkas Has Ignored, Abused, or Failed to Follow**

Mayorkas has abused his authority as DHS secretary by repeatedly disregarding multiple laws passed by Congress—laws he swore an oath to uphold—including many provisions under the INA. These laws cover everything from requirements to detain and remove those who enter the country illegally, to clear limitations on paroling inadmissible aliens into the country.

This section of the report documents the laws and court orders that Mayorkas has either ignored or abused and those he has instructed the men and women of DHS to violate or ignore.

### **Exhibit 1: Abuse of Parole Under Section 212 of the INA**

Mayorkas has ignored the clear statutory language of section 212(d)(5)(A) of the INA by directing Customs and Border Protection (CBP) to mass-parole inadmissible aliens into the United States.<sup>12</sup> Under INA section 212(d)(5)(A), the secretary may only grant parole on a case-by-case and temporary basis, for an urgent humanitarian reason or significant public benefit.<sup>13</sup> Situations that may warrant parole on this very limited basis include certain medical conditions or participation in judicial proceedings in the United States.<sup>14</sup>

Generally, DHS must detain inadmissible aliens that it encounters at the border, per section 235 of the INA.<sup>15</sup> DHS, in its discretion, can use parole to temporarily release an inadmissible alien from custody while the alien's immigration case is adjudicated in immigration court.<sup>16</sup>

However, Mayorkas has wantonly flouted the statute's clear language by granting parole to hundreds of thousands of illegal aliens,<sup>17</sup> creating and maintaining parole programs for certain nationality groups,<sup>18</sup> and by using parole in a way inconsistent with the statute, as a means to relieve the Biden administration from the embarrassing optics of overcrowded Border Patrol facilities—facilities overwhelmed by his own policies.<sup>19</sup>

Mayorkas is abusing parole not because DHS has no other options to deal with this self-inflicted crisis, but rather because he has made a willful decision to do so. Instead of enforcing the laws regarding detention and removal of illegal aliens, he has chosen a policy of mass “catch and release,” as this report will demonstrate, and is using mass parole to help implement it.

<sup>12</sup> 8 U.S.C. § 1182.

<sup>13</sup> Ibid.

<sup>14</sup> 8 C.F.R. § 212.5(b).

<sup>15</sup> 8 U.S.C. § 1182(d)(5)(A).

<sup>16</sup> Ibid.

<sup>17</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

<sup>18</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, June 13, 2023, <https://www.uscis.gov/CHNV>.

<sup>19</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Memorandum: Parole Plus Alternative to Detention*, November 2, 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2023-May/Parole%20Plus%20Alternative%20to%20Detention.pdf>. Joel Martinez, then-acting chief patrol agent of the Border Patrol's Laredo Sector, affirmed to the House Committee on Homeland Security on June 1, 2023, that Parole + ATD was used in the midst of surges and capacity issues.



## SECTION 1: LAWS AND COURT ORDERS MAYORKAS HAS IGNORED, ABUSED, OR FAILED TO FOLLOW

Mayorkas's use of mass parole is perhaps less surprising considering his past statements about the use of detention. In testimony before the House Appropriations Subcommittee on Homeland Security in May 2021, Mayorkas stated, "I am concerned about the overuse of detention, and where alternatives to detention, ATD, would suffice...we will indeed be looking at that and executing accordingly."<sup>20</sup>

A year later, he testified to the Senate Homeland Security and Governmental Affairs Committee that detention "has been misused in the immigration system for many years."<sup>21</sup>

A federal appeals court has even made clear that Mayorkas has not followed the statutory parole requirements. In its 2021 ruling in *Texas v. Biden*, the Fifth Circuit Court of Appeals wrote the following:

"The idea seems to be that DHS can simply parole every alien it lacks the capacity to detain. But that solves nothing: The statute allows only case-by-case parole. Deciding to parole aliens *en masse* is the opposite of *case-by-case* decisionmaking. ... So the Government's proposal to parole every alien it cannot detain is the opposite of the 'case-by-case basis' determinations required by law. ... And the same is true of DHS's pretended power to parole aliens while ignoring the limitations Congress imposed on the parole power. That's not *nonenforcement*; it's *misenforcement*, suspension of the INA, or both.

"We therefore hold that DHS has violated not only the A[dministrative] P[rocedure] A[ct] but also Congress's statutory commands in [8 U.S.C.] §1225."<sup>22</sup>

Notwithstanding, there is reason to believe that Mayorkas has ignored the Fifth Circuit's ruling. Joseph Edlow, former USCIS acting director, wrote in his June 14, 2023, testimony to the House Committee on Homeland Security, "Regardless of the plain language of the statute and the legislative history, parole has become a favorite tool of the Biden Administration. While first used as an alternative to detention, parole programs have subsequently played a large role in artificially decreasing numbers along the border."<sup>23</sup>

Despite the INA's clear language reserving parole for case-by-case consideration,<sup>24</sup> Mayorkas has overseen or created multiple different parole programs based on general group descriptions, including:

- The Central American Minors Refugee and Parole Program
- The Haitian Family Reunification Parole Program
- The Cuban Family Reunification Parole Program

<sup>20</sup> Alejandro Mayorkas, "Homeland Security Department Fiscal Year 2022 Budget Request," *C-SPAN video*, 1:18:32, May 26, 2021, <https://www.c-span.org/video/?512037-1/homeland-security-department-fiscal-year-2022-budget-request>.

<sup>21</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Resources and Authorities Needed to Protect and Secure the Homeland*, 117th Cong., 2d sess., 2:20:16, May 4, 2022, <https://www.hsgac.senate.gov/hearings/05-04-2022-resources-and-authorities-needed-to-protect-and-secure-the-homeland/>.

<sup>22</sup> *Texas v. Biden*, No. 21-10806, 4, 105-106 (5th Cir. 2021).

<sup>23</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Joseph B. Edlow for Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis*, 118th Cong., 1st sess., June 14 2023, 10, <https://homeland.house.gov/media/2023/06/2023-06-14-HRG-Testimony.pdf>.

<sup>24</sup> 8 U.S.C. § 1182.



## SECTION 1: LAWS AND COURT ORDERS MAYORKAS HAS IGNORED, ABUSED, OR FAILED TO FOLLOW

- Operation Allies Welcome
- Uniting For Ukraine
- Parole Process for Venezuelans
- Parole Process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV)
- Family Reunification Parole Process for Colombia, El Salvador, Guatemala, and Honduras

Most recently, in early 2023, DHS created a *de facto* visa program under the auspices of the CHNV parole program,<sup>25</sup> allowing up to 30,000 individuals from those countries to be paroled into the country every month.<sup>26</sup> Approved parole recipients are allowed to enter the United States and are also eligible to immediately apply for work authorization.<sup>27</sup> These programs are not only an abuse of parole and an infringement on Congress' authority over immigration policy<sup>28</sup>—including establishing new visa programs—but are deeply unfair to individuals attempting to enter the country legally by acquiring a visa.

Blanket parole policies like the one created by this program are legally questionable on their face. “Simply paroling up to 360,000 individuals, which is what they are on track to do per year, violates the letter of the law. It’s very clear,” former DHS Acting Secretary Chad Wolf told the House Committee on Homeland Security in June 2023, referring to the number of aliens eligible to enter the country annually via the CHNV program.<sup>29</sup>

On April 27, 2023, just days ahead of the expiration of the Center for Disease Control and Prevention’s (CDC) Title 42 order, allowing CBP to quickly expel illegal aliens on public health grounds, DHS announced a new policy aimed at “managing” the anticipated wave of illegal aliens, including the creation of “new family reunification parole processes for El Salvador, Guatemala, Honduras and Colombia.”<sup>30</sup>

Mayorkas’ department rolled out the policy July 7, 2023, stating that the mass-parole program for nationals of these four countries could be paroled into the United States for up to three years “while they wait to apply to become a lawful permanent resident.”<sup>31</sup> More than 73,000 individuals from these countries could be eligible to be paroled, according to notices provided in DHS’ release announcing the program.<sup>32</sup>

<sup>25</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, June 13, 2023, <https://www.uscis.gov/CHNV>.

<sup>26</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, June 14, 2023, <https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans>.

<sup>27</sup> *Ibid.*

<sup>28</sup> 8 U.S.C. § 1182.

<sup>29</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:27:52, June 14, 2023, <https://www.youtube.com/watch?v=Ogjm6jzYHqw>.

<sup>30</sup> “U.S. Department of Homeland Security, News, *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration*, April 27, 2023, <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration>.

<sup>31</sup> U.S. Department of Homeland Security, *DHS Announces Family Reunification Parole Processes for Colombia, El Salvador, Guatemala, and Honduras*, July 7, 2023, <https://www.dhs.gov/news/2023/07/07/dhs-announces-family-reunification-parole-processes-colombia-el-salvador-guatemala>.

<sup>32</sup> *Ibid.*



## SECTION 1: LAWS AND COURT ORDERS MAYORKAS HAS IGNORED, ABUSED, OR FAILED TO FOLLOW

DHS has also used a program called “Parole Plus Alternatives to Detention” (Parole + ATD) to mass-parole illegal aliens instead of detaining them as required by law.<sup>33</sup> Alternatives to Detention (ATD) is a program by which DHS monitors illegal aliens released into the interior via technology and case officer supervision.<sup>34</sup> As a later phase of this investigation will document, the Biden administration’s specific use of ATD has proven to be a poor substitute for actual detention and enforcement of U.S. immigration law.

Mayorkas has mass-paroled hundreds of thousands of illegal aliens into the United States on Parole + ATD. In Fiscal Year (FY)22, the Border Patrol paroled more than 378,000 illegal aliens under the Parole + ATD program.<sup>35</sup>

A federal district court vacated the official Parole + ATD program in March 2023, holding that the policy “is unlawful and is due to be vacated under the APA.”<sup>36</sup> In his decision in *Florida v. United States*, Judge Kent Wetherell of the United States District Court for the Northern District of Florida issued a withering rebuke of Mayorkas’ actions:

“[T]he evidence establishes that [the Biden administration] have effectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing ‘alternatives to detention’ over actual detention and by releasing more than a million aliens into the country—on ‘parole’ or pursuant to the exercise of ‘prosecutorial discretion’ under a wholly inapplicable statute—without even initiating removal proceedings.”<sup>37</sup>

In addition to running afoul of the parole statute, Parole + ATD represented a potential national security and public safety risk. Judge Wetherell continued his opinion:

“Although DHS says it is screening arriving aliens released on Parole+ATD to determine if they are a public safety threat, the more persuasive evidence establishes that DHS cannot reliably make that determination. Indeed, according to Defendants own witnesses, DHS has no way to determine if an alien has a criminal history in his home country unless that country reports the information to the U.S. government or the alien self-reports. Therefore, DHS is mainly only screening aliens at the border to determine if they have previously committed a crime in the United States, and because many of these aliens are coming to the United States for the first time, DHS has no idea whether they have criminal histories or not.”<sup>38</sup>

<sup>33</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Memorandum: Parole Plus Alternative to Detention*, November 2, 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2023-May/Parole%20Plus%20Alternative%20to%20Detention.pdf>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Memorandum: Policy on the Use of Parole Plus Alternatives to Detention to Decompress Border Locations*, July 18, 2022, [https://litigationtracker.justiceactioncenter.org/sites/default/files/2023-03/flnd%20-%20203-2021-cv-01066%20-%20July%2018.%202022%20Parole%20and%20ATD%20memo\\_0.pdf](https://litigationtracker.justiceactioncenter.org/sites/default/files/2023-03/flnd%20-%20203-2021-cv-01066%20-%20July%2018.%202022%20Parole%20and%20ATD%20memo_0.pdf).

<sup>34</sup> *Ibid.*

<sup>35</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

<sup>36</sup> *State of Florida v. United States*, No. 3:21-cv-01066, 108, (N.D. Fla. 2023).

<sup>37</sup> *Ibid.*, 5-6.

<sup>38</sup> *Ibid.*, 35.



## SECTION 1: LAWS AND COURT ORDERS MAYORKAS HAS IGNORED, ABUSED, OR FAILED TO FOLLOW

Due to Wetherell's ruling, it appears the Biden administration has stopped using the Parole + ATD program, however, DHS continues to mass parole aliens into previously mentioned parole programs.<sup>39</sup>

On May 10, 2023, the day before Title 42 was set to expire, former<sup>40</sup> Border Patrol Chief Raul Ortiz issued new guidance, "Parole with Conditions,"<sup>41</sup> authorizing Border Patrol agents to release illegal aliens on parole if detention facilities reached certain capacities,<sup>42</sup> in direct violation of Wetherell's March ruling.<sup>43</sup>

On May 11, 2023, the state of Florida filed for an emergency restraining order to halt the Parole with Conditions guidance.<sup>44</sup> Wetherell issued a temporary restraining order on the policy, writing that it "appears to be materially indistinguishable from the Parole + ATD policy" vacated in March.<sup>45</sup>

Less than a month later, Mayorkas' mass-parole policies were dealt another blow in the courts, when on June 5, the Eleventh Circuit Court of Appeals denied DHS' motion to stay Wetherell's orders vacating the Parole + ATD and Parole with Conditions policies.<sup>46</sup>

Mayorkas' use of parole programs has also been exposed in other court proceedings. In August 2021, Judge Matthew Kacsmaryk of the U.S. District Court for the Northern District of Texas noted in *Texas v. Biden*:

"Any class-wide parole scheme that paroled aliens into the United States simply because DHS does not have the detention capacity would be a violation of the narrowly prescribed parole scheme in section 1182 which allows parole 'only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'"<sup>47</sup>

To ensure compliance with the district court's order to faithfully reimplement the Remain in Mexico program, or Migrant Protection Protocols (MPP), Kacsmaryk ordered DHS to file monthly reports showing compliance with the court's order while litigation involving the Biden administration's attempt to end MPP was ongoing.<sup>48</sup>

In addition to statistics on MPP, the reports filed by Mayorkas' DHS showed the department was paroling an average of 34,839 aliens per month into the United States and releasing, paroled or

<sup>39</sup>U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2023*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>40</sup> Ortiz retired June 30, 2023.

<sup>41</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Memorandum: Policy on Parole with Conditions in Limited Circumstances Prior to the Issuance of a Charging Document (Parole with Conditions)*, May 10, 2023, <https://www.aila.org/infonet/cbp-issues-memo-on-policy-on-parole-with-condition>.

<sup>42</sup> Shweta Watwe, "Key Plank of Biden Post-Title 42 Border Policy Halted by Judge," *Bloomberg Law*, May 17, 2023, <https://news.bloomberglaw.com/litigation/post-title-42-dhs-immigration-parole-policy-halted-by-us-judge>.

<sup>43</sup> *State of Florida v. United States*, No. 3:21-cv-01066, 108, (N.D. Fla. 2023).

<sup>44</sup> See Plaintiff's Motion to Enforce Permanent Injunction and for Expedited Discovery in *State of Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB, (N.D. Fla. 2023).

<sup>45</sup> *State of Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB, 8, (N.D. Fla. 2023).

<sup>46</sup> *State of Florida v. United States*, No. 23-11528, (11th Cir. 2023).

<sup>47</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, 43, (N.D. Tex. 2021).

<sup>48</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, (N.D. Tex. 2021).



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otherwise, an average of more than 76,000 total aliens per month, while the average monthly Immigration and Customs Enforcement (ICE) detention usage rate was 78.9 percent<sup>49</sup>

In other words, Mayorkas paroled tens of thousands of illegal aliens into the country even while ICE detention space was going unused—rendering the argument that mass parole is somehow necessary because DHS “lacks” detention space a lie to the American people and to Congress.

In its 2021 decision affirming the District Court’s ruling on DHS’ termination of MPP, the United States Court of Appeals for the Fifth Circuit (Fifth Circuit) reiterated that the Biden administration acknowledged not just that its termination of MPP would result in more illegal aliens being paroled, but that mass parole was the plan to begin with: “As discussed above, the District Court found that MPP’s termination will result in the parole of many aliens whom DHS otherwise would have returned to Mexico. The Government’s brief, of course, confirms that the plan is indeed to give widespread parole to the class of aliens whom it can’t or won’t detain.”<sup>50</sup>

The numbers demonstrate how significantly Mayorkas’ DHS is abusing its limited statutory parole authority. In FY23 to date, Border Patrol has paroled more than 300,000 illegal aliens, including more than 130,000 in December 2022 alone.<sup>51</sup>

In June 2023, former Border Patrol Chief Rodney Scott told the House Committee on Homeland Security that when he was a Border Patrol sector chief, the highest number of people he paroled into the country in one year was “about 10”, and “there was a very in-depth threat assessment done with every one of those individuals. There was a plan to keep track of them, and then when whatever the reason [they were paroled] was done, we physically made sure the person was removed from the United States consistent with the law.”<sup>52</sup> Former ICE Acting Director Tom Homan has said he paroled even fewer than Scott over a period of approximately two years.<sup>53</sup>

In comparison to Mayorkas’ DHS, Scott said parole was previously used “consistent with the law, [on a] case-by-case, individual determination. From my understanding, the way it’s being used now is just a blanket way to get people out of stations, avoid the optics of people backed up in Border Patrol stations.”<sup>54</sup>

A few weeks prior, Scott told the House Judiciary Committee, “I do not believe the Border Patrol can be doing today the legal assessment required for each individual case—it’s just not possible.”<sup>55</sup>

<sup>49</sup> See Status Reports, Defendants’ Monthly Report Pursuant to Injunction, *State of Texas v. Biden*, No. 2:21-cv-00067, (N.D. Tex. 2021).

<sup>50</sup> *Texas v. Biden*, No. 21-10806, 86, (5th Cir. 2021). In June 2022, the Supreme Court reversed the Fifth Circuit’s ruling, finding that DHS had the authority to end MPP, though it did not address Mayorkas’ abuse of parole in its ruling.

<sup>51</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>52</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 3:12:40, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=11560s>.

<sup>53</sup> “Leaked Border Patrol docs show Biden admin ‘lying’ about immigration: Tom Homan,” *Fox Business*, YouTube video, 1:08, October 14, 2021, <https://www.youtube.com/watch?v=e4W41b822sl>.

<sup>54</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 3:13:18, June 14, 2023, <https://www.youtube.com/live/0gjm6jzYHqw?feature=share&t=11597>.

<sup>55</sup> Adam Shaw [@AdamShawNY], “At the @JudiciaryGOP Subcommittee Hearing, Ex-BP Chief Scott Said He Paroled 6-8 Migrants a Year, Compared to Hundreds of Thousands Now. ‘I Do Not Believe the Border Patrol Can Be Doing Today the Legal Assessment Required for Each Individual Case -- It’s Just Not Possible.’” Tweet, *Twitter*, May 23, 2023, <https://twitter.com/AdamShawNY/status/1661024789920907269>.



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The Biden administration is using parole to undermine the clear text of the existing statute and create never-ending benefits to otherwise ineligible aliens:

“Parole is the Biden Administration’s go-to tool to bring large numbers of illegal aliens into the U.S. In addition, the Administration provides work authorization for these populations as a default. While the Department of Homeland Security (DHS) parole guidance states that the benefit is for two years, the Administration’s practice is to extend ‘temporary’ benefits and automatically renew work authorization. With the Administration’s extremely low deportation numbers there is no expectation of an end to this benefit for an illegal alien.”<sup>56</sup>

Parole outside of the INA’s statutory framework is simply unacceptable. Mayorkas’ goal is clear—to use mass parole to make illegal immigration appear lawful, even though doing so means he is undermining the law.

### ***Exhibit 2: Flouting Detention and Removal Requirements of Section 235 of the INA***

Mayorkas has also failed to abide by the detention and removal requirements of section 235 of the INA. Section 235(b)(1) of the INA establishes the procedure for “expedited removal,” which requires Border Patrol to detain and remove any illegal alien attempting to enter the United States without a visa or other proper immigration papers.<sup>57</sup>

If, however, an illegal alien being considered for expedited removal indicates an intention to apply for asylum or indicates a fear of persecution, an asylum officer will conduct a “credible fear” interview.<sup>58</sup>

The INA requires an alien claiming credible fear to be detained throughout the expedited removal process.<sup>59</sup> Specifically, INA section 235(b)(1)(B) provides that an alien “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”

Section 235(b)(1)(B) also states that if an asylum officer finds the individual’s claim of credible fear to be valid, “the alien shall be detained for further consideration of the application for asylum.”

Simply put, “Congress mandated that aliens in expedited removal proceedings be detained: detained when apprehended; detained pending an interview on a credible fear claim; and detained pending a determination on any subsequent asylum claim.”<sup>60</sup> The statutory responsibility to detain inadmissible aliens is clear and comprehensive.

<sup>56</sup> Lora Ries, “To Stop Administrative Abuse, Congress Must Narrow Scope of Immigration Parole,” *The Heritage Foundation*, April 18, 2023, <https://www.heritage.org/immigration/report/stop-administrative-abuse-congress-must-narrow-scope-immigration-parole>.

<sup>57</sup> 8 U.S.C. 8 § 1225.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> Andria Strano and Lauren Alder Reid, “Re: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protections by Asylum Officers,” *Center for Immigration Studies*, October 18, 2021, [https://cis.org/sites/default/files/2021-10/JNPRM\\_Asylum\\_Procedures\\_FINAL\\_submitted\\_10-18-2021.pdf](https://cis.org/sites/default/files/2021-10/JNPRM_Asylum_Procedures_FINAL_submitted_10-18-2021.pdf).



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Ultimately, any inadmissible alien applying for entry into the United States is required to be detained.<sup>61</sup> INA section 235(b)(2)(A) holds, “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained...”

Mayorkas’ policy of “catch and release” ignores these detention mandates and undermines the law. Indeed, his department has released millions of illegal aliens into the United States who should otherwise have been detained, as section two of this report demonstrates.<sup>62</sup>

Indeed, DHS’ own numbers demonstrate the shocking degree to which Mayorkas has ignored the requirement to detain illegal aliens.<sup>63</sup>

In June 2022, the Department of Justice submitted data to the Supreme Court of the United States in connection to litigation over MPP showing that in FY13, under Pres. Barack Obama’s leadership, 91 percent of single adults and family units were detained in whole or in part while their cases were adjudicated, including 82 percent detained from the beginning of their case through its resolution.<sup>64</sup>

This 91-percent figure plummeted to a mere 36 percent in FY21 (excluding Title 42 expulsions and MPP enrollees).<sup>65</sup> Just 10 percent were detained for the duration of their case, 26 percent were released from detention at some point during their case, and nearly two-thirds were never detained at all.<sup>66</sup>

In addition to the hundreds of thousands of aliens released on parole, Mayorkas’ DHS has released hundreds of thousands more illegal aliens from detention on their own recognizance after issuing them court dates—via a “Notice to Appear” (NTA)—meaning they are ordered to appear before a judge, and released into the interior on their word that they will be present for their court appearance.<sup>67</sup>

In FY 22, Border Patrol released more than 310,000 illegal aliens with NTAs.<sup>68</sup> In FY23 so far, the Border Patrol has released nearly 240,000.<sup>69</sup>

<sup>61</sup> 8 U.S.C. § 1225.

<sup>62</sup> Andria Strano and Lauren Alder Reid, “Re: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protections by Asylum Officers,” *Center for Immigration Studies*, October 18, 2021, [https://cis.org/sites/default/files/2021-10/JNPRM\\_Asylum\\_Procedures\\_FINAL\\_submitted\\_10-18-2021.pdf](https://cis.org/sites/default/files/2021-10/JNPRM_Asylum_Procedures_FINAL_submitted_10-18-2021.pdf).

<sup>63</sup> *Ibid.*

<sup>64</sup> U.S. Department of Justice, Office of the Solicitor General, *Re: Joseph R. Biden, Jr., President of the United States, et al. v. Texas, et al., No. 21-954*, 3, June 6, 2022, [https://www.supremecourt.gov/DocketPDF/21/21-954/227228/20220606154050875\\_Letter%2021-954%20%206-6-2022.pdf](https://www.supremecourt.gov/DocketPDF/21/21-954/227228/20220606154050875_Letter%2021-954%20%206-6-2022.pdf).

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.* at § 1225(b)(1)(B).

<sup>68</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

<sup>69</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.



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Meanwhile, hundreds of thousands of illegal aliens have been released without any court date at all, per a February 2023 NBC report documenting that almost 600,000 illegal aliens were released without court dates between March 2021-January 2023.<sup>70</sup>

Early in the crisis, tens of thousands of illegal aliens were released with instructions to report to ICE, also known as a “Notice to Report” (NTR), a document with no legal authority that simply requests an illegal alien “check in” with an ICE office at the alien’s final destination.<sup>71</sup>

Between March 21 and Aug. 31, 2021, for example, Border Patrol released more than 100,000 individuals with NTRs.<sup>72</sup> More than 47,000 of those individuals failed to comply with the NTR they were given, and likely remain at large in the country today.<sup>73</sup>

Even in the days immediately following Title 42’s expiration, almost 70 percent of illegal aliens were being released into the interior, either on parole or with an NTA.<sup>74</sup>

DHS also cannot argue that it must mass-release illegal aliens because the department lacks space to detain every illegal alien.

First, in addition to the clear language of the statute stating that illegal aliens “shall” be detained during the process of expedited removal,<sup>75</sup> the secretary’s own budget requests undercut the argument, as DHS has consistently requested funding for fewer detention beds,<sup>76</sup> and failed to use all the beds they have available.<sup>77</sup>

Wetherell, in his decision against Mayorkas’ Parole + ATD policy, pointed out the inconsistency:

“It is true that Congress is ultimately responsible for allocating the funds that are required to detain more aliens. However, DHS led Congress to believe that it did not need more detention capacity because it represented in its fiscal year 2022 and 2023 budget requests that ‘a reduction in detention capacity level will not impede ICE’s ability to apprehend, detain, and remove noncitizens that present a threat to national security, border security, and public safety.’ The fact that DHS continued to ask for less detention capacity and more money for ‘alternatives to detention’ is another indication that the Non-Detention Policy challenged by Florida exists because it confirms Defendants’ prioritization of ‘alternatives to detention’ over actual detention.”<sup>78</sup>

<sup>70</sup> Julia Ainsley, “Nearly 600,000 migrants who crossed the border since March 2021 were released in the U.S. with no immigration court dates,” *NBC News*, February 3, 2023, <https://www.nbcnews.com/politics/immigration/nearly-600000-migrants-crossed-border-released-inside-us-rcna68687>

<sup>71</sup> *Ibid.* at § 1225 (b)(2)(A).

<sup>72</sup> Anna Giaritelli, “47,705 Migrants Released with Instructions to Report to ICE Have Gone Missing under Biden,” *Washington Examiner*, January 11, 2022, <https://www.washingtonexaminer.com/news/47-705-migrants-released-with-instructions-to-report-to-ice-have-gone-missing-under-biden>.

<sup>73</sup> *Ibid.*

<sup>74</sup> Stephen Dinan, “Most Migrants Still Caught and Released after Title 42,” *The Washington Times*, May 18, 2023, <https://www.washingtontimes.com/news/2023/may/18/most-migrants-still-caught-and-released-after-titl/>.

<sup>75</sup> 8 U.S.C. § 1225(b)(1)(B)(ii).

<sup>76</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 24, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf).

<sup>77</sup> *Ibid.*

<sup>78</sup> *State of Florida v. United States*, No. 3:21-cv-01066, 39-40, (N.D. Fla. 2023).



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Oklahoma Sen. James Lankford put it even more succinctly in his questioning of Mayorkas during the aforementioned May 2022 Senate Homeland Security and Governmental Affairs Committee hearing—“It’s hard for me to process when you’re saying, ‘We’re limited on space,’ but literally your budget asks for even less space.”<sup>79</sup>

Second, DHS under Mayorkas has terminated policies like MPP that relieved pressure on detention capacity.

In *Texas v. Biden*, the Fifth Circuit highlighted how DHS painted itself into a corner, writing, “The Government’s position thus boils down to this: We can’t do one thing Congress commanded (detain under § 1225(b)(2)(A)), and we don’t want to do one thing Congress allowed (return under § 1225(b)(2)(C)). Parole does not provide a way out of the box created by DHS’s can’ts-and-don’t-wants.”<sup>80</sup>

In his opinion, Wetherell also wrote to this effect:

“Thus, like a child who kills his parents and then seeks pity for being an orphan, it is hard to take Defendants’ claim that they had to release more aliens into the country because of limited detention capacity seriously when they have elected not to use one of the tools provided by Congress in §1225(b)(2)(C) and they have continued to ask for less detention capacity in furtherance of their prioritization of ‘alternatives to detention’ over actual detention.”<sup>81</sup>

Third, the argument is also self-defeating, as it is dishonest for Mayorkas to use a supposed lack of detention capacity as justification for refusing to detain the record number of aliens that his own policies have encouraged to cross the border illegally. As Wetherell wrote in his March 2023 opinion:

There were undoubtedly geopolitical and other factors that contributed to the surge of aliens at the Southwest Border, but Defendants’ position that the crisis at the border is not largely of their own making because of their more lenient detention policies is divorced from reality and belied by the evidence. Indeed, the more persuasive evidence establishes that Defendants effectively incentivized what they call ‘irregular migration’ that has been ongoing since early 2021 by establishing policies and practices that all-but-guaranteed that the vast majority of aliens arriving at the Southwest Border who were not excluded under the Title 42 Order would not be detained and would instead be quickly released into the country where they would be allowed to stay (often for five years or more) while their asylum claims were processed or their removal proceedings ran their course—assuming, of course, that the aliens do not simply abscond before even being placed in removal proceedings, as many thousands have done.<sup>82</sup>

<sup>79</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Resources and Authorities Needed to Protect and Secure the Homeland*, 117th Cong., 2nd sess., 2:21:28, May 4, 2022, <https://www.hsgac.senate.gov/hearings/05-04-2022-resources-and-authorities-needed-to-protect-and-secure-the-homeland/>.

<sup>80</sup> *Texas v. Biden*, No. 21-10806, 103, (5th Cir. 2021).

<sup>81</sup> *State of Florida v. United States*, No. 3:21-cv-01066, 40, (N.D. Fla. 2023).

<sup>82</sup> *Ibid*, 21-22.



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Detention is critical to immigration enforcement, which Mayorkas certainly knows.

“Detention is the surest way to ensure that an alien will not abscond pending completion of their immigration proceedings,” wrote Wetherell in his March 2023 decision.<sup>83</sup>

DHS’ own FY21 Lifecycle Report, released in November 2022, noted that 82 percent of illegal aliens “neither expelled or repatriated directly by CBP nor continuously detained by ICE” remain in the United States years later, and that illegal aliens not removed after 12 months “are rarely repatriated after that.”<sup>84</sup>

However, despite the perverse incentives created by such lax detention policies, based on the text of INA section 235 and DHS’ current practices, Mayorkas has failed to follow the mandatory detention requirements of the INA.

### **Exhibit 3: Ignoring Removal Requirements of Section 237 of the INA**

Mayorkas has also undermined the law in effectively prohibiting ICE from detaining and removing the vast majority of illegal aliens present in the United States. To accomplish this, Mayorkas has encouraged DHS officials to exercise “prosecutorial discretion” in enforcement and removal of illegal aliens present in the United States.<sup>85</sup> Based on DHS policy memos, however, this encouragement is little more than a mandate to not enforce the law against most illegal aliens.

This non-enforcement approach started on day one of the Biden administration. Though section 236(c) of the INA requires detention of certain criminal aliens,<sup>86</sup> and section 237 requires that certain aliens be removed,<sup>87</sup> David Pekoske, then-acting secretary of DHS, published a memo on Jan. 20, 2021, severely restricting ICE officials’ ability to detain and remove illegal aliens present in the United States.<sup>88</sup>

The memo stated that only three categories of illegal aliens were priorities for detention and removal—national security threats, those entering the country on or after Nov. 1, 2020, or not present in the United States before that date, and aggravated felons released from federal, state, or local prisons who are determined to pose a threat to public safety.<sup>89</sup> Pekoske also declared a 100-day moratorium on deportations, which was subsequently blocked by a federal judge.<sup>90</sup>

<sup>83</sup> Ibid, 8.

<sup>84</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Fiscal Year 2021 Enforcement Lifecycle Report*, by Nadwa Mossad, et. al., 5, November 2022, [https://www.dhs.gov/sites/default/files/2022-12/2022\\_1114\\_pley\\_enforcement\\_lifecycle\\_report\\_fy2021.pdf](https://www.dhs.gov/sites/default/files/2022-12/2022_1114_pley_enforcement_lifecycle_report_fy2021.pdf).

<sup>85</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor*, January 12, 2022, <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>.

<sup>86</sup> 8 U.S.C § 1226(c).

<sup>87</sup> Ibid. at § 1227.

<sup>88</sup> U.S. Department of Homeland Security, *Memorandum: Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, January 20, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

<sup>89</sup> Ibid, 2.

<sup>90</sup> *State of Texas v. United States*, No. 6:21-cv-00003, (S.D. Tex. 2021).



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This effort by DHS continued in February 2021, when former ICE Acting Director Tae Johnson also issued interim guidance to the agency, further building on Pekoske’s January memorandum.<sup>91</sup>

Mayorkas reiterated and built on this anti-enforcement approach. In his own September 2021 memo, he stated, “The fact an individual is a removable [alien] therefore should not alone be the basis of an enforcement action against them.”<sup>92</sup> The Mayorkas memo further fleshed out the flawed Pekoske and Johnson memos, providing even more “justification” of the secretary’s decision to restrict ICE agents’ ability to arrest and remove illegal aliens.<sup>93</sup>

An April 2022 memo from Kerry Doyle, principal legal advisor for ICE’s Office of the Principal Legal Advisor (OPLA), also indicated that OPLA was operating under this restrictive guidance.<sup>94</sup> Officers were being encouraged to abuse prosecutorial discretion in furtherance of Mayorkas’ vision.<sup>95</sup>

Mayorkas’ September 2021 memo was enjoined by a federal court in June 2022.<sup>96</sup> One year later, the Supreme Court reversed the district court’s judgment on procedural grounds, finding that the states lacked standing to sue on the issue.<sup>97</sup> The Court’s decision made clear that the holding was procedural in nature, and did not vindicate Mayorkas’ failure to detain and remove illegal aliens.

Indeed, Supreme Court Justice Brett Kavanaugh wrote that the decision “does not indicate any view on whether the Executive is complying with its statutory obligations,”<sup>98</sup> and re-affirmed Congress’ statutory authority on immigration.

After the Supreme Court’s ruling, Mayorkas immediately vowed to return to his policy of non-enforcement,<sup>99</sup> effectively undermining Congress’ authority in his refusal to remove illegal aliens.

The policy directives outlined in DHS’s various memos directly contradict section 237(a)(1) of the INA, which outlines the types of removable aliens that “shall . . . be removed”, including those who have committed certain crimes, terrorist activity, drug or human trafficking.<sup>100</sup>

Consequently, under Mayorkas, removals have plummeted and the Non-Detained Docket (NDD) has exploded, as this report later documents.

<sup>91</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Memorandum: Interim Guidance: Civil Immigration Enforcement and Removal Priorities*, February 18, 2021, [https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf).

<sup>92</sup> U.S. Department of Homeland Security, *Memorandum: Guidelines for the Enforcement of Civil Immigration Law*, September 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>93</sup> *Ibid.*

<sup>94</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Memorandum: Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*, April 3, 2022, [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf).

<sup>95</sup> *Ibid.*

<sup>96</sup> *State of Texas v. United States*, No. 6:21-cv-00016, (S.D. Tex. 2022).

<sup>97</sup> *United States v. Texas*, 599 U.S. \_\_ (2023).

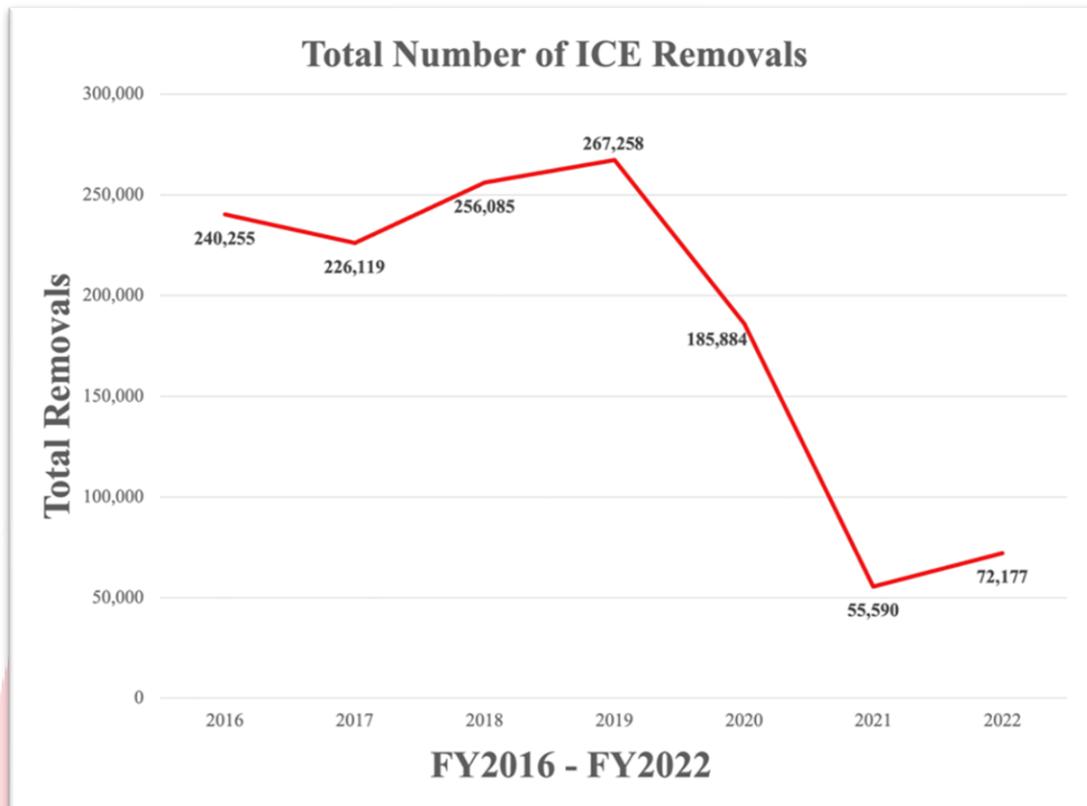
<sup>98</sup> *Ibid.*, 3.

<sup>99</sup> U.S. Department of Homeland Security, News, *Statement from Secretary Mayorkas Regarding the Supreme Court Decision on Immigration Enforcement*, June 23, 2023, <https://www.dhs.gov/news/2023/06/23/statement-secretary-mayorkas-regarding-supreme-court-decision-immigration>.

<sup>100</sup> 8 U.S.C. § 1227.



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*ICE removals have plummeted under Mayorkas' leadership. Even during the height of the COVID-19 pandemic, the Trump administration removed 236 percent more illegal aliens than were removed in FY21. (Source: ICE removal data)*

Former USCIS Acting Director Edlow testified to the House Committee on Homeland Security in June 2023 that the purpose of Mayorkas' restrictive guidance was "to redefine immigration enforcement by creating fictional priorities with no basis in law," and that those priorities gave "even the most serious of criminal aliens a free pass in the interest of equity and 'justice.'"<sup>101</sup> Further, he testified, Mayorkas' failure to follow and enforce duly passed laws of Congress governing removals represents "aggressive action to undermine immigration enforcement," and "is a dereliction of duty."<sup>102</sup>

Mayorkas has used the guise of "prosecutorial discretion" to justify his refusal to enforce the laws duly passed by Congress. Prosecutorial discretion, however, is limited. Edlow further testified:

"However, that discretion is not absolute and cannot replace whole statutory text. Prosecutorial discretion should be viewed in the context of a case-by-case analysis in an individual matter. The use of prosecutorial discretion to exempt an entire class of

<sup>101</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Joseph B. Edlow for Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis*, 118th Cong., 1st sess., June 14, 2023, 2, <https://homeland.house.gov/media/2023/06/2023-06-14-HRG-Testimony.pdf>.

<sup>102</sup> "Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis," *Homeland Security Committee Events*, YouTube video, 35:52, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=2073s>.



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individuals from law enforcement action, as is suggested in these memos, is not discretion at all.”<sup>103</sup>

Many federal courts have agreed with such reasoning. In *Florida v. United States*, Wetherell wrote in vacating Mayorkas’ Parole + ATD policy that while immigration officials have discretion in carrying out the laws of the United States, “that discretion must be exercised within the confines established by Congress.”<sup>104</sup> Congress established those confines in the INA.<sup>105</sup>

In the Supreme Court’s opinion in *United States v. Texas*, Justice Kavanaugh indicated that prosecutorial discretion is not unlimited:

“Under the Administrative Procedure Act, a plaintiff arguably could obtain review of agency non-enforcement if an agency ‘has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities.’ So too, an extreme case of non-enforcement arguably could exceed the bounds of enforcement discretion and support Article III standing.”<sup>106</sup>

Although not part of the majority opinion, Justice Samuel Alito also made this clear in his dissent in the same case, writing:

“First, 8 U. S. C. §1226(c) directs the Government to ‘take into custody any alien’ inadmissible or deportable on certain criminal or terrorist grounds ‘when the alien is released’ from criminal custody, including when such an alien is released on ‘parole, supervised release, or probation.’ Second, §1231(a) imposes a categorical detention mandate. Section 1231(a)(2) provides that the Government ‘shall detain [an] alien’ ‘[d]uring the removal period,’ which often begins either when an ‘order of removal becomes administratively final’ or when an ‘alien is released from detention or confinement’ not arising from immigration process, §1231(a)(1)(B).

“All of our recent decisions interpreting these provisions confirm that, for covered aliens, shall means shall; it does not mean ‘may.’ Until quite recently, that was the Government’s understanding as well.”<sup>107</sup>

<sup>103</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Joseph B. Edlow for Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis*, 118th Cong., 1st sess., June 14, 2023, 3, <https://homeland.house.gov/media/2023/06/2023-06-14-HRG-Testimony.pdf>.

<sup>104</sup> *State of Florida v. United States*, No. 3:21-cv-01066, 3, (N.D. Fla. 2023).

<sup>105</sup> *Ibid.*

<sup>106</sup> *United States v. Texas*, 599 U.S. \_\_\_, 14, (2023).

<sup>107</sup> *Ibid.*, 47.



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Finally, though his ruling striking down the Mayorkas ICE memo was ultimately reversed by the Supreme Court on procedural grounds, Judge Drew Tipton of the U.S. District Court for the Southern District of Texas left no doubt about Mayorkas' abuse of prosecutorial discretion:

“True, the Executive Branch has case-by-case discretion to abandon immigration enforcement as to a particular individual. This case, however, does not involve individualized decisionmaking.

“Instead, this case is about a rule that binds Department of Homeland Security officials in a generalized, prospective manner—all in contravention of Congress's detention mandate. It is also true that the Executive Branch may prioritize its resources. But it must do so within the bounds set by Congress. Whatever the outer limits of its authority, the Executive Branch does not have the authority to change the law. Using the words ‘discretion’ and ‘prioritization,’ the Executive Branch claims the authority to suspend statutory mandates. The law does not sanction this approach. Accepting the Executive Branch's position would have profound consequences for the separation of powers.”<sup>108</sup>

In other words, immigration officials have some latitude to make judgments about how best to enforce the law in specific situations. They do not possess the authority to, as a matter of policy, simply refuse to enforce the law, substituting their policy agendas for the laws passed by Congress. But that is exactly what Mayorkas has directed his officials to do.

ICE numbers also demonstrate the importance of detention to interior removals, which are occurring far less frequently under Mayorkas' policies. In a 2019 press release reporting annual statistics from ICE's Enforcement and Removal Operations (ERO), the agency noted that among the more-than 267,000 individuals removed by ICE in FY19, “85% had previously spent time in ICE detention, demonstrating its continued importance for the removal process.”<sup>109</sup>

As Tipton so eloquently articulated in his opinion, Mayorkas' brazen actions are a direct affront to the separation of powers—the foundation of our republican form of government—and a serious violation of his oath of office.

<sup>108</sup> State of Texas v. United States, No. 6:21-cv-00016, 3, (S.D. Tex. 2022).

<sup>109</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE details how border crisis impacted immigration enforcement in FY 2019*, December 11, 2019, <https://www.ice.gov/news/releases/ice-details-how-border-crisis-impacted-immigration-enforcement-fy-2019>.



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### **Exhibit 4: Ignoring Requirement to Detain Criminal Illegal Aliens Under Section 236(c) of the INA**

Section 236(c) of the INA states that the federal government “shall take into custody” certain criminal aliens. Despite the statute’s requirement that DHS take certain criminal aliens into custody, DHS’ enforcement memos make clear that ICE will only target a very limited class of criminals for detention and removal.

In addition to refusing to detain a broad swath of criminal illegal aliens found within the United States, Mayorkas’ DHS is knowingly releasing them into the United States at the Southwest border.<sup>110</sup>

In fact, then-ICE Acting Director Johnson told Congress in April 2023 that ICE was prepared to release criminal illegal aliens from detention to supposedly create space for an anticipated increase in illegal aliens crossing the Southwest border when Title 42 ended.<sup>111</sup>

Johnson downplayed any such potential releases, however, claiming that any criminals released would be “very low-level criminals.”<sup>112</sup> A subsequent press report revealed ICE data showing hundreds of criminal illegal aliens were released from detention in March and April 2023.<sup>113</sup>

Finally, Mayorkas’ de-prioritization of enforcing the law against criminal aliens has been exacerbated by an environment at the Southwest border that criminal aliens can easily exploit.

Thousands of Border Patrol agents have been pulled off the line to process and release record numbers of illegal aliens into the interior.<sup>114</sup> As a result, the number of known gotaways—illegal aliens who evade Border Patrol apprehension and enter the country but are still detected crossing—has skyrocketed under Mayorkas’ watch. Since FY21, more than 1.5 million known gotaways have been recorded, as of May 2023.<sup>115</sup> CBP recorded more than 389,000 gotaways in FY21, nearly 600,000 in FY22, and approximately 530,000 through early May this fiscal year.<sup>116</sup> At the current pace of 530,000 known gotaways through May 10, reported by the New York Post, CBP will record around 875,000 gotaways this fiscal year—an astounding figure.<sup>117</sup>

<sup>110</sup> Callie Patterson, Carl Campanile, and Bruce Golding, “Migrants with Criminal Records Among Those Being Released in the US: ICE Agent,” *New York Post*, January 27, 2022, <https://nypost.com/2022/01/27/migrants-with-criminal-records-among-those-being-released-in-the-us-ice-agent/>.

<sup>111</sup> “Budget Hearing – Fiscal Year 2024 Request for the U.S. Immigration and Customs Enforcement Agency,” *House Appropriations Committee*, YouTube video, 1:35:26, April 18, 2023, <https://www.youtube.com/watch?v=EZLOTp8DH6w&t=5725s>.

<sup>112</sup> *Ibid.*

<sup>113</sup> Stephen Dinan, “ICE Released Hundreds of Criminals to Clear Space for Border Surge,” *The Washington Times*, May 9, 2023, <https://www.washingtontimes.com/news/2023/may/9/ice-released-hundreds-criminals-clear-space-border/>.

<sup>114</sup> “Full Committee Field Hearing: ‘Failure By Design: Examining Secretary Mayorkas’ Border Crisis,’” *Homeland Security Committee Events*, YouTube video, 2:46:10 March 15, 2023, <https://www.youtube.com/watch?v=7Z1ETzh3AUA&t=9960s>.

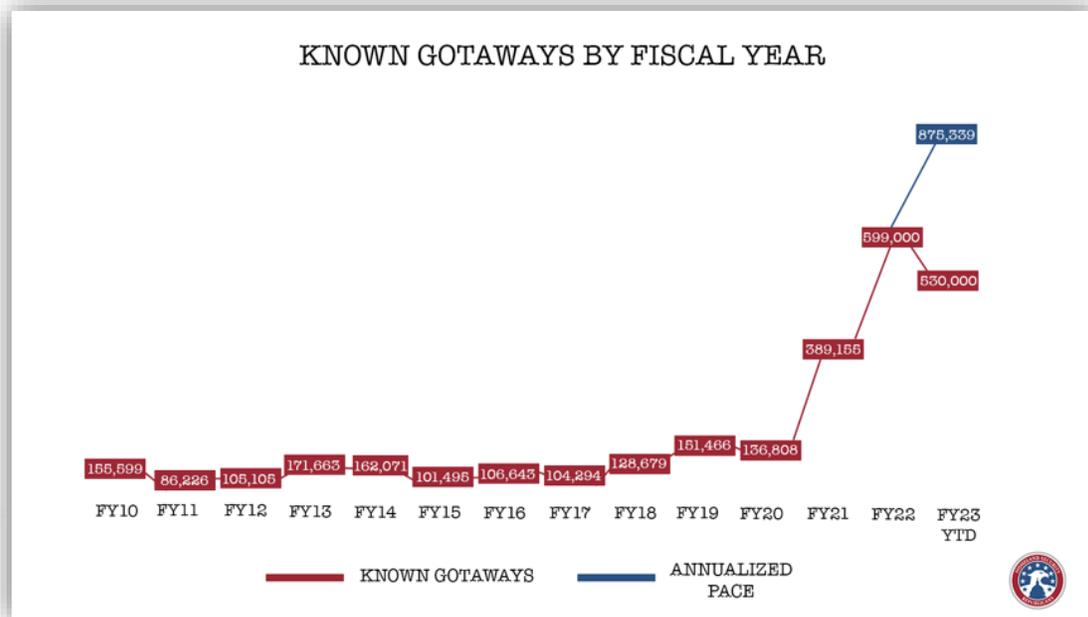
<sup>115</sup> MaryAnn Martinez and Stephanie Pagones, “530K Illegal Migrants Sneaked into US Since October: CBP,” *New York Post*, May 10, 2023, <https://nypost.com/2023/05/10/530k-illegal-migrants-have-border-agents-since-start-of-2023/>.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*



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(Sources: DHS 2021 Border Security Metrics Report, media reports)

DHS has no information about these gotaways, and it is likely that among them are numerous gang members, violent criminals, human and drug traffickers, and known or suspected national security threats.

These gotaways would rather evade Border Patrol altogether than be apprehended and have their identities checked in government databases. They would rather sneak across and forgo release into the interior, along with the opportunity for work authorization and taxpayer-funded transportation to the city of their choice. The reasons for this—some of which include involvement in gang activity, smuggling narcotics into the United States, or even intending to harm American citizens—are troubling.

Even if these gotaways were caught, in many cases, officials would have a tough time verifying criminal backgrounds given DHS’ limitations in gathering that information from the aliens’ home countries, as ICE’s Johnson told Congress in April.<sup>118</sup>

Present and future criminal aliens are also released into the interior under Mayorkas’ policy to not return unaccompanied alien children (UACs) to their home countries, as later documented in this report. A historic number of UACs have come across the Southwest border,<sup>119</sup> including teenage gang members, like the El Salvadoran teenager and MS-13 gang member who was

<sup>118</sup> Victor Nava, “DHS Chief Expects ‘Surge’ at the Border Next Month When Title 42 Ends,” *New York Post*, April 18, 2023, <https://nypost.com/2023/04/18/alejandro-mayorkas-expects-surge-at-the-border-next-month-when-title-42-ends/>.

<sup>119</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.



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released into the country in March 2022<sup>120</sup> on Mayorkas' watch and subsequently strangled 20-year-old Kayla Hamilton in July 2022.

UACs sometimes commit horrific crimes after entering, like Jose Hernandez-Espinal, who entered the country as a 10-year-old in 2013, later raping two women in the Washington, D.C., metro area in May 2023.<sup>121</sup> Another example is Carlos Dominguez, an illegal alien who entered the country in 2009 when he was 7. In late April and early May 2023, Dominguez fatally stabbed multiple people in the vicinity of the University of California-Davis campus.<sup>122</sup> These are just a few examples, more of which will be documented later in this investigation.

ICE officials have also stated that around 40 percent of the MS-13 gang members they arrest originally came into the country as UACs.<sup>123</sup>

How many of the historic number of UACs that have crossed on Mayorkas' watch already have criminal backgrounds, or will later commit similar heinous acts?

In addition to the requirements of section 236(c), section 212 of the INA establishes several categories of inadmissible aliens, who by law are not allowed to enter or remain in the country.<sup>124</sup>

Inadmissible aliens include:

- Aliens who have committed crimes of moral turpitude, multiple crimes, or certain non-violent crimes;
- Aliens who are drug traffickers or human traffickers;
- Aliens who have engaged in certain types of misconduct or abuse;
- Aliens who are suspected terrorists or otherwise pose a security threat to the United States; or
- Aliens who illegally cross the border.<sup>125</sup>

As this report will continue to demonstrate, the number of inadmissible aliens now residing in the United States because Mayorkas has not detained them is in the millions, rendering the standards established by section 212 effectively meaningless.<sup>126</sup>

Not only is ICE not removing illegal aliens in accordance with the law, but it is failing to detain criminal illegal aliens, as well.<sup>127</sup> This is yet another violation of the INA by Mayorkas.

<sup>120</sup> U.S. Congress, House of Representatives, Committee on the Judiciary and the Subcommittee on Immigration Integrity, Security, and Enforcement, *The Murder of Kayla Hamilton: A Case for Immigration Enforcement and Border Security*, report prepared by Committee and Subcommittee staff, 118th Cong., 1st sess., May 23, 2023, 5, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-05-23-the-murder-of-kayla-hamilton-a-case-study-for-immigration-enforcement-and-border-security.pdf>.

<sup>121</sup> "Suspect in Silver Spring trail rape case is in US illegally: ICE," *Fox 5 DC*, May 19, 2023, <https://www.fox5dc.com/news/suspect-in-silver-spring-trail-rape-case-is-in-us-illegally-ice>.

<sup>122</sup> Lauren Walike, "Davis stabbing suspect placed on ICE detainer," *ABC 10*, May 5, 2023, <https://www.abc10.com/article/news/local/davis-stabbing-suspect-ice-detainer/103-9d65369a-5f6a-4a7c-bdd3-1f191420b093>.

<sup>123</sup> U.S. Congress, House of Representatives, Judiciary Committee, Subcommittee on Immigration Integrity, Security and Enforcement, *Statement of Jessica M. Vaughan for The Biden Border Crisis: Exploitation of Unaccompanied Alien Children*, 118th Cong., 1st sess., April 26, 2023, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/vaughan-testimony.pdf>.

<sup>124</sup> 8 U.S.C. § 1182.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> 8 U.S.C. § 1226(c).



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### **Exhibit 5: Acting Contrary to Prohibitions Against Harboring Illegal Aliens or Encouraging Illegal Entry in Section 274 of the INA**

Section 274(a) of the INA makes explicitly clear that it is against the law to transport, move, or attempt to transport or move an illegal alien within the United States.<sup>128</sup> Per the statute, it is also illegal to conceal, harbor, or shield an illegal alien from detection by law enforcement, or to attempt to do so.<sup>129</sup> Finally, this section of the INA provides that anyone who “encourages” or “induces” someone to “enter” or “reside in” the United States is violating the law.<sup>130</sup>

The consequences of violating this statute are severe. Each offense carries a maximum five-year prison sentence for each illegal alien encouraged to enter, or aided in entering or transporting.<sup>131</sup> If someone violates the prohibitions of section 274(a) and the alien being encouraged to enter the country illegally, or being transported in the country, suffers “serious bodily injury” or death in the process of doing so, the individual who encouraged or facilitated the illegal entry could face up to 20 years in prison, and possible life imprisonment.<sup>132</sup>

Aiding and abetting any of these prohibited activities is also a criminal act, carrying a penalty of up to five years imprisonment, per section 274(a).<sup>133</sup>

Mayorkas’ policies ignore the prohibitions of section 274(a). His policies and rhetoric have encouraged mass illegal entry into the United States. Under his leadership, DHS has also worked closely with non-government entities to help transport illegal aliens throughout the United States after they are released from DHS custody, as this report documents in great detail.

DHS itself has even coordinated directly with Mexican authorities to facilitate the flow of illegal immigration into the United States. Journalist Todd Bensman, who is also a Texas Department of Public Safety (DPS) veteran, reported from the Southwest border on May 10, 2023, that multiple Mexican immigration officers told him Mexican officials were working with CBP officials ahead of the end of Title 42 to coordinate the mass flow of illegal aliens across the Rio Grande River:

“President Joe Biden’s Department of Homeland Security has been coordinating these mass swims with Mexico’s immigration service, INM, at high levels on an encrypted WhatsApp channel. ... The Americans on the other side would ask the Mexicans to hold back the migrants – not because such crossings are illegal and should be blocked and obstructed, but only until the Americans had finished processing the last batch into the country through Brownsville. Once the Americans felt they could take in more, they message the Mexicans that ‘they are ready to receive them.’”<sup>134</sup>

<sup>128</sup> 8 U.S.C. § 1324(a)(1)(A).

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid at § 1324(a)(1)(B).

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Todd Bensman, “Biden DHS Coordinating Illegal Immigration In-Flows with Mexico,” *Center for Immigration Studies*, May 10, 2023, <https://cis.org/Bensman/Biden-DHS-Coordinating-Illegal-Immigration-InFlows-Mexico>.



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If such reporting is accurate, coordination to facilitate illegal entry into the United States could potentially represent a violation of Congress' prohibition on aiding and abetting illegal or improper entry into the United States.

### **Exhibit 6: Undermining Section 235 of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)**

Under section 235 of the TVPRA, DHS must work with the Department of Health and Human Services (HHS) and other agencies to develop “policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.”<sup>135</sup>

In practice, however, under Mayorkas' leadership, DHS has consistently processed and released a record number of UACs into the interior rather than return them to their home countries.

In the early days of his tenure, Mayorkas repeatedly said that UACs will not be sent back to their home countries. For example, on March 18, 2021, he told “CBS This Morning” that DHS “will not expel”<sup>136</sup> UACs, and a few days later he said on NBC's “Meet the Press” that DHS had “made a decision that we will not expel young, vulnerable children.”<sup>137</sup> The human consequences of Mayorkas' decision to ignore this statute have been immense and will be documented in a later phase of this investigation.

Mayorkas' open-borders policies and public statements have encouraged a historic number of UACs to cross the Southwest border into the United States. In FY21, CBP recorded approximately 147,000 encounters of unaccompanied minors, and in FY22, the number increased to more than 152,000.<sup>138</sup> In FY23 so far, the number is north of 91,000.<sup>139</sup> These numbers have skyrocketed from FY20, when CBP recorded just over 33,000 encounters of UACs the entire year.<sup>140</sup>

Even in FY19, with its relatively short-lived crisis, CBP recorded just over 80,600 encounters of UACs over the 12-month period.<sup>141</sup>

In fulfillment of Mayorkas' policies, from FY21-22, DHS released more than 251,000 UACs to HHS' Office of Refugee Resettlement (ORR), which is responsible for providing care to, and finding sponsors for, these minors.<sup>142</sup> A later phase of this investigation will examine the consequences of this policy of releasing tens of thousands of UACs into the country instead of returning them to their families.

<sup>135</sup> 8 U.S.C. § 1232

<sup>136</sup> “Homeland Security secretary on surge in migration at Southwest U.S. border,” *CBS News*, video, 6:34, March 18, 2021, <https://www.cbsnews.com/video/homeland-security-secretary-on-surge-in-migration-at-southwest-us-border/#x>.

<sup>137</sup> “Meet the Press - March 21, 2021,” *NBC News*, March 21, 2021, <https://www.nbcnews.com/meet-the-press/meet-press-march-21-2021-n1261691>.

<sup>138</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Southwest Border Migration FY 2019*, November 14, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

<sup>142</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Press Office, *Fact Sheet: Unaccompanied Children (UC) Program*, July 5, 2023, <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.



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### **Exhibit 7: Improper Expansion of Asylum-Granting Authority to USCIS Officials**

In March 2022, Mayorkas<sup>143</sup> approved an interim final rule granting himself power to adjudicate asylum applications in expedited removal cases,<sup>144</sup> despite statutory language reserving that power for the attorney general of the United States. Section 103(g) of the INA states:

“The Attorney General shall have such authorities and functions under this chapter and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review (EOIR), or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of [the Homeland Security Act].”<sup>145</sup>

Both before and after the 2002 enactment of the Homeland Security Act, the attorney general, through immigration judges with the EOIR, has had *sole authority* to review USCIS asylum officers’ credible fear findings and to adjudicate illegal aliens’ asylum applications in removal proceedings.

Despite this precedent and the statutory text, the interim final rule approved by Mayorkas allowed USCIS asylum officers, who act on behalf of the DHS secretary, to grant asylum claims at the Southwest border.<sup>146</sup>

In doing so, Mayorkas unilaterally transferred the power to grant asylum to bureaucrats who are not permitted to exercise that authority. USCIS asylum officers possess the legal authority to issue a finding of “credible fear” before an alien facing expedited removal at the border may be considered for asylum. Even if the asylum officer finds the alien has a credible fear, the officer is not then statutorily authorized to grant the alien’s subsequent asylum claim.

By giving these officers unprecedented authority to grant asylum, Mayorkas has largely cut immigration judges, ICE attorneys, and the broader adversarial process from the asylum process, in direct contravention of the law.<sup>147</sup>

<sup>143</sup> Attorney General Merrick Garland joined in the interim rule.

<sup>144</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services and U.S. Department of Justice, Executive Office for Immigration Review, Rule, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” *Federal Register* 87, no. 60 (March 29, 2022): 18078-18226, <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

<sup>145</sup> 8 U.S.C. § 1103(g).

<sup>146</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services and U.S. Department of Justice, Executive Office for Immigration Review, Rule, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” *Federal Register* 87, no. 60 (March 29, 2022): 18078-18226, <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

<sup>147</sup> *Ibid.* The Biden administration said it would pause use of the rule in the wake of Title 42’s expiration. See Hamed Aleaziz, “Signature Biden asylum reform policy is now on hold,” *Los Angeles Times*, April 12, 2023, <https://www.latimes.com/politics/story/2023-04-12/biden-asylum-processing-rule-pause>.



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In proposing the new rule, Mayorkas cited the increasing number of encounters at the Southwest border as presenting “serious challenges for an already overwhelmed U.S. asylum system at the border.”<sup>148</sup> However, those “challenges” were self-imposed through Mayorkas’ open-borders policies that encourage illegal aliens to make claims of credible fear and seek asylum. In other words, Mayorkas unilaterally changed the law to give himself more power to “fix” the very mess he created.

Former USCIS Acting Director Edlow and former DHS Acting Deputy Chief of Staff Lora Ries wrote in 2022 that the rule also removes an important fraud-prevention measure in the asylum process, allowing an alien’s credible fear claim to also serve as their asylum application:

“One of the many benefits of having aliens file asylum applications following a credible fear determination is that it allows DHS to look for inconsistencies in the claim and, if necessary, use it in a fraud investigation. It is well documented that many aliens seeking a credible fear interview have been coached, and later inconsistencies are critical in distinguishing a valid claim from a frivolous one. Under the [Interim Final Rule’s] structure, the record of the interview serves as the underlying application, so the alien no longer has to provide a written recollection of the claim. This places the trier of fact, the asylum officer, in a very weak position.”<sup>149</sup>

Even more troubling, in approving the new rule, not only did Mayorkas circumvent the law, but reporting suggests the rule facilitates the possible approval of an untold number of fraudulent or illegitimate asylum claims, making a mockery of the asylum system in an effort to process and release illegal aliens into the country more quickly.<sup>150</sup>

Edlow recently made a convincing case to this effect, writing that the rule was “aimed at processing in aliens faster and getting them [a] full-fledged asylum interview, in a non-adversarial manner, without the benefit of immigration court or ICE trial attorney’s input. This is rulemaking run amok as it is contrary to statute, contrary to long-existing policy, and directly encroaches on the Department of Justice.”<sup>151</sup>

<sup>148</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services and U.S. Department of Justice, Executive Office for Immigration Review, Proposed Rule, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” *Federal Register* 86, no. 159 (August 20, 2021): 46906-46950, <https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

<sup>149</sup> Joe Edlow and Lora Ries, “Congress Should Prohibit Biden Administration Asylum Rule,” *The Heritage Foundation*, April 22, 2022, <https://www.heritage.org/immigration/report/congress-should-prohibit-biden-administration-asylum-rule>.

<sup>150</sup> Andrew R. Arthur and Robert Law, “Biden Administration Finalizes Plan to Rubber-Stamp Asylum Grants,” *Center for Immigration Studies*, March 24, 2022, <https://cis.org/Arthur/Biden-Administration-Finalizes-Plan-RubberStamp-Asylum-Grants>.

<sup>151</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Joseph B. Edlow for Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis*, 118th Cong., 1st sess., June 14 2023, 6, <https://homeland.house.gov/media/2023/06/2023-06-14-HRG-Testimony.pdf>.



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### **Exhibit 8: Abuse of CBP One in Support of New Mass-Parole Programs**

This report previously established how mass parole of illegal aliens into the interior undermines U.S. immigration law.<sup>152</sup> Mayorkas has not only ignored the statute by implementing policies based on mass parole—he has devised new methods to do so.

In January 2023, Mayorkas' DHS announced a new process using the CBP One mobile app to pre-register aliens located outside the United States for mass entry and release into the country.<sup>153</sup> Traditionally, the app was used by legitimate travelers to submit their information in advance prior to crossing the border into the United States, and for commercial operators to make appointments for the inspection of perishable cargo.<sup>154</sup>

Under Mayorkas' new policy, aliens who would otherwise have no legitimate claim to enter the United States can now schedule an appointment at a port of entry where they can—but are not required to—claim asylum, and promptly be released into the interior.<sup>155</sup> In other words, he has expanded the use of the app to allow otherwise inadmissible individuals to schedule an appointment in order to gain entry into the United States, giving DHS yet another means of mass-releasing aliens into the country.<sup>156</sup>

Since the inception of this new program, more than 120,000 aliens have scheduled appointments using the new process,<sup>157</sup> with more numbers showing the mass use of CBP One covered further in this report.

The misuse of the CBP One app has institutionalized Mayorkas's mass-parole and release policies.<sup>158</sup> Mayorkas has also been playing a massive shell game with this policy, shifting the flow of would-be illegal aliens from between the ports of entry to the ports of entry, making otherwise illegal immigration appear lawful, and attempting to relieve the Biden administration of the embarrassing optics of mass illegal crossings between the ports.<sup>159</sup> In so doing, his use of CBP One to further a mass-parole agenda allows him to conceal the consequences of his policies from the American people. A later section of this report documents some of the consequences of Mayorkas' policy, and DHS' misleading framing of border security metrics following the program's rollout.<sup>160</sup>

<sup>152</sup> See Section 1, Exhibit 1: *Unlawful Use of Parole Under Section 212 of the INA*.

<sup>153</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Delivers Remarks on DHS's Continued Preparation for the End of Title 42 and Announcement of New Border Enforcement Measures and Additional Safe and Orderly Processes*, January 5, 2023,

<https://www.dhs.gov/news/2023/01/05/secretary-mayorkas-delivers-remarks-dhss-continued-preparation-end-title-42-and>.

<sup>154</sup> U.S. Department of Homeland Security, *Privacy Impact Assessment for CBP One™*, No. DHS/CBP/PIA-068, February 19, 2021,

<https://www.dhs.gov/sites/default/files/2023-05/privacy-pia-cbp068-cbpmobileapplication-may2023.pdf>.

<sup>155</sup> U.S. Department of Homeland Security, News, *DHS Scheduling System for Safe, Orderly, and Humane Border Processing Goes Live with CBP One™ App*, January 12, 2023. <https://www.dhs.gov/news/2023/01/12/dhs-scheduling-system-safe-orderly-and-humane-border-processing-goes-live-cbp-onetm>.

<sup>156</sup> Alyssa Guzman, "Biden Admin Expand CBP One App to Accept Up To 522K Asylum Seekers Per Year," *New York Post*, July 6, 2023,

<https://nypost.com/2023/07/06/biden-admin-expands-cbp-one-app-to-accept-up-to-522k-asylum-seekers-per-year/>.

<sup>157</sup> Camilo Montoya-Galvez, "U.S. plans to admit nearly 40,000 asylum-seekers per month through mobile app," *CBS News*, May 31, 2023,

<https://www.cbsnews.com/news/asylum-seekers-cbp-one-mobile-app-u-s-plans-admit-nearly-40000-monthly/>.

<sup>158</sup> 8 U.S.C. § 1157.

<sup>159</sup> Mark Morgan, "Biden and Mayorkas's dishonest border security shell game," *Washington Examiner*, February 7, 2023,

<https://www.washingtonexaminer.com/restoring-america/fairness-justice/biden-and-mayorkas-dishonest-border-security-shell-game>.

<sup>160</sup> 8 U.S.C. § 1229a(b)(4)(A).



## SECTION 1: LAWS AND COURT ORDERS MAYORKAS HAS IGNORED, ABUSED, OR FAILED TO FOLLOW

For the purposes of this section, the American people should understand that the policy violates not just the original intent of the app, but more importantly is being used as a tool to undermine the statutes that prohibit mass parole<sup>161</sup> and require detention of inadmissible aliens.<sup>162</sup>

### **Exhibit 9: Ignoring Federal Court Order to Reinstate Remain in Mexico Program**

Mayorkas has not only ignored and failed to enforce the laws passed by Congress, but has also refused to comply with a federal judicial order.

Specifically, as already documented, in August 2021 the U.S. District Court for the Northern District of Texas ordered Mayorkas to reimplement the Remain in Mexico program, at least until litigation over the policy was resolved.<sup>163</sup>

The court ordered Mayorkas to enforce the policy “in good faith until such a time as it has been lawfully rescinded in compliance with the [Administrative Procedure Act] and until such a time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention...”<sup>164</sup>

Despite this order, the Border Patrol enrolled *zero* aliens in the program in September<sup>165</sup> or October 2021.<sup>166</sup> Just 16 were enrolled in November 2021 and 96 in December 2021.<sup>167</sup> The highest number of aliens enrolled in the program in one month was 1,264, in July 2022, but enrollments plummeted to 151 the next month.<sup>168</sup> Statistics provided by CBP show that the Border Patrol enrolled around 5,500 aliens in MPP from October 2021 to August 2022.<sup>169</sup> Total encounters at the Southwest border in that timeframe totaled 2.15 million,<sup>170</sup> meaning enrollments in MPP as a percentage of total encounters represented a mere one-quarter of one percent.<sup>171</sup>

Meanwhile, the Border Patrol released more than 33,000 illegal aliens on Parole + ATD between October-December 2021 alone, compared to just 112 aliens enrolled in MPP in the same time period.<sup>172</sup>

As noted by one former senior USCIS official, when Mayorkas was ordered to reimplement MPP, “[T]here was an attempt to do that—a halfhearted attempt to do that. But in the press release that

<sup>161</sup> 8 U.S.C. § 1182.

<sup>162</sup> 8 U.S.C. § 1225.

<sup>163</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, (N.D. Tex. 2021).

<sup>164</sup> *Ibid.*, 52.

<sup>165</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2021*, May 11, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2021>.

<sup>166</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>171</sup> A December 2022 DHS report listed 12,564 total MPP enrollments from December 2021 through August 2022, which would represent a rate of 0.6 percent of all Southwest border land encounters in that period. See U.S. Department of Homeland Security, Publication Library, *Migrant Protection Protocols Cohort Report*, December 2022, [https://www.dhs.gov/sites/default/files/2023-02/2023\\_0127\\_public\\_migrant\\_protection\\_protocols\\_cohort\\_report\\_december\\_2022.pdf](https://www.dhs.gov/sites/default/files/2023-02/2023_0127_public_migrant_protection_protocols_cohort_report_december_2022.pdf).

<sup>172</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

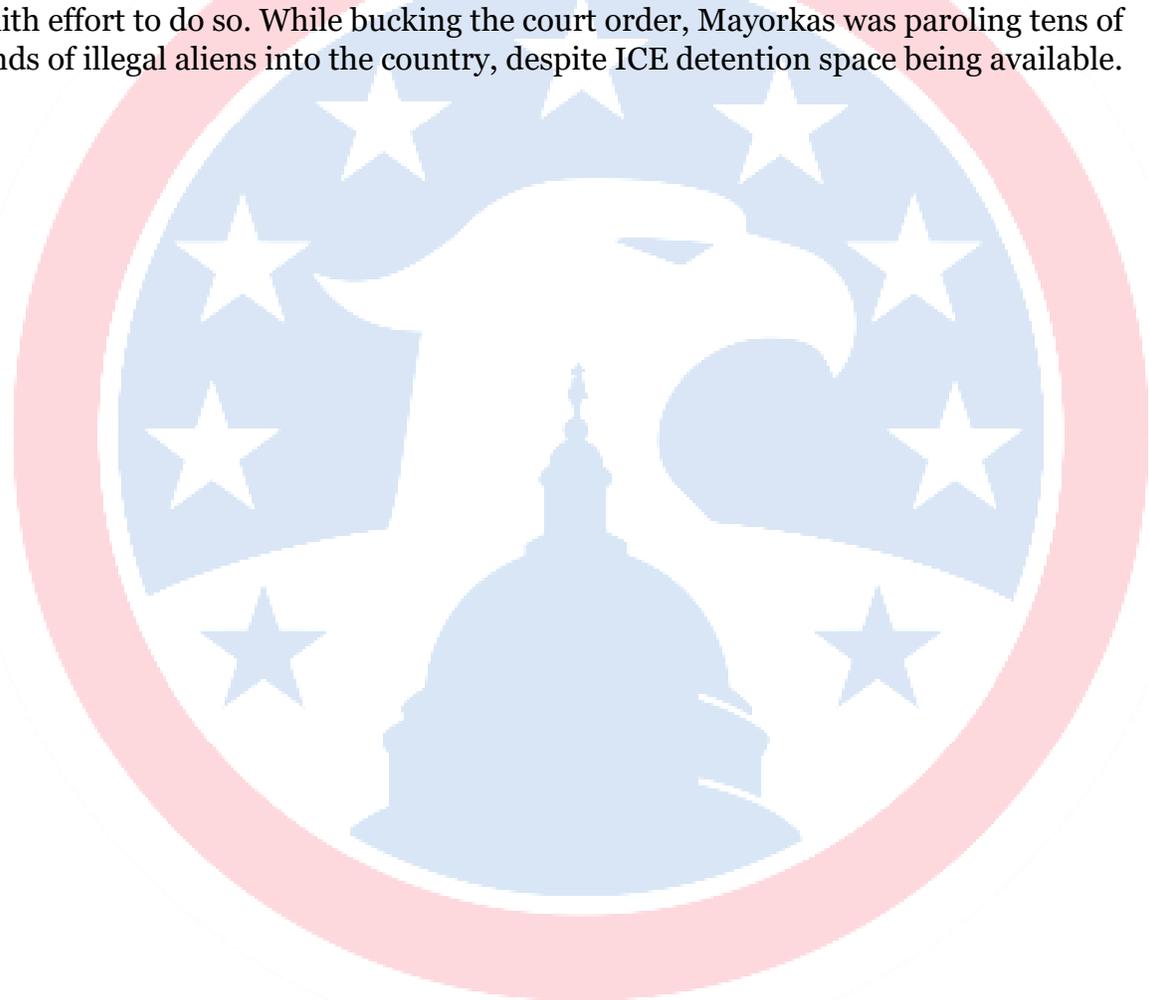


## SECTION 1: LAWS AND COURT ORDERS MAYORKAS HAS IGNORED, ABUSED, OR FAILED TO FOLLOW

did that, it also made it clear that the secretary had every intention to fight that decision from the court, and to take measures to end MPP in other ways. So, it was really never an actual attempt to reinstate it.”<sup>173</sup>

The Supreme Court’s ruling nearly a year later ultimately granting Mayorkas the authority to terminate MPP is no defense for Mayorkas’ refusal to follow the district court’s order that stood until then. The bottom line is that the district court ordered Mayorkas to reimplement MPP “in good faith,” and he refused, despite having the ability to do so.<sup>174</sup>

It is clear from both CBP’s own numbers and expert testimony that Mayorkas not only failed to promptly reimplement MPP when ordered by a federal court—he also failed to put forward a good-faith effort to do so. While bucking the court order, Mayorkas was paroling tens of thousands of illegal aliens into the country, despite ICE detention space being available.



<sup>173</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:07:04, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=4019s>.

<sup>174</sup> See Plaintiffs’ Motion to Enforce Permanent Injunction and for Expedited Discovery, *State of Texas v. Biden*, No. 2:21-cv-00067, (N.D. Tex. 2021).



## SECTION 2: ACTIONS TAKEN TO ENCOURAGE AND FACILITATE MASS ILLEGAL IMMIGRATION

### **Section 2: Actions Taken to Encourage and Facilitate Mass Illegal Immigration**

Mayorkas has not just stopped at refusing to enforce existing law, however. He has taken numerous actions to actively incentivize and facilitate mass illegal immigration, in direct contravention of his duties and responsibilities as the secretary.

This section of the report lays out the numerous policies the Biden administration has ended that have directly led to the historic crisis, as well as new policies implemented by Mayorkas that have continued to cause chaos at the Southwest border.

A dramatic shift has taken place under Mayorkas' leadership regarding the apprehension and detention of illegal aliens—a shift not just from the Trump administration, but from previous administrations of both parties. Nearly every major border security or immigration policy of Mayorkas' DHS encourages illegal entry by removing consequences for, and undermining law enforcement's ability to respond to, law-breaking.

In response to questions from multiple members of the House Committee on Homeland Security, former Border Patrol Chief Scott testified that both before and after the Biden administration came into office, Mayorkas and other officials quickly moved to end CBP's focus on securing the border and deterring illegal entry, instead prioritizing the rapid processing and release of illegal aliens into the country.

In his testimony to the House Committee on Homeland Security, Scott said:

“As chief of the United States Border Patrol, my staff and I engaged and advised the Biden transition teams well before inauguration. The administration's laser focus on expediting processing and increasing opportunities for migrants to enter the U.S. never wavered.

“Advice from career professionals was ignored. Policies were implemented that resulted in thousands of aliens being released into the U.S. Illegal immigration intensified, overwhelmed the Border Patrol, and effectively transferred control of our Southwest border directly to the Mexican drug cartels.”<sup>175</sup>

<sup>175</sup> “Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 42:02, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=2522s>.



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When asked by Florida Rep. Carlos Gimenez if Mayorkas was advised by CBP personnel that his policy decisions would spark a chaotic border crisis, Scott testified:

“Yeah, he was informed verbally. He was informed in writing. ... Our input was no longer solicited and when my team and I gave it unsolicited, we were basically put in a box. They did not want to know what we had to say. They made it very clear: Expedite processing and find new ways to let migrants into the U.S. That was the only agenda.”<sup>176</sup>

When asked by Texas Rep. August Pfluger if Mayorkas was briefed on policy failures or specific policy recommendations by CBP, Border Patrol, and ICE officials, Scott made clear that Mayorkas knew what was going on, and yet conversations about deterrence were simply shut down:

“I personally participated in numerous conference calls. The secretary insulated himself a lot, but he had representatives on those calls and occasionally he was in those calls himself. ... [T]he administration made it very clear—Deterrence was no longer our mission and we weren’t even allowed to talk about it. The minute you talked about trying to slow down the flow or putting any kind of a deterrent mechanism in place, we were immediately stymied.”<sup>177</sup>

In its 2021 decision in *Texas v. Biden*, the U.S. District Court for the Northern District of Texas also noted that senior Biden officials were made aware of the consequences of open-borders policies:

“During the latter half of 2020, the Biden transition team met with career staff from DHS. According to Mark Morgan — who is former Acting Commissioner of CBP, former Acting Director of ICE, and Marine — CBP ‘career employees . . . fully briefed the Biden transition officials on the importance of MPP and the consequences that would follow a suspension of MPP.’ Morgan stated: ‘transition personnel were specifically warned that the suspension of the MPP, along with other policies, would lead to a resurgence of illegal aliens attempting to illegally enter our [southwest border].’ And officials were also ‘warned smuggling organizations would exploit the rescission and convince migrants the U.S. borders are open. They were warned the increased volume was predictable and would overwhelm Border Patrol’s capacity and facilities, as well as HHS facilities.’”<sup>178</sup>

Mayorkas’ policies are actively incentivizing illegal entry into the United States because they inflict little to no consequence for entering the country in violation of the law. Individuals around the world know they are likely to be released into the interior, and offered numerous benefits such as taxpayer-funded transportation to the destination of their choice—thereby completing the final link in the human smuggling chain that began in Mexico or Central America.

<sup>176</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:35:11, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=5685s>.

<sup>177</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:48:10, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=6471s>.

<sup>178</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, 14-15, (N.D. Tex. 2021).



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### **WATCH: Former Border Patrol Chief Tells Congress He Was Prevented From Even Talking About Border Security**

The world has gotten the message. Illegal aliens have told reporters time and again they believe the border is open, and they have raced to take advantage.<sup>179</sup>

In the earliest days of the crisis, crowds of people streamed to the Southwest border wearing T-shirts saying, “Biden, Please Let Us In!” because they knew the policies of the Biden administration—and Mayorkas’ DHS in particular—represented an unprecedented chance to enter the United States.<sup>180</sup>

<sup>179</sup> “Migrants arrive outside Kamala Harris’ residence in D.C.,” *Fox News*, YouTube video, September 15, 2022, <https://www.youtube.com/watch?v=5sYWg8Q4FZ0>.

<sup>180</sup> “Migrants wear Biden T-shirts at US-Mexico border, demand clearer policies,” *Fox 10 Phoenix*, March 4, 2021, <https://www.fox10phoenix.com/news/migrants-wear-biden-t-shirts-at-us-mexico-border-demand-clearer-policies>.



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(Source: Guillermo Arias/AFP)

Each month, tens of thousands of aliens are being released into the United States, because the consequences inherent to illegally entering the country have been removed.<sup>181</sup>

This section contains a list of policies that the Biden administration has actively done away with, failed to enforce, or on which it has reversed course from the previous administration. The ending of these policies has had the direct result of encouraging mass illegal immigration and abuse of the asylum system.

### **Effective Policies Canceled by the Biden Administration**

**Migrant Protection Protocols (MPP):** The Trump administration implemented MPP, also known as the “Remain in Mexico” policy, to reduce the strain on America’s overwhelmed asylum system.<sup>182</sup> The policy helped deter illegal aliens from filing illegitimate or fraudulent asylum claims upon arrival at the Southwest border.<sup>183</sup> Certain aliens who illegally entered or sought admission into the United States through Mexico, including those who intended to seek asylum, were required to wait in Mexico until their claim was adjudicated.<sup>184</sup>

Given that since FY13, only between 12-17 percent of asylum claims are ultimately granted, under MPP thousands of people likely chose not to make the journey to the border for what they realized would prove to be an unwinnable claim.<sup>185</sup> They knew they would have to wait for years

<sup>181</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Custody and Transfer Statistics FY2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>182</sup> U.S. Department of Homeland Security, News, *Migrant Protection Protocols*, January 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> U.S. Department of Justice, Executive Office for Immigration Review, *Adjudication Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim*, April 21, 2023, <https://www.justice.gov/eoir/page/file/1062976/download>.



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in Mexico while their claim was processed, rather than be released into the United States, from which, DHS data consistently shows, UACs and family units are rarely removed.<sup>186</sup>

Former DHS Acting Secretary Wolf called MPP “one of the most effective policies in solving the 2019 border crisis, and reducing the unprecedented flood of fraudulent asylum claims being made at the southern border.”<sup>187</sup>

An October 2019 DHS assessment found the program was “an indispensable tool in addressing the ongoing crisis at the southern border and restoring integrity to the immigration system.”<sup>188</sup>

The assessment further noted:

“MPP is one among several tools DHS has employed effectively to reduce the incentive for aliens to assert claims for relief or protection, many of which may be meritless, as a means to enter the United States to live and work during the pendency of multi-year immigration proceedings. Even more importantly, MPP also provides an opportunity for those entitled to relief to obtain it within a matter of months. MPP, therefore, is a cornerstone of DHS’s ongoing efforts to restore integrity to the immigration system...”<sup>189</sup>

The Border Patrol’s former chief Scott explained in more detail why MPP was so effective in reducing asylum fraud:

“MPP made sure people got due process, but they did not get what they want. Most of these people from my experience don’t really care about asylum. They don’t really care about the legal documentation or process. They want to be released into the United States. Once that was taken away, the flow immediately decreased because they couldn’t commit fraud.

“Everybody knew that. This administration got rid of that program intentionally. They’re responsible for the results.”<sup>190</sup>

The October 2019 DHS memo referenced similar results, stating, “MPP returnees who do not qualify for relief or protection are being quickly removed from the United States. Moreover, aliens without meritorious claims—which no longer constitute a free ticket into the United States—are beginning to voluntarily return home.”<sup>191</sup>

However, despite the proven track record of MPP’s effectiveness, Mayorkas and other Biden administration officials fought to end the policy. On Jan. 20, 2021, the Biden administration

<sup>186</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Fiscal Year 2020 Enforcement Lifecycle Report*, by Marc R. Rosenblum and Hongwei Zhang, December 2020, 14-15, [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special\\_Reports/Enforcement\\_Lifecycle/2020\\_enforcement\\_lifecycle\\_report.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special_Reports/Enforcement_Lifecycle/2020_enforcement_lifecycle_report.pdf).

<sup>187</sup> “Chad Wolf: Reinstatement of ‘Remain in Mexico’ Policy a ‘Win’ for Border Security,” *The Heritage Foundation*, August 25, 2021, <https://www.heritage.org/press/chad-wolf-reinstatement-remain-mexico-policy-win-border-security>.

<sup>188</sup> U.S. Department of Homeland Security, *Assessment of the Migrant Protection Protocols (MPP)*, October 28, 2019, 2, [https://www.dhs.gov/sites/default/files/publications/assessment\\_of\\_the\\_migrant\\_protection\\_protocols\\_mpp.pdf](https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf).

<sup>189</sup> *Ibid.*, 6.

<sup>190</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:06:28, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=3985s>.

<sup>191</sup> U.S. Department of Homeland Security, *Assessment of the Migrant Protection Protocols (MPP)*, October 28, 2019, 3, [https://www.dhs.gov/sites/default/files/publications/assessment\\_of\\_the\\_migrant\\_protection\\_protocols\\_mpp.pdf](https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf).



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suspended MPP,<sup>192</sup> and roughly six months later, Mayorkas issued a memo stating MPP should be terminated.<sup>193</sup>

Kacsmark of the U.S. District Court for the Northern District of Texas wrote in his August 2021 opinion in *Texas v. Biden*:

“The incoming Biden Administration (1) knew MPP had been found effective by DHS as a matter of policy, (2) knew MPP had been successfully defended in court, and (3) had received warnings about the consequences that would attend the repealing of MPP. But the Biden Administration suspended new enrollments in MPP on its first day in office. ... Since that day, DHS has not offered a single justification for suspending new enrollments in the program during the period of review.”<sup>194</sup>

In a 2021 lawsuit challenging Mayorkas’ termination of MPP, West Virginia Attorney General Patrick Morrisey described the devastating consequences of ending the policy for his state:

“DHS’s termination of the MPP is a major change that increases the ‘pull factor’ attracting individuals without a lawful right to enter the United States or a legitimate asylum claim to nonetheless travel to and across the Southern border into this country, requiring the attention and resources of the Border Patrol. By its consequences burdening and distracting the Border Patrol, the termination of the MPP decreases the security of the border against fentanyl trafficking between ports of entry, leading directly to both increased numbers of smuggling attempts and increased rates of success in evading Border Patrol.

[...]

“[I]n 2020, 74.5% of all drug-related deaths in West Virginia were connected with fentanyl.”<sup>195</sup>

Kacsmark also made clear that the Mayorkas memo did not take into account any of MPP’s documented successes, nor how DHS would detain illegal aliens after its termination:

“The June 1 Memorandum contained no discussion or analysis of DHS’s previous assessment that MPP removed ‘perverse incentives’ and decreased the number of aliens attempting to illegally cross the border. The June 1 Memorandum contained no discussion or analysis regarding DHS’s ability to fulfill its statutory obligation to detain certain classes of aliens in the absence of MPP.”<sup>196</sup>

Accordingly, he wrote, the termination of MPP “has contributed to the current border surge.”<sup>197</sup>

<sup>192</sup> U.S. Department of Homeland Security, News, *DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program*, January 20, 2021, <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.

<sup>193</sup> U.S. Department of Homeland Security, *Memorandum: Termination of the Migrant Protection Protocols Program*, June 1, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_0601\\_termination\\_of\\_mpp\\_program.pdf](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf).

<sup>194</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, 15, (N.D. Tex. 2021).

<sup>195</sup> See Plaintiff’s Filing in *State of West Virginia v. U.S. Department of Homeland Security*, No. 5:21-cv-11111, 4, (N.D. W. Va. 2021).

<sup>196</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, 16, (N.D. Tex. 2021).

<sup>197</sup> *Ibid*, 17.



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For more than a year, Mayorkas fought numerous legal battles to dismantle it, ultimately prevailing in June 2022, when the Supreme Court ruled the Biden administration had authority to end the policy.<sup>198</sup> Although Mayorkas was ordered by a federal district court to enforce MPP for the duration of the litigation, he consistently refused to do so, as this report has documented.

When asked during congressional testimony by Rep. Michael McCaul, R-Tex., if Mayorkas was responsible for the consequences that ensued after MPP was eliminated, Wolf responded, “[T]he answer to that is a resounding yes. Obviously, the secretary ended MPP, Migrant Protection Protocols, so he’s responsible for the actions that follow that.”<sup>199</sup>

***Border Wall Construction:*** The border wall system is a critical component in maintaining order and security at the Southwest border. A CBP press release in October 2020 stated plainly, “The results speak for themselves: illegal drug, border crossings, and human smuggling activities have decreased in areas where barriers are deployed. ... [T]he border wall is forcing drug smugglers to where we are best prepared to catch them – our ports of entry.”<sup>200</sup>

The release noted other successes achieved by investing in the border wall system. In Yuma Sector, illegal crossings in places with new border wall system dropped 87 percent from FY19 to FY20. In FY19, Border Patrol in the Yuma Sector apprehended 12 large groups (100+ persons), while in FY20, after new border wall system was erected, no such groups were encountered. In one section of the Rio Grande Valley Sector, apprehensions decreased 79 percent following the construction of new border wall system. In other words, the evidence demonstrates that walls work.

On his first day in office, Biden ordered a halt to construction of new border wall, declaring, “It shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall.”<sup>201</sup> In testimony before the House Committee on Homeland Security on April 19, 2023, Mayorkas declared, “I stand by the decision of this administration to cease construction of the wall.”<sup>202</sup>

This statement stands in stark contrast to the testimony of former Border Patrol Chief Ortiz, who testified to the House Committee on Homeland Security in March 2023 that further construction of the border wall system would be helpful in securing the border,<sup>203</sup> and that he disagreed with Biden’s order to halt construction of new border wall.<sup>204</sup>

<sup>198</sup> *Biden v. Texas*, 597 U.S. \_\_\_\_ (2022).

<sup>199</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:05:41, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=3919s>.

<sup>200</sup> U.S. Department of Homeland Security, News, *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, October 29, 2020, <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers>.

<sup>201</sup> U.S. President, Proclamation, “Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction,” *Federal Register* 86, no. 16 (January 27, 2021): 7225-7227, <https://www.federalregister.gov/documents/2021/01/27/2021-01922/termination-of-emergency-with-respect-to-the-southern-border-of-the-united-states-and-redirection-of>.

<sup>202</sup> “Congressman Brecheen Questions Secretary Mayorkas During Homeland Security Committee Hearing 4/19/23,” *Congressman Josh Brecheen*, YouTube video, 4:54, April 19, 2023, <https://www.youtube.com/watch?v=YCa4Y0DFOBY>.

<sup>203</sup> “Full Committee Field Hearing: ‘Failure By Design: Examining Secretary Mayorkas’ Border Crisis,’” *Homeland Security Committee Events*, YouTube video, 1:33:38, March 15, 2023, <https://www.youtube.com/watch?v=7Z1ETzh3AUA&t=5618s>.

<sup>204</sup> “Full Committee Field Hearing: ‘Failure By Design: Examining Secretary Mayorkas’ Border Crisis,’” *Homeland Security Committee Events*, YouTube video, 1:50:12, March 15, 2023, <https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=6612>.



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***Asylum Cooperative Agreements:*** The Trump administration negotiated asylum cooperative agreements (ACAs) with El Salvador, Guatemala, and Honduras.<sup>205</sup> These agreements served a number of important functions, including recognizing these nations as essentially “safe third country” options to which the United States could return individuals who had arrived at the Southwest border seeking relief, but who had not applied for asylum when passing through those countries on the journey to the Southwest border.

The agreements also made it clear that these individuals should claim asylum in the countries party to the agreements, not the United States. The Biden administration suspended these commonsense agreements on Feb. 6, 2021, and later terminated them.<sup>206</sup>

***Title 42:*** In 2020, the Trump administration responded to the COVID-19 pandemic by invoking the CDC’s Title 42 public health authority. Unlike other policies in this section, this was a public health tool, not an immigration policy.<sup>207</sup> However, under Title 42, CBP could suspend the Title 8 statutory asylum process for certain illegal aliens and immediately expel them back to Mexico through the closest port of entry.<sup>208</sup>

This was a vital authority, not only allowing CBP officials to rapidly expel those who had no legal claim to enter the United States, but to protect those agents and American citizens across the country from the spread of COVID-19.

Under the previous administration, Border Patrol agents made significant use of this authority. From April 2020-January 2021, the Border Patrol expelled more than 437,000 illegal aliens using Title 42 authority, compared to just 56,494 Title 8 apprehensions.<sup>209</sup> Title 42 expulsions by OFO exceeded Title 8 encounters every month during this period, as well.<sup>210</sup>

Mayorkas’ DHS, however, failed to fully and effectively utilize this authority. Throughout FY21 and FY22, while the Biden administration was using the COVID-19 pandemic as a justification for various restrictions and vaccine mandates, the number of Title 42 expulsions as a percentage of Border Patrol encounters dropped substantially, with Title 8 apprehensions even outnumbering Title 42 expulsions in multiple months.<sup>211</sup> OFO recorded more Title 8 encounters than Title 42 expulsions every month beginning March 2021 through the public health order’s expiration in

<sup>205</sup> U.S. Department of Homeland Security, *Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*, May 31, 2019, [https://www.dhs.gov/sites/default/files/publications/19\\_1028\\_opa\\_factsheet-northern-central-america-agreements\\_v2.pdf](https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf).

<sup>206</sup> U.S. Department of State, Office of the Spokesperson, *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras*, February 6, 2021, <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

<sup>207</sup> 42 U.S.C. § 265.

<sup>208</sup> *Ibid.*

<sup>209</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2020*, March 27, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2021*, May 26, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021>.

<sup>210</sup> *Ibid.*

<sup>211</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2021*, May 26, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy22>.



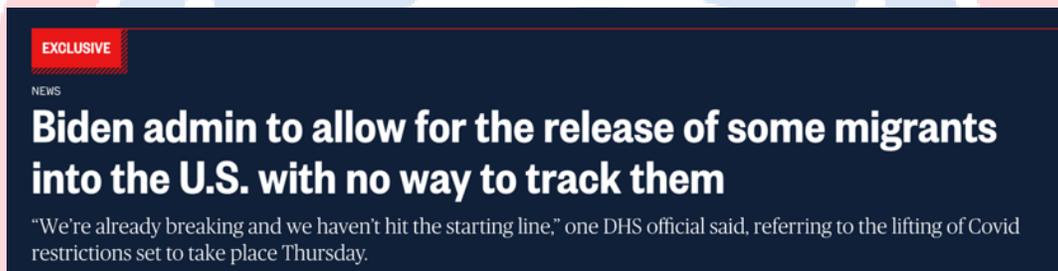
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May 2023.<sup>212</sup> In FY23, OFO typically recorded at least 10-12 times as many Title 8 encounters as Title 42 expulsions.<sup>213</sup>

In February 2023, for example, just 33 percent (70,470) of those apprehended were expelled under Title 42 (Note: CBP updated its numbers in June 2023, subsequently showing 76,218 Title 42 expulsions, for a rate of 35 percent).<sup>214</sup>

The Biden administration ended Title 42 on May 11, 2023.<sup>215</sup> In the days leading up to May 11, thousands of illegal aliens gathered just across the Southwest border waiting to cross, while thousands more did so.<sup>216</sup> Total encounters in April jumped to more than 275,000, with the majority occurring at the Southwest border.<sup>217</sup> Border Patrol recorded multiple consecutive days of more than 10,000 apprehensions in the days before Title 42 expired.<sup>218</sup>

At the time, DHS also authorized the mass release of illegal aliens into the interior of the United States without court dates via the Parole with Conditions policy<sup>219</sup>—an action quickly blocked by a federal judge after the state of Florida sued.<sup>220</sup> However, CBP records show that several thousand illegal aliens were still released without court dates in the short time the policy was active.<sup>221</sup>



According to an NBC News report, the policy directed “Customs and Border Protection to begin releasing migrants into the U.S. without court dates or the ability to track them, according to three sources familiar with the plans.”<sup>222</sup>

As the cartels temporarily pulled back to assess the fallout of Title 42’s end, daily apprehensions between the ports of entry fell from the highs over the period of a few days before the authority

<sup>212</sup> Ibid. and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

<sup>213</sup> Ibid.

<sup>214</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

<sup>215</sup> 88 F.R. 31314.

<sup>216</sup> MaryAnn Martinez, “Up to 40,000 Migrants Amass at Border as End of Title 42 Nears,” *New York Post*, April 13, 2023, <https://nypost.com/2023/04/13/up-to-40000-migrants-amass-at-border-as-end-of-title-42-nears/>.

<sup>217</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>218</sup> Adam Shaw and Bill Melugin, “Border Patrol Encounters 10,000 Migrants for Third Day in a Row as Numbers Swell before Title 42 Drops,” *Fox News*, May 11, 2023, <https://www.foxnews.com/politics/border-patrol-encounters-10000-migrants-third-day-numbers-swell-before-title-42-drops>.

<sup>219</sup> Adam Shaw and Bill Melugin, “Border Patrol chief authorizes release of migrants into US without court dates as Title 42 ends,” *Fox News*, May 11, 2023, <https://www.foxnews.com/politics/border-patrol-chief-authorizes-release-migrants-us-without-court-dates-title-42-ends>.

<sup>220</sup> *State of Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB (N.D. Fla. 2023).

<sup>221</sup> David Propper, “6,400 migrants released from border patrol custody without court notices: legal docs,” *New York Post*, May 15, 2023, <https://nypost.com/2023/05/15/6400-migrants-released-from-border-patrol-custody-without-court-notices/>.

<sup>222</sup> Julia Ainsley, “Biden admin to allow for the release of some migrants into the U.S. with no way to track them,” *NBC News*, May 10, 2023, <https://www.nbcnews.com/politics/biden-admin-plans-order-release-migrants-us-no-way-track-rcna83704>.



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expired but were still at crisis levels of approximately 3,700 per day, according to DHS in early June.<sup>223</sup>

At a member-level briefing for House Committee on Homeland Security's Border Security and Enforcement Subcommittee on May 24, 2023, DHS officials noted that the cartels are lying in wait as they prepare their next moves in the post-Title 42 era.

One source also told the *New York Post*, "The intel is that they are testing the waters, seeing who's released into the United States and who is getting deported," while a Border Patrol source said, "No one knows U.S. immigration laws better than the cartels. They study it and find any loopholes so they can exploit it."<sup>224</sup> However, top Border Patrol officials expect the numbers to climb once again.

At the same briefing, the Border Patrol's Ortiz told members that while apprehensions had decreased from historic highs of 10,000 per day as Title 42 was expiring, he "fully expect[s]" those numbers to return to the 6,500-7,000 per day CBP had been recording for months.<sup>225</sup>

In DHS' press release, Mayorkas' department tried to frame the decrease from nearly 11,000 daily apprehensions to around 3,700 apprehensions as a 70-percent drop in unlawful entries between the ports, conveniently omitting that its policies have simply shifted some of the burden from the Border Patrol *between* the ports to the Office of Field Operations (OFO) *at* the ports.<sup>226</sup>

According to one study, "there has been no significant reduction of illegal entrants—they have simply been renamed and re-directed. Tens of thousands of illegal aliens whom the Border Patrol would have 'encountered'—that is, administratively arrested—are now allowed to enter the country by the CBP Office of Field Operations inspectors at air and land POEs [ports of entry]."<sup>227</sup>

Former Border Patrol Chief Scott testified before Congress to this effect in June 2023:

"The crisis at our border is still raging. Don't get lulled into believing that 3,500 arrests a day should be cheered just because it is lower than the 11,000 a day we saw a few weeks ago. The Border Patrol remains overwhelmed, the cartels continue to control who and what is entering the United States, migrants are still being exploited, and children are still being trafficked."<sup>228</sup>

When further questioned by House Homeland Security Committee Chairman Mark Green, R-Tenn., about the number of unlawful entries post-Title 42, Scott testified, "I do not believe that

<sup>223</sup> U.S. Department of Homeland Security, "Border Encounters Remain Low as Biden-Harris Administration's Comprehensive Plan to Manage the Border After Title 42 in Effect," Press Release, June 6, 2023, <https://www.dhs.gov/news/2023/06/06/border-encounters-remain-low-biden-harris-administrations-comprehensive-plan-manage>.

<sup>224</sup> MaryAnn Martinez, "Cartels offer to smuggle migrants over the US border for \$200 each," *New York Post*, May 25, 2023, <https://nypost.com/2023/05/25/cartels-charge-200-to-smuggle-migrants-over-the-us-border/>.

<sup>225</sup> Raul Ortiz, Briefing to the House Committee on Homeland Security, May 24, 2023.

<sup>226</sup> U.S. Department of Homeland Security, "Border Encounters Remain Low as Biden-Harris Administration's Comprehensive Plan to Manage the Border After Title 42 in Effect," Press Release, June 6, 2023, <https://www.dhs.gov/news/2023/06/06/border-encounters-remain-low-biden-harris-administrations-comprehensive-plan-manage>.

<sup>227</sup> Simon Hankinson and Lora Ries, "Deceptive Numbers and Word Games Are Hiding Continued Mass Illegal Immigration Post-Title 42," *The Heritage Foundation*, June 13, 2023, <https://www.heritage.org/immigration/report/deceptive-numbers-and-word-games-are-hiding-continued-mass-illegal-immigration>.

<sup>228</sup> "Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis," *Homeland Security Committee Events*, YouTube video, 39:49, June 14, 2023, <https://www.youtube.com/live/0gjm6jzYHqw?feature=share&t=2389>.



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there has been a decrease in the numbers. It is a shell game. And the other thing I want to point out too is it's very selective about what day they choose to compare the numbers to.”<sup>229</sup>

The number of illegal aliens arriving in American airports is further proof of how Mayorkas' DHS is playing a massive shell game. Per the Washington Times, “America's airports have become the latest front line on border crossings as illegal immigrants pour in by the tens of thousands each month, bypassing the U.S.-Mexico boundary and landing deep in the country's heartland.”<sup>230</sup>

The report continues, “They're coming via the administration's new ‘parole’ program, which seeks to take Venezuelans, Cubans, Haitians and Nicaraguans, *who had been rushing the southern border, and redirect them to airports.*”<sup>231</sup>

Amidst the chaos, CBP personnel have expressed concerns about how the continuing flood of illegal immigration will be handled. One Border Patrol agent told the press, “I think we're screwed and they're going to use the parole and [Notice to Appear]/[“Own Recognition] pathways. The legit options are going back to consequences, but they're not gonna do that. These processing centers are just going to be used to shuffle people through faster.”<sup>232</sup>

In the same press report, former ICE agent Victor Avila said that DHS personnel in the El Paso area were telling him they were unable to properly vet those entering illegally, but the directive from leadership was to “move them along, move them quickly.”<sup>233</sup>

***Expanding Abuse of Parole Programs:*** In 2017, President Trump signed an executive order ending the abuse of parole, reiterating that parole was only to be used on a case-by-case basis for humanitarian purposes, pursuant to the law.<sup>234</sup> The Biden administration revoked this order on Feb. 2, 2021.<sup>235</sup> By law, parole should only be offered on a case-by-case basis when there is significant public benefit or urgent humanitarian need to do so, and is temporary.

In more than two years under Mayorkas' leadership, the administration has created various parole programs by which hundreds of thousands of otherwise inadmissible aliens have been admitted into the country in complete contradiction of the laws passed by Congress.<sup>236</sup> Mass

<sup>229</sup> “Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 51:23, June 14, 2023, <https://www.youtube.com/watch?v=Ogjm6jzYHqw&t=3083s>.

<sup>230</sup> Stephen Dinan, “Illegal immigrants stream into airports as Biden plans kick in,” *The Washington Times*, June 11, 2023, <https://www.washingtontimes.com/news/2023/jun/11/illegal-immigrants-stream-airports-biden-plans-kic/>.

<sup>231</sup> *Ibid.*, (emphasis added).

<sup>232</sup> Ali Bradley, “Title 42: Agents prepare for migrant surge as deadline looms,” *NewsNation*, April 20, 2023, <https://www.newsnationnow.com/us-news/immigration/title-42-agents-prepare-migrant-surge-deadline-looms/>.

<sup>233</sup> *Ibid.*

<sup>234</sup> U.S. President, Executive Order, “Border Security and Immigration Enforcement Improvements,” *Federal Register* 82, no. 18 (January 30, 2017): 8793-8797, <https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements>.

<sup>235</sup> U.S. President, Executive Order, “Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,” *Federal Register* 86, no. 23 (February 5, 2021): 8267-8271, <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>.

<sup>236</sup> Stef W. Knight, “Biden's immigration moves could put huge population in limbo,” *Axios*, March 2, 2023, <https://www.axios.com/2023/03/02/biden-parole-border-immigrants-daca-legal>.



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parole of these individuals is unlawful, as the Fifth Circuit Court of Appeals<sup>237</sup> and the U.S. District Court for the Northern District of Florida<sup>238</sup> have both ruled.

**Reestablishing Central American Minors (CAM) Program:** The Trump administration terminated the CAM program in 2017.<sup>239</sup> This program, created during the Obama administration, “allowed adult aliens in the U.S. to apply for refugee status for their children residing in their home countries if the children were unmarried, under 21, and nationals of Guatemala, El Salvador, or Honduras.”<sup>240</sup>

Adults applying on behalf of their children were often illegal aliens who had received deferred action, Temporary Protected Status (TPS), parole, deferred enforced departure, or withholding of removal.<sup>241</sup> Most children were found ineligible for refugee admission, but were still considered for parole into the United States.<sup>242</sup> According to federal court documents, the parole-approval rate in cases with decisions rendered was approximately 99 percent in 2017.<sup>243</sup>

The Biden administration issued an executive order on Feb. 2, 2021,<sup>244</sup> announcing its intent to restart the CAM program, and on March 10, the State Department announced the program had been reopened, including cases that had been closed following CAM’s termination.<sup>245</sup>

In June 2021, DHS and the State Department announced they were expanding the program to an even broader group of aliens, including parents and legal guardians in the United States under the categories of “lawful permanent residence; temporary protected status; parole; deferred action; deferred enforced departure; or withholding of removal. In addition, this expansion of eligibility will now include certain U.S.-based parents or legal guardians who have a pending asylum application or a pending U visa petition filed before May 15, 2021.”<sup>246</sup>

**Crackdown on Sanctuary Cities:** In 2017, the Trump administration issued Executive Order 13768, which prohibited federal grant money from being awarded to municipal jurisdictions that refuse to cooperate with ICE with respect to removing criminal aliens.<sup>247</sup> These jurisdictions are

<sup>237</sup> *Texas v. Biden*, No. 21-10806 (5th Cir. 2021).

<sup>238</sup> *State of Florida v. United States*, No. 3:21-cv-01066 (N.D. Fla. 2023).

<sup>239</sup> U.S. Department of Homeland Security, Notice, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” *Federal Register* 82, no. 157 (August 16, 2017): 38926-38927, <https://www.federalregister.gov/documents/2017/08/16/2017-16828/termination-of-the-central-american-minors-parole-program>.

<sup>240</sup> George Fishman, “The Pernicious Perversion of Parole,” *Center for Immigration Studies*, February 16, 2022, <https://cis.org/Report/Pernicious-Perversion-Parole>.

<sup>241</sup> *Ibid.*

<sup>242</sup> Lora Ries and Michael Sutherland, “Biden Administration’s Border Catastrophe – A Policy Tracker,” *The Heritage Foundation*, June 25, 2021, <https://datavisualizations.heritage.org/immigration/biden-administrations-border-catastrophe-a-policy-tracker/>.

<sup>243</sup> *S.A. v. Trump*, No. 18-cv-03539-LB (N.D. Cal. 2019).

<sup>244</sup> U.S. President, Executive Order, “Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,” *Federal Register* 86, no. 23 (February 5, 2021): 8267-8271, <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>.

<sup>245</sup> U.S. Department of State, Office of the Spokesperson, *Restarting the Central American Minors Program*, March 10, 2021, <https://www.state.gov/restarting-the-central-american-minors-program/>.

<sup>246</sup> U.S. Department of Homeland Security, News, *Joint Statement by the U.S. Department of Homeland Security and U.S. Department of State on the Expansion of Access to the Central American Minors Program*, June 15, 2021, <https://www.dhs.gov/news/2021/06/15/joint-statement-us-department-homeland-security-and-us-department-state-expansion>.

<sup>247</sup> U.S. President, Executive Order, “Enhancing Public Safety in the Interior of the United States, 2017, Executive Order 13768 of January 25, 2017,” *Federal Register* 82, no. 18 (June 30, 2017): 8799, <https://www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02102.pdf>.



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commonly referred to as “sanctuary cities.” However, the Biden administration issued an executive order on Jan. 20, 2021, revoking Executive Order 13768.<sup>248</sup>

**Asylum Standards:** The Trump administration worked to clarify the meaning of “particular social group” in the context of requisite asylum criteria in an effort to end previous overbroad interpretations of the term.<sup>249</sup> In June 2021, Attorney General Merrick Garland vacated previous attorney general decisions, demonstrating that the Biden administration would consider domestic and gang violence as potential bases for a protected ground to qualify for asylum.<sup>250</sup>

**USCIS Asylum Fees:** Under the Trump administration, USCIS issued a rule that instituted a \$50 asylum application fee.<sup>251</sup> Prior to the rule, asylum applications were fee-free, notwithstanding a cost associated with other USCIS applications. The fees for other applications rose periodically, essentially subsidizing the cost of asylum applications. The Biden administration revoked the rule by executive order in February 2021.<sup>252</sup>

**Emboldening the Deferred Action for Childhood Arrivals Program (DACA):** President Trump attempted to rescind DACA, effectively an amnesty program, but was only partially successful. The Supreme Court ordered the administration to continue processing renewal applications, but did not require it to adjudicate new applications.<sup>253</sup> In a Jan. 20, 2021, executive order, Biden ordered DHS to “preserve and fortify” DACA.<sup>254</sup>

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The cumulative effect of eliminating these policies, and failing to replace them with meaningful enforcement measures providing a consequence to illegally entering the country, has been to signal to the world that America’s borders are open, that those who cross will often be released into the interior, and a host of new programs are available by which individuals can enter the country.

<sup>248</sup> U.S. President, Executive Order, “Revision of Civil Immigration Enforcement Policies and Priorities,” *Federal Register* 86, no. 14 (January 25, 2021): 38926-38927, <https://www.federalregister.gov/documents/2021/01/25/2021-01768/revision-of-civil-immigration-enforcement-policies-and-priorities>.

<sup>249</sup> U.S. Department of Justice, Office of the Attorney General, *Matter of A-B-*, Respondent, June 11, 2018, <https://www.justice.gov/eoir/page/file/1070866/download>.

<sup>250</sup> U.S. Department of Justice, Office of the Associate Attorney General, *Impact of Attorney General decisions in Matter of L-E-A- and Matter of A-B-*, by Vanita Gupta, June 16, 2021, <https://www.justice.gov/aso/page/file/1404826/download>.

<sup>251</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, August 3, 2020, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-16389.pdf>.

<sup>252</sup> The White House, “Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” February 2, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>.

<sup>253</sup> *Department of Homeland Security et al. v. Regents of the University of California*, 200 U. S. 321, 337, (2019).

<sup>254</sup> The White House, “Memorandum: Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA),” January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.



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### **DHS Policies Actively Benefitting Illegal Aliens and Encouraging Mass Illegal Immigration**

However, Mayorkas has not stopped with simply ending effective policies. He has also taken further action to proactively facilitate illegal immigration, tie the hands of law enforcement, and reward those who break our laws.

**Mass Release of Illegal Aliens Under “Catch and Release:”** In short, the policy of Mayorkas’ DHS is “catch and release.” In his March 2023 decision vacating Mayorkas’ “Parole + ATD” policy, Wetherell also described the philosophy behind the “catch-and-release” policy:

“The evidence establishes that in late January or early February of 2021, DHS made a discrete change in detention policy from ‘*release only if there is a compelling reason to*’ to ‘*release unless there is a compelling reason not to.*’ Specifically, before January 2021, DHS limited the release of aliens at the Southwest Border to very exigent circumstances, but under the new policy ... DHS began instructing agents to release aliens at the Southwest Border unless the alien is a public safety or flight risk.”<sup>255</sup>

During his first two years on the job, many illegal aliens processed under DHS’ Title 8 authority have been released into the interior—the primary exception being known criminals. Under Mayorkas’ policies, CBP has released *at least* 2.18 million illegal aliens into the country,<sup>256</sup> while recording another 1.5 million known gotaways since FY21.<sup>257</sup>

The actual number is almost certainly hundreds of thousands higher, given the failure by ICE and OFO to publish release data since June 30, 2022<sup>258</sup>—a marked contrast to the transparency promised by White House officials early in the administration.<sup>259</sup> This means *at least* 3.6 million illegal aliens are newly in the United States since FY21—almost certainly to stay, given the Biden administration’s lax policy on deportations.<sup>260</sup>

This policy is being utilized every day, and is reflected in CBP’s monthly numbers. In March 2023, CBP initially recorded 191,899 Southwest border encounters, later revising this number upward to 193,234 in June 2023.<sup>261</sup> Of the original number CBP reported, well over half (104,238 illegal aliens) were released into the interior after apprehension by the Border Patrol or completing an appointment scheduled via the CBP One app.<sup>262</sup>

<sup>255</sup> *State of Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB, 71, (N.D. Fla. 2023), (emphasis added).

<sup>256</sup> Andrew Arthur, “Decoding CBP’s Southwest Border Statistics for May,” *Center for Immigration Studies*, June 26, 2023, <https://cis.org/Arthur/Decoding-CBPs-Southwest-Border-Statistics-May>.

<sup>257</sup> MaryAnn Martinez, “1.5M ‘gotaways’ have slipped into the US under Biden — three times as many as during 3 years of Trump,” *New York Post*, May 15, 2023, <https://nypost.com/2023/05/15/1-5m-gotaways-have-slipped-into-the-us-under-biden-three-times-as-many-as-during-3-years-of-trump/>.

<sup>258</sup> Andrew Arthur, “Decoding CBP’s Southwest Border Statistics for May,” *Center for Immigration Studies*, June 26, 2023, <https://cis.org/Arthur/Decoding-CBPs-Southwest-Border-Statistics-May>.

<sup>259</sup> Matthew Choi, “‘Transparency back to the briefing room’: Psaki commits to pre-Trump press norms,” *Politico*, January 20, 2021, <https://www.politico.com/news/2021/01/20/jen-psaki-press-briefing-460922>.

<sup>260</sup> Anna Giaritelli, “Two million immigrants released into US under Biden are ‘here indefinitely,’” *Washington Examiner*, June 7, 2023, <https://www.washingtonexaminer.com/policy/immigration/two-million-immigrants-border-here-indefinitely>.

<sup>261</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

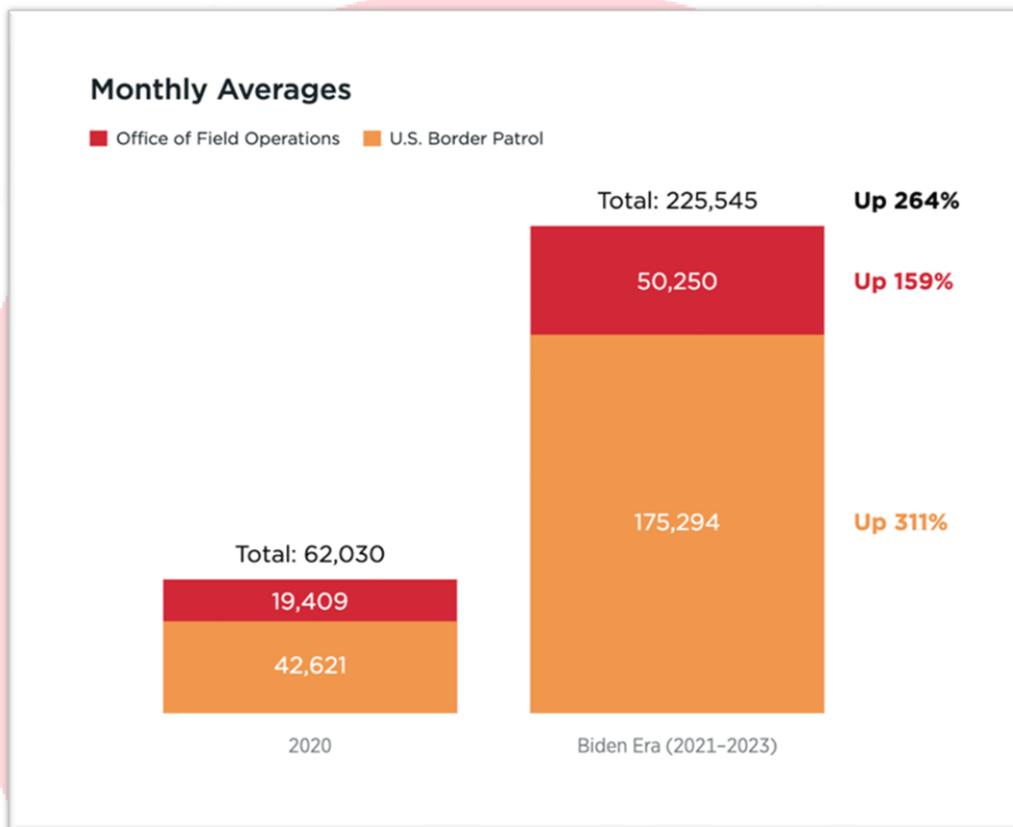
<sup>262</sup> Neil Munro, “Biden’s Border Flood: 180,000 More Migrants In March,” *Breitbart News*, April 18, 2023, <https://www.breitbart.com/immigration/2023/04/18/bidens-border-roughly-180000-more-migrants-in-march/>.



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With Title 42 no longer in effect, CBP is also no longer able to expel individuals immediately using that authority.<sup>263</sup>

Detention is critical to ensuring prompt removal of illegal aliens. DHS' own numbers show that when illegal aliens are detained for the entirety of their case, they are removed 97 percent of the time, but when they are only partially detained or not detained at all, removal rates drop into the single digits.<sup>264</sup> “Catch and release” is a major incentive for aliens to cross the border illegally.



(Source: Heritage Foundation representation of CBP data)

**CBP One Mobile App Shell Game:** Mayorkas' policies are driving more inadmissible aliens to the ports of entry to seek unlawful entry into the United States. In FY20, nationwide encounters at the ports of entry totaled 241,786, an average of 20,148 per month.<sup>265</sup> In FY21, these encounters jumped to 294,352, or 24,529 per month.<sup>266</sup> In FY22, the number increased substantially to 551,930, an average of 45,994 per month.<sup>267</sup>

<sup>263</sup> Colleen Long, “Title 42 has ended. Here’s what it did, and how US immigration policy is changing,” *Associated Press*, May 12, 2023, <https://apnews.com/article/immigration-biden-border-title-42-mexico-asylum-be4e0b15b27adb9bede87b9bbe8798d#>.

<sup>264</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Fiscal Year 2021 Enforcement Lifecycle Report*, by Nadwa Mossad, et. al., 16, November 2022, [https://www.dhs.gov/sites/default/files/2022-12/2022\\_1114\\_pley\\_enforcement\\_lifecycle\\_report\\_fy2021.pdf](https://www.dhs.gov/sites/default/files/2022-12/2022_1114_pley_enforcement_lifecycle_report_fy2021.pdf).

<sup>265</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*



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So far in FY23, total encounters at the ports exceed 673,000, with more than 84,000 encounters per month.<sup>268</sup> Since March 2023, such encounters have exceeded 90,000.<sup>269</sup> This puts OFO—the branch of CBP that manages America’s ports of entry—on pace for more than 1 million encounters at the ports in FY23—an increase of more than 300 percent from FY20.<sup>270</sup>

On January 5, 2023—the same day that Biden and Mayorkas rolled out DHS’ new mass parole program for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV)<sup>271</sup>—they also announced the expanded use of the CBP One mobile app for aliens to make appointments at a port of entry to seek admission into the United States.<sup>272</sup> In practice, however, this expanded use had actually been underway for several months prior.<sup>273</sup>

Since the introduction of the CBP One program, the Biden administration has touted the temporary decrease in encounters between the ports of entry as a success. However, the number of encounters at ports of entry has been rising since the policy’s implementation.<sup>274</sup>

In the first eight months of FY23, OFO recorded more than 231,000 encounters of inadmissible aliens at the Southwest border.<sup>275</sup> During the same timeframe in FY22, OFO recorded approximately 96,000 encounters, with the dramatic spike occurring around the end of the fiscal year, further confirming reporting that Mayorkas’ DHS had been rolling the program out even prior to the January announcement.<sup>276</sup>

According to recent reports, in the first few months of the new policy, more than 99 percent of individuals who sought a humanitarian exemption from Title 42 requirements through the app had their request granted.<sup>277</sup> By mid-April 2023, more than 75,000 applications had already been completed or scheduled through April 25, 2023.<sup>278</sup>

The number of those admitted via the program also continues to increase. A CBS News report from May 31, 2023, quoted DHS officials saying the department planned to admit nearly 40,000 aliens per month via the app, which would total nearly half a million in just one year alone.<sup>279</sup>

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> U.S. Department of Homeland Security, News, *DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, January 5, 2023, <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

<sup>272</sup> The White House, “Remarks by President Biden on Border Security and Enforcement,” January 5, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/01/05/remarks-by-president-biden-on-border-security-and-enforcement/>.

<sup>273</sup> Todd Bensman, “Legalizing Border Crossing for All: The Next Stage of Biden’s Migration Crisis,” *Center for Immigration Studies*, November 21, 2022, <https://cis.org/Bensman/Legalizing-Border-Crossing-All-Next-Stage-Bidens-Migration-Crisis>.

<sup>274</sup> Hannah Davis, “Illegal Alien Encounters Surge and Shift Under Biden,” *The Heritage Foundation*, June 21, 2023, <https://datavisualizations.heritage.org/immigration/illegal-alien-encounters-surge-and-shift-under-biden/>.

<sup>275</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>276</sup> Ibid.

<sup>277</sup> Adam Shaw, “Over 99% of migrants who have sought Title 42 exception via CBP One app were approved,” *Fox News*, April 14, 2023, <https://www.foxnews.com/politics/99-percent-migrants-sought-title-42-exception-cbp-one-app-approved>.

<sup>278</sup> Ibid.

<sup>279</sup> Camilo Montoya-Galvez, “U.S. plans to admit nearly 40,000 asylum-seekers per month through mobile app,” *CBS News*, May 31, 2023, <https://www.cbsnews.com/news/asylum-seekers-cbp-one-mobile-app-u-s-plans-admit-nearly-40000-monthly/>.

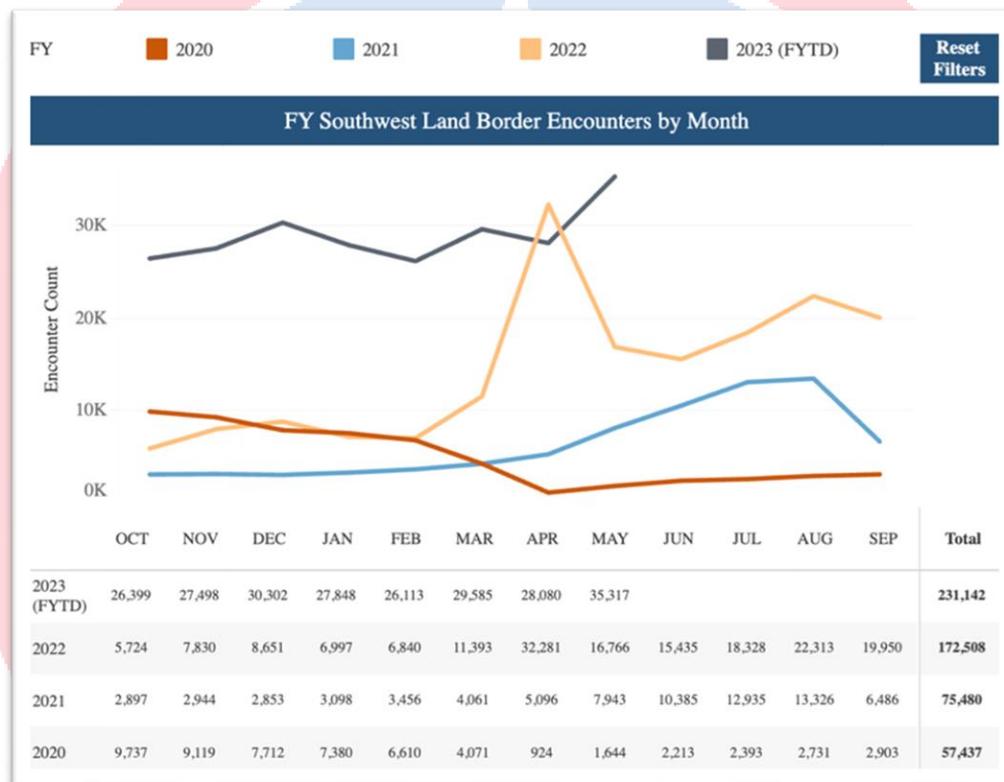


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The report also revealed that more than 120,000 individuals had made appointments through the app at the time of publication.<sup>280</sup>

Blas Nuñez-Neto, DHS assistant secretary for border and immigration policy, confirmed these expansion plans on June 1, 2023, per a CBP tweet announcing an increase in the number of CBP One appointments to 1,250.<sup>281</sup>

At the end of June, CBP announced it was further increasing the number of daily appointments to 1,450.<sup>282</sup> This number of appointments per day over 30 days would total 43,500, and more than half a million illegal aliens released into the interior over the course of a year—just through the CBP One app.



*OFO encounters are on the rise under Mayorkas' new policies. (Source: CBP Southwest Land Border Encounters data)*

Otherwise inadmissible aliens have taken advantage of the tenuous pathway Mayorkas has opened through CBP One. It should be noted that included in the FY17 National Defense Authorization Act (NDAA) was section 1092, “Border Security Metrics,” now codified at 6

<sup>280</sup> Ibid.

<sup>281</sup> U.S. Customs and Border Protection [@CBP], The CBP One app is working for migrants. Beginning today, June 1, CBP is expanding the number of appointments to 1,250 per day. Hear more from @DHSgov Assistant Secretary Nunez-Neto in Brownsville, TX,” Tweet, *Twitter*, June 1, 2023, <https://twitter.com/CBP/status/1664331131225776135?s=20>.

<sup>282</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP One Appointments Increased to 1,450 Per Day*, June 30, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day>.



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U.S.C. §223 under the Obama administration.<sup>283</sup> According to the code, a key metric of “the effectiveness of security at ports of entry” is “total inadmissible travelers who attempt to, or successfully, enter the United States at a port of entry.”<sup>284</sup>

The fact that those using CBP One may apply for asylum does not entitle them to automatic release into the interior either, per section 235(b)(2)(A) of the INA.<sup>285</sup> Whether they entered the country illegally between ports of entry or are determined to be “inadmissible” after arriving at a port, the law requires DHS to detain those who are not “clearly and beyond a doubt entitled to be admitted.”<sup>286</sup>

Despite being hailed by some as a means for more individuals to seek asylum, one recent report found that individuals making appointments via the app were not being asked why they were seeking asylum, or even receiving interviews—they were simply being released into the United States on parole.<sup>287</sup> This prompted Sen. Josh Hawley, R-Mo., to excoriate Mayorkas in a recent Senate hearing for running “a concierge service for illegal immigrants.”<sup>288</sup>

Concerning its use for parole, there seems to be no bar to seeking entry through the app. When asked during his congressional testimony by Rep. Clay Higgins, R-La., if the new policy truly contained no parameters “disqualifying” aliens from applying, former Border Patrol Chief Scott answered, “That is my understanding.”<sup>289</sup>

Aliens are also exploiting a major loophole in the CBP One policy, which allows them to come to a port of entry seeking an appointment instead of scheduling it via the app if they experience problems due to “language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle.”<sup>290</sup> Since the new policy was unveiled, users have reported numerous technical problems with the app.<sup>291</sup>

A recent report shows that aliens are taking advantage of this loophole. “Since the end of Title 42 on May 11, migrants have been told the only way to get into the U.S. for an asylum interview is to secure an appointment via the CBP One app,” wrote Border Report’s Salvador Rivera on May 30, 2023.<sup>292</sup> “But it appears some migrants have found a loophole in the requirement and have begun camping out at the San Ysidro Port of Entry waiting for access to the U.S.”<sup>293</sup>

<sup>283</sup> 6 U.S.C. § 223.

<sup>284</sup> *Ibid.* at § 223(c)(1)(A)(i).

<sup>285</sup> 8 U.S.C. § 1225(b)(2)(A).

<sup>286</sup> *Ibid.*

<sup>287</sup> Jack Herrera, “Fleeing or Your Life? There’s An App for That,” *Texas Monthly*, March 2, 2023, <https://www.texasmonthly.com/news-politics/cbp-app-asylum-biden-administration/>.

<sup>288</sup> Josh Hawley, “Hawley Pushes Biden Administration to Explain their ‘Concierge Service for Illegals,’” *Josh Hawley U.S. Senator for Missouri*, March 30, 2023, <https://www.hawley.senate.gov/hawley-pushes-biden-administration-explain-their-concierge-service-illegals>.

<sup>289</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 1:16:07, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=11560s>.

<sup>290</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office for Immigration Review, Rule, “Circumvention of Lawful Pathways,” *Federal Register* 88, no. 94 (May 16, 2023): 31314-31452, <https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways>.

<sup>291</sup> Joel Rose and Marisa Penaloza, “Migrants are frustrated with the border app, even after its latest overhaul,” *NPR*, May 12, 2023, <https://www.npr.org/2023/05/12/1175948642/migrants-are-frustrated-with-the-asylum-claim-app-even-after-the-latest-overhaul>.

<sup>292</sup> Salvador Rivera, “No appointment, no problem, migrants find loophole and line up at California port of entry post Title 42,” *Border Report*, May 30, 2023, <https://www.borderreport.com/news/no-appointment-no-problem-migrants-find-loophole-and-line-up-at-california-port-of-entry-post-title-42/>.

<sup>293</sup> *Ibid.*



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In the piece, entitled “No Appointment, No Problem,” Rivera further noted, “many migrants are becoming aware of this loophole and are camping out along the pedestrian lanes leading into the border crossing from Tijuana.”<sup>294</sup>

Following the end of Title 42, Mayorkas’ DHS has proven even more brazen in its misuse of CBP One. Per a report from the journalist Bensman, who spent days on the ground in Mexico as Title 42 was expiring:

“Immigrants caught illegally crossing the border all claim asylum. But officials are attempting to persuade them to ‘voluntarily withdraw’ these claims and be returned to Mexico with no black mark on their record and then encouraged to come back under a separate humanitarian parole permit that is being handed out in Mexico through a greatly expanded ‘CBP One’ cell phone app, two government sources tell [the Center for Immigration Studies].”<sup>295</sup>

Bensman reported that those who enter via this route receive “two-year work permits and access to certain welfare benefits.”<sup>296</sup> Even those who do not withdraw their asylum claim are often released “on their own recognizance,” essentially a promise to CBP that they will cooperate with the government throughout the disposition of their claim.<sup>297</sup>

Per the new DHS policies announced on May 10, the day before Title 42’s expiration, aliens who unlawfully cross the Southwest border “will be presumed ineligible for asylum under new regulations” and “barred from reentry to the United States for at least five years, if ordered removed.”<sup>298</sup> It is also worth noting that the number of “voluntary returns”—those who depart the country voluntarily in lieu of going through removal proceedings—reported by the Border Patrol increased substantially in May. Through the first seven months of FY23, the Border Patrol reported 25,860 voluntary returns.<sup>299</sup> In May alone, the number was 19,085.<sup>300</sup>

Illegal aliens who elect to voluntarily return are likely not subject to the punitive measures in DHS’ May 10 announcement—measures which largely restate existing statutory penalties—and thus are almost certainly being released with the understanding they can subsequently attempt to re-enter the country using the CBP One app.<sup>301</sup> On-the-ground reporting by journalists like Bensman indicates it is certainly possible.

This mass parole has extended even to groups not traditionally granted relief by prior administrations. Per Bensman’s reporting, Mexicans are receiving the benefit due to cartel

<sup>294</sup> Ibid.

<sup>295</sup> Todd Bensman, “Sources: Despite Talk of Tough ‘Consequences’, Biden Is Admitting Illegal Immigrants Just Like Before,” *Center for Immigration Studies*, May 19, 2023, <https://cis.org/Bensman/Sources-Despite-Talk-Tough-Consequences-Biden-Admitting-Illegal-Immigrants-Just>.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid.

<sup>298</sup> U.S. Department of Homeland Security, Fact Sheets, *Fact Sheet: Department of State and Department of Homeland Security Announce Additional Sweeping Measures to Humanely Manage Border through Deterrence, Enforcement, and Diplomacy*, May 10, 2023, <https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border>.

<sup>299</sup> U.S. Department of Homeland Security, Customs and Border Protection Newsroom, *Custody and Transfer Statistics FY23*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>300</sup> Ibid.

<sup>301</sup> Todd Bensman, “Legalizing Border Crossing for All: The Next Stage of Biden’s Migration Crisis,” *Center for Immigration Studies*, November 21, 2022, <https://cis.org/Bensman/Legalizing-Border-Crossing-All-Next-Stage-Bidens-Migration-Crisis>.



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violence in the states from which they originate, inconsistent with recent practice—“Providing such benefit to Mexicans is extremely unusual. ... American asylum judges have always uniformly rejected Mexican citizen claims of cartel violence for asylum on grounds that they can find safe haven elsewhere inside Mexico...”<sup>302</sup>

The app has also been weaponized by Mexican immigration officials against those making appointments. The Associated Press reported on June 12, 2023, that CBP One appointments in Laredo, Texas, had been suspended because Mexican officials in Nuevo Laredo were extorting those coming to the border, threatening to prevent them from traveling to the port of entry unless first receiving payment.<sup>303</sup>

These realities on the ground stand in stark contrast to DHS claims that the new process provides “a safe, orderly, and humane process for noncitizens to access ports of entry...”<sup>304</sup>

Several members of Congress sent a request to Mayorkas on March 24, 2023, requesting more information about the program, including how many individuals are being released into the interior, who they are, and where they are entering the country.<sup>305</sup> The members asked for Mayorkas to provide the data by April 4, 2023, but in further display of his dereliction of duty, he ignored this congressional request for information.

On May 23, 2023, Texas filed a lawsuit challenging the use of CBP One to support Mayorkas’ policy of mass parole.<sup>306</sup>

***Restrictive ICE Guidance:*** The president’s 100-day moratorium on deportations should have been a clear warning about interior enforcement under his and Mayorkas’ leadership.<sup>307</sup>

But they did not stop there. As this report documents, one of the Biden administration’s first acts was to issue new guidance to ICE which severely restricted agents’ ability to pursue, detain, and deport illegal aliens.

Mayorkas’ restrictive guidance to ICE is a major factor behind the skyrocketing number of illegal aliens on the NDD and the massive number of criminal illegal aliens at large in the country. Under the new guidance issued in February 2021, Mayorkas’ DHS made it clear that only select groups of illegal aliens were legitimate targets for arrest and removal.

Rand Henderson, sheriff of Montgomery County, Texas, put it this way in August 2022—“When the Biden administration came into office, they winnowed down the number of offenses that would be considered for deportation. If we have criminals operating in our community that can

<sup>302</sup> Ibid.

<sup>303</sup> Valerie Gonzalez and Jule Watson, “US halts online asylum appointments at Texas Crossing after extortion warnings,” *The Associated Press*, June 12, 2023, <https://apnews.com/article/mexico-border-cbp-one-laredo-bfcef8c3f52d9cec2563b40da905a391>.

<sup>304</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Makes Changes to CBP One App*, May 5, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app>.

<sup>305</sup> U.S. Congress, House of Representatives, Office of Rep. Tom Tiffany, *CBP One Letter*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., March 24, 2023, <https://www.scribd.com/document/634082626/CBP-One-Letter>.

<sup>306</sup> Rebecca Santana, “Texas sues Biden administration over asylum rule, saying phone app encourages illegal immigration,” *The Associated Press*, May 24, 2023, <https://apnews.com/article/texas-paxton-cbpone-immigration-border-asylum-5ad591deb956bb192f84c13b64620fc0>.

<sup>307</sup> U.S. Department of Homeland Security, *Memorandum: Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, January 20, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).



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be deported, I think we need to take advantage of that. This administration under Mayorkas' leadership has chosen not to.”<sup>308</sup>

According to one commentary released at the time, this new guidance was restrictive not just on its face, but also because of the bureaucracy it established to prevent detention of the majority of illegal aliens in the United States:

“[It] instructs federal agents to prioritize detention and deportation only of those engaged in, or suspected to be engaged in, terrorism or espionage, or whose detention is critical to ‘national security.’ This standard will likely apply to a mere handful of the thousands of migrants streaming across the border each day.”

“Those who commit supposedly ‘less serious’ crimes while here, or who are apprehended through normal law enforcement operations, will essentially be given a free pass. The guidance goes further, however, requiring agents to seek pre-approval from their field office or special agent in charge if they want to pursue action against any individual not covered under the guidance’s ‘priority cases’ criteria—terrorists, spies, and convicted aggravated felons—and then write weekly reports to justify these pursuits. The criteria also include those who arrived in the U.S. after Nov. 1, 2020—an impossible factor for agents to accurately determine in the course of doing their jobs. Law enforcement professionals estimate these guidelines will take 90 percent of those here illegally off the table when it comes to detention or deportation.”<sup>309</sup>

As already documented, in September 2021, Mayorkas released his memo detailing even more radical instructions for deportations, including his instruction that “the fact an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them.”<sup>310</sup>

Illegal aliens know that if they are released into the interior under Mayorkas’ policies, ICE almost certainly cannot and will not deport them.

This guidance has created a seemingly insurmountable problem for ICE, as well. With the release of literally millions of illegal aliens into the interior, it is unlikely ICE will ever have the logistical ability to remove them. Consider that in FY19, ICE deported removed more than 267,000 illegal aliens. However, this total is a drop in the bucket compared to the total number of illegal aliens released into the interior by Mayorkas.

In FY22, ICE removed approximately 72,000 illegal aliens.<sup>311</sup> Since Mayorkas took office, he has released more than two million aliens into the country, while since FY21, more than 1.5 million

<sup>308</sup> Jon Levine, “Texas sheriffs take aim at Biden border policies causing ‘tsunami of death’ from drug smuggling,” *New York Post*, August 27, 2022, <https://nypost.com/2022/08/27/texas-sheriffs-say-open-border-causing-a-tsunami-of-death/>.

<sup>309</sup> Lora Ries, “Ries: Biden Administration’s New ICE Guidance ‘Turns America Into a Sanctuary Country,’” *The Heritage Foundation*, February 19, 2021, <https://www.heritage.org/press/ries-biden-administrations-new-ice-guidance-turns-america-sanctuary-country>.

<sup>310</sup> U.S. Department of Homeland Security, *Guidelines for the Enforcement of Civil Immigration Law*, September 30, 2021, 2, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>311</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Newsroom, *ICE releases FY 2022 annual report*, December 30, 2022, <https://www.ice.gov/news/releases/ice-releases-fy-2022-annual-report>.



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have entered as known gotaways.<sup>312</sup> When one year's worth of removals equals approximately two percent of total releases and known gotaways on Mayorkas' watch, the math quickly becomes daunting—and unsustainable.

**Prohibiting Border Patrol Agents from Pursuing Smugglers and Other Illegal Aliens:** On Jan. 11, 2023, CBP announced an update to its Emergency Driving and Vehicular Pursuits Directive.<sup>313</sup> The update provides a “framework” for law enforcement in determining whether to engage in vehicle pursuits based on the “severity of the crime” and “threats posed by the subject.”<sup>314</sup> According to the National Border Patrol Council (NBPC), CBP's new pursuit policy will empower human and drug smugglers while hindering Border Patrol agents' ability to engage them.<sup>315</sup>

Given the rising rate of smuggling and trafficking involving vehicles, particularly in border states, this fear is well-founded. When new DHS policy limits Border Patrol agents from engaging in chases, the cartels will take advantage.<sup>316</sup>

**Mayorkas' Irresponsible Rhetoric:** In addition to the policies he has implemented, Mayorkas' very own words have contributed to the chaos at the border.

Mayorkas has repeatedly encouraged parents and families to send their children to the border to cross illegally by simply stating consistently and publicly that UACs will not be returned to their home countries.<sup>317</sup>

Not only has this presented the cartels an opportunity of which they have taken full advantage, but it has encouraged thousands of families to self-separate, putting their children in the hands of the cartels and human smugglers, and eventually in the hands of “sponsors” in the United States, many of whom will ultimately force them into slave-like working conditions or the sex trade.<sup>318</sup>

The number of children and teenagers who have subsequently been subjected or exposed to drowning, rape, abuse, violent assault, and harsh elements along the journey is unknowable, but a later phase of this investigation will detail the suffering these people face on their journey to the Southwest border, and even after they are released into the interior.

<sup>312</sup> MaryAnn Martinez, “1.5M ‘gotaways’ have slipped into the US under Biden — three times as many as during 3 years of Trump,” *New York Post*, May 15, 2023, <https://nypost.com/2023/05/15/1-5m-gotaways-have-slipped-into-the-us-under-biden-three-times-as-many-as-during-3-years-of-trump/>.

<sup>313</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Updates Emergency Driving and Vehicular Pursuits Directive*, January 11, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-updates-emergency-driving-and-vehicular-pursuits-directive>.

<sup>314</sup> *Ibid.*

<sup>315</sup> Paul Best, “Border Patrol union rips Biden admin's new pursuit policy: ‘Smugglers will be encouraged to drive recklessly,’” *Fox News*, January 31, 2023, <https://www.foxnews.com/politics/border-patrol-union-rips-biden-admin-new-pursuit-policy-smugglers-encouraged-drive-recklessly>.

<sup>316</sup> National Border Patrol Council, Local 2366, BP Union – Del Rio, *NBPC press release regarding CBP's new pursuit policy*, January 31, 2023, <https://nbpc2366.org/nbpc-press-release-regarding-cbpc-new-pursuit-policy/>.

<sup>317</sup> Mark Moore, “Alejandro Mayorkas says border is closed but children won't be expelled,” *New York Post*, March 21, 2021, <https://nypost.com/2021/03/21/alejandro-mayorkas-border-is-closed-but-children-wont-be-expelled/>; and Evelyn Lim, “Despite Trafficking Crisis, Biden's Policies Encourage Minors to Cross Southern Border Alone,” *The Daily Signal*, September 17, 2021, <https://www.dailysignal.com/2021/09/17/despite-trafficking-crisis-bidens-policies-encourage-minors-to-cross-southern-border-alone/>; and Matthew Brown, “‘The border is closed’: DHS Secretary Mayorkas defends Biden administration's handling of unaccompanied minors,” *USA Today*, March 21, 2021, <https://www.usatoday.com/story/news/politics/2021/03/21/alejandro-mayorkas-defends-biden-administration-response-unaccompanied-minors-border/4789495001/>.

<sup>318</sup> Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warnings,” *New York Times*, April 17, 2023, <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>; and Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 25, 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.



## SECTION 2: ACTIONS TAKEN TO ENCOURAGE AND FACILITATE MASS ILLEGAL IMMIGRATION



### **WATCH: Border Patrol Agent Tries to Save Baby Pulled from the Rio Grande**

While Mayorkas has on one hand “urged” individuals not to put themselves in the hands of the cartels and smugglers, in the same breath, he has encouraged these people to make use of so-called “lawful, safe, and orderly pathways” newly established by this administration, policies like the new mass parole programs and the CBP One policy.<sup>319</sup>

By doing so has encouraged hundreds of thousands of individuals to illegally enter the United States and file fraudulent asylum claims in the hope of being released into the interior while their claims are adjudicated. Mayorkas knows full well the statutory requirements to receive asylum, and that the majority of those filing claims do not ultimately receive it.<sup>320</sup>

His own department and senior officials have even acknowledged this publicly. On May 17, 2023, the official CBP Twitter account declared, “most aliens who come to our border” do not qualify for asylum, especially when applying for economic reasons or to escape violence.<sup>321</sup> Three days later, CBP Acting Commissioner Troy Miller tweeted, “Economic need & flight from generalized violence are not a basis for asylum in the US,” breaking with Mayorkas’ rhetoric.<sup>322</sup>

That has not stopped individuals from all over the world from flocking to America’s borders and filing these claims.

<sup>319</sup> “Mayorkas lays out asylum plan as Title 42 nears end,” *The Times and Democrat*, video, 1:01, May 10, 2023, [https://thetandd.com/news/video\\_d8de8fbd-3973-55eb-af1c-d0c9980b85fb.html](https://thetandd.com/news/video_d8de8fbd-3973-55eb-af1c-d0c9980b85fb.html).

<sup>320</sup> U.S. Department of Justice, Executive Office for Immigration Review, *Adjudication Statistics: Credible Fear and Asylum Process*, October 23, 2019, <https://www.justice.gov/eoir/file/1216991/download>.

<sup>321</sup> U.S. Customs and Border Patrol [@CBP], “According to US immigration law, in fact most aliens who come to our border are not eligible to stay in the United States. The asylum law does not provide for aid only for reasons of economy or general violence.” Tweet, *Twitter*, May 17, 2023, <https://twitter.com/CBP/status/1658899650839998464>.

<sup>322</sup> Troy Miller [@CBPTroyMiller], “Under Title 8 authorities, noncitizens without a viable asylum claim or unable to establish a legal basis to remain in the US are removed to their home countries. Economic need & flight from generalized violence are not a basis for asylum in the US.” Tweet, *Twitter*, May 20, 2023, <https://twitter.com/CBPTroyMiller/status/1660042777676193794>.



## SECTION 2: ACTIONS TAKEN TO ENCOURAGE AND FACILITATE MASS ILLEGAL IMMIGRATION



### **WATCH: Venezuelan Lived Successfully in Ecuador for Seven Years, Then Came to the United States Using CBP One App**

USCIS data shows that the backlog of asylum claims has exploded on Mayorkas' watch. Through the second quarter of FY21, the majority of which constituted the first months of the Biden administration, pending asylum claims, as well as those for a lesser form of relief known as "withholding of removal," totaled 398,928.<sup>323</sup> By the first quarter of FY23 (October-December 2022), these pending claims had skyrocketed to 708,099.<sup>324</sup>

By encouraging these claims, Mayorkas is incentivizing mass illegal immigration and abuse of America's generous asylum system, preventing deserving recipients from finding swift relief, and making a crisis situation worse.

<sup>323</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Number of Service wide Forms By Quarter, Form Status, and Processing Time, Fiscal Year 2021*, [https://www.uscis.gov/sites/default/files/document/reports/Quarterly\\_All\\_Forms\\_FY2021Q2.pdf](https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2021Q2.pdf).

<sup>324</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Number of Service-wide Forms By Quarter, Form Status, and Processing Time, October 1, 2022 – December 31, 2022*, [https://www.uscis.gov/sites/default/files/document/data/Quarterly\\_All\\_Forms\\_FY2023\\_Q1.pdf](https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2023_Q1.pdf).



## SECTION 3: ACTIONS TAKEN TO SPREAD ILLEGAL ALIENS ACROSS THE COUNTRY

### **Section 3: Actions Taken to Spread Illegal Aliens Across the Country**

The Biden administration has actively taken steps not only to encourage and incentivize mass illegal immigration, but to facilitate the spread of illegal aliens throughout the country once they are released from DHS custody, and often at taxpayer expense.

#### **Mayorkas' Vast NGO Network**

Since the early days of the crisis in 2021, DHS has released illegal aliens to a vast network of non-governmental organizations (NGOs), particularly those located at the border, who then provide logistical support.

These groups receive hundreds of millions of taxpayer dollars to provide all manner of services to illegal aliens once they are released from CBP or ICE custody, including food, lodging, and transportation to the destination of their choice.<sup>325</sup>

The Government Accountability Office (GAO) has left no doubt about this collaboration at the Southwest border, per a report issued April 19, 2023.<sup>326</sup> In the study, the GAO notes, “When releasing these noncitizens into the U.S., DHS components such as CBP and U.S. Immigration and Customs Enforcement (ICE) may coordinate with nonprofit organizations (nonprofits) that provide services such as food, shelter, and transportation,” further finding that the Federal Emergency Management Agency (FEMA) provides funds to these NGOs to offer services to illegal aliens.<sup>327</sup>

This problem of NGO involvement in facilitating the border crisis is broad in scope. Per the GAO report:

“About two-thirds (16 of 25) of CBP and ICE locations in states along the southwest border reported coordinating with local nonprofits. ... We found that all the CBP U.S. Border Patrol sectors (nine of nine) reported coordinating with nonprofits. ... Among the 16 locations that reported coordinating with nonprofits, most (13 of 16) reported doing so on a daily basis.”<sup>328</sup>

These NGOs also reported high traffic coming through their doors, with one group saying it had handled around 180,000 individuals since 2021, and another documented around 42,000 since 2022.<sup>329</sup>

<sup>325</sup> Andrew R. Arthur, “Massive spending bill includes \$785 million to feed, house, and transport migrants,” *Center for Immigration Studies*, December 30, 2022, <https://cis.org/Arthur/Massive-Spending-Bill-Includes-785-Million-Feed-House-and-Transport-Migrants>.

<sup>326</sup> U.S. Government Accountability Office, *Southwest Border: DHS Coordinates with and Funds Nonprofits Serving Noncitizens*, GAO-23-106147, April 19, 2023, 1, <https://www.gao.gov/assets/gao-23-106147.pdf>.

<sup>327</sup> *Ibid.*

<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*



## SECTION 3: ACTIONS TAKEN TO SPREAD ILLEGAL ALIENS ACROSS THE COUNTRY

Funding has been provided under various programs administered by FEMA, including the Emergency Food and Shelter Program-Humanitarian Relief (EFSP-H) and now the new Shelter and Services Program (SSP), a program put forward in FEMA's FY24 budget justification to replace EFSP-H.<sup>330</sup>

These programs come with a massive price tag. As NewsNation's Jorge Ventura and Devan Markham recently reported, "Americans are paying a hefty price for the humanitarian crisis at the southern border, and in a way, the federal government is able to hide the true cost of the border crisis from the public through NGOs."<sup>331</sup>



### **WATCH: Biden Administration Using NGOs to Hide True Cost of Border Crisis**

Hundreds of millions of dollars have recently been authorized for FEMA to provide through these programs, including to NGOs.<sup>332</sup>

On June 12, 2023, FEMA announced more than \$360 million in funding through the SSP to "non-federal entities," including NGOs, to help cover some of the costs of the massive surge of illegal aliens into the United States.<sup>333</sup> Around \$291 million is being made available in the first tranche of funding, with New York City receiving the largest percentage (\$104.6 million), and more than \$72 million will be made available at a later date during the second tranche of funding.<sup>334</sup>

<sup>330</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *Federal Emergency Management Agency Budget Overview*, March 12, 2023, 240, [https://www.dhs.gov/sites/default/files/2023-03/FEDERAL%20EMERGENCY%20MANAGEMENT%20AGENCY\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/FEDERAL%20EMERGENCY%20MANAGEMENT%20AGENCY_Remediated.pdf).

<sup>331</sup> Jorge Ventura and Devan Markham, "NGOs Use American Tax Dollars to Relocate Migrants," *NewsNation*, June 7, 2023, <https://www.newsnationnow.com/us-news/immigration/border-coverage/ngos-american-tax-dollars-migrants/>.

<sup>332</sup> U.S. Library of Congress, Congressional Research Service, *FEMA's Emergency Food and Shelter Program (EFSP)*, by Elizabeth M. Webster, 2, May 15, 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12026>.

<sup>333</sup> U.S. Department of Homeland Security, U.S. Federal Emergency Management Agency, *The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program*, June 12, 2023, <https://www.fema.gov/grants/preparedness/shelter-services-program/fy-23-nofo>.

<sup>334</sup> *Ibid.*



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FEMA has announced “performance measures” to make sure those funds are spent on some of the very benefits encouraging illegal immigration, including “number of noncitizen migrants transported” and “number of nights of lodging provided.”<sup>335</sup>

This money is also likely being misused on a broad scale, as a recent DHS OIG report found.<sup>336</sup>

As part of its investigation, the OIG audited \$12.9 million of \$80.6 million given out to NGOs between March-September 2021 by the federal board tasked with administering the funds.<sup>337</sup>

The OIG’s report found that some of these NGOs failed to “provide the required receipts or documentation for claimed reimbursements” or “provide supporting documentation for families and individuals to whom they provided services.”<sup>338</sup> Money was even being spent to provide services to illegal aliens who entered the country as gotaways.<sup>339</sup>

Ultimately, the report concluded that \$7.4 million of the \$12.9 million audited was suspect, “because FEMA did not provide sufficient oversight of the funds and instead relied on local boards and fiscal agents to enforce the funding and application guidance.”<sup>340</sup>

An exclusive report from Fox News in January 2022, based on information provided by an ICE source, further highlights the coordination between the Biden administration and NGOs. The source said in the report that ICE’s ERO team had been turned into an “unofficial travel coordination agency.”<sup>341</sup>

In a separate report, Fox’s Bill Melugin and Adam Shaw wrote, “the city of Brownsville said its Office of Emergency Management, through federal assistance from the Federal Emergency Management Agency (FEMA), works to facilitate ‘the transfer of these migrants to their final destination by allowing them to use services to contact their families, NGOs, or a taxicab.’”<sup>342</sup>

The same report found that ICE acknowledged that the agency was transporting illegal aliens to “airports and transit hubs, and coordinat[ing] with non-governmental organizations to provide migrants with shelter, food, clothing, and transport.”<sup>343</sup>

<sup>335</sup> Ibid.

<sup>336</sup> Adam Shaw, “DHS OIG finds millions in American Rescue Plan funds misused by NGOs, given to ‘gotaway’ illegal immigrants,” *Fox News*, March 31, 2023, <https://www.foxnews.com/politics/dhs-oig-finds-millions-american-rescue-plan-funds-misused-ngos-given-gotaway-illegal-immigrants>.

<sup>337</sup> U.S Department of Homeland Security, Office of the Inspector General, *FEMA Should Increase Oversight to Prevent Misuse of Humanitarian Relief Funds*, OIG-23-20, 4, March 28, 2023, <https://www.oig.dhs.gov/sites/default/files/assets/2023-03/OIG-23-20-Mar23.pdf>. The Biden administration’s American Rescue Plan Act (ARPA) made a total of \$110 million available to these groups for use in providing services to illegal aliens.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid, 8.

<sup>340</sup> Ibid.

<sup>341</sup> Bill Melugin and Adam Shaw, “ICE agents forced to coordinate travel for illegal immigrants, some with criminal records: source,” *Fox News*, January 27, 2022, <https://www.foxnews.com/politics/ice-removal-operations-turned-into-unofficial-travel-coordination-agency-source-says>.

<sup>342</sup> Bill Melugin and Adam Shaw, “Fox News footage shows mass release of single adult migrants into US,” *Fox News*, January 25, 2022, <https://www.foxnews.com/politics/texas-footage-single-adult-migrants-released-us>.

<sup>343</sup> Ibid.



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### [WATCH: Reporter Documents DHS Coordination with NGOs on Release of Illegal Aliens](#)

A recent study further established the connection between NGOs and the dispersal of illegal aliens throughout the United States.<sup>344</sup> Examining commercially available data from approximately 30,000 mobile devices, the Heritage Foundation's Oversight Project found that devices that pinged at approximately 30 border-region NGOs were later found in all but one congressional district.<sup>345</sup>

In particular, a sample of 3,400 devices geo-fenced to a Catholic Charities facility in San Juan, Texas, showed that those devices later pinged in 433 of 435 congressional districts.<sup>346</sup>

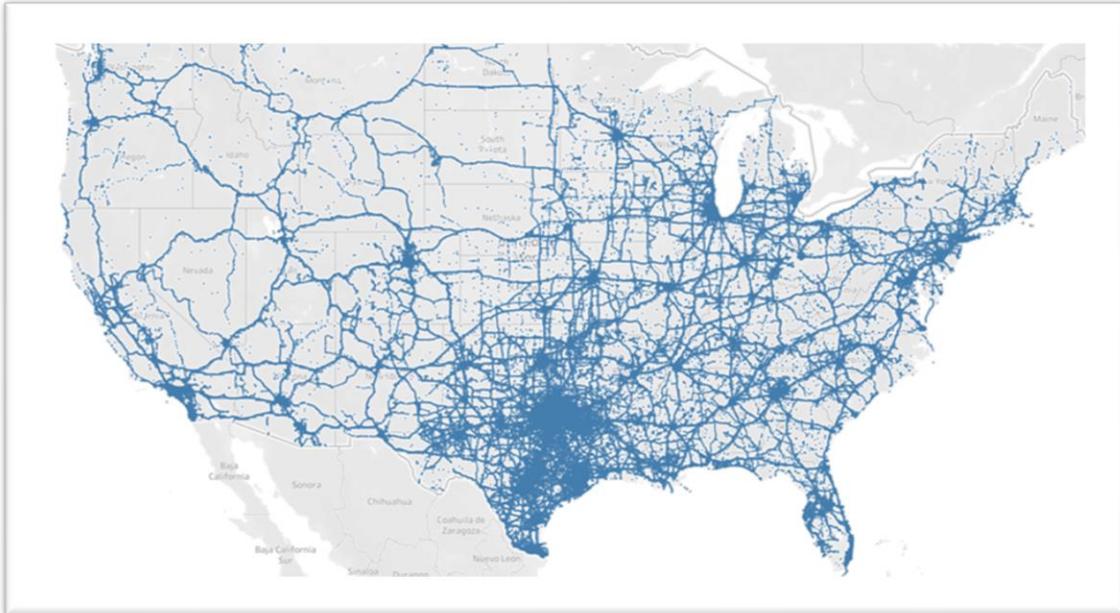
<sup>344</sup> Yael Halon, "NGOs are helping transport migrants to nearly every US congressional district, new analysis found," *Fox News*, December 21, 2022, <https://www.foxnews.com/media/ngos-helping-transport-migrants-us-congressional-district-analysis-found>.

<sup>345</sup> "Oversight Project Investigation Uncovers Shocking Facts About Who's Facilitating Biden Border Crisis," *The Heritage Foundation*, December 5, 2022, <https://www.heritage.org/press/oversight-project-investigation-uncovers-shocking-facts-about-whos-facilitating-biden-border>.

<sup>346</sup> *Ibid.*



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*An analysis of the movement patterns of anonymized mobile devices gathered in January 2022 from approximately 22,000 devices showed that these devices passed through the premises of 20 border-state NGOs before later pinging in 431 of 435 congressional districts. (Source: Heritage Foundation Oversight Project NGO report)*

Indeed, the NGOs have stated this publicly. John Martin, deputy director for the Opportunity Center for the Homeless in El Paso, told NewsNation the NGOs “will then work with [aliens], and the general term that we use is we go through a ‘processing.’ *That processing is to facilitate travel to the destination of their choice.*”<sup>347</sup>

NGO facilitation of illegal immigration may go even further. Per one press report, an untold number of illegal aliens have been listing the physical addresses of NGOs like Catholic Charities facilities as the address of their intended destination.<sup>348</sup> This means that when ICE sends an illegal alien’s court date to them via the mail, it does not go to the illegal alien, but rather the NGO facility they visited weeks or months prior—if they ever visited at all.<sup>349</sup>

Catholic Charities said it became aware of this practice in April 2022 and said it opposed such behavior, but as of December 2022, it was still occurring, per reporting by the Washington Times.<sup>350</sup> DHS actually endorsed the practice, telling one media outlet, “Those who do not have a supporter in the U.S. may provide the address of an NGO or other location in their destination city that may not be a residential address.”<sup>351</sup>

<sup>347</sup> Jorge Ventura and Devan Markham, “NGOs use American tax dollars to relocate migrants,” *NewsNation*, June 7, 2023, <https://www.newsnationnow.com/us-news/immigration/border-coverage/ngos-american-tax-dollars-migrants/>, (emphasis added)

<sup>348</sup> Stephan Dinan, “Migrants depend on Catholic Charities to avoid deportation,” *The Washington Times*, December 19, 2022, <https://www.washingtontimes.com/news/2022/dec/19/migrants-using-catholic-charities-to-shield-themse/>.

<sup>349</sup> *Ibid.*

<sup>350</sup> *Ibid.*

<sup>351</sup> *Ibid.*



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Providing these addresses only makes it harder for ICE to track an illegal alien's final destination, which means they may not receive information regarding their court date.<sup>352</sup> "If you keep them off the docket there's never a court hearing, which means the next time ICE gets them, they're just then beginning that process. This is to delay as long as possible the removal of illegal aliens," according to Rob Law, a former senior official at USCIS.<sup>353</sup>

Mayorkas has also admitted to the connection between DHS and NGOs. In a hearing before the House Judiciary Committee on April 28, 2022, Mayorkas told Rep. Louie Gohmert, R-Tex., that DHS was asking for more money to support NGOs, including helping them pay for transportation of illegal aliens throughout the country.<sup>354</sup>

Department officials have also been clear about DHS coordination with NGOs. In a June 2022 report about the Biden administration considering moving illegal aliens from the border to Los Angeles, a DHS official was quoted as saying, "DHS will continue to closely coordinate with and support cities and NGOs to facilitate the movement of any individual encountered at the Southwest border..."<sup>355</sup>

Section 274 of the INA, prohibits "transport[ing], or mov[ing] or attempt[ing] to transport or move" illegal aliens inside the United States.<sup>356</sup> The fact that these individuals have filed an asylum claim does not change the fact that they were inadmissible aliens upon entering the country, and should have been detained while their claim was adjudicated, or removed if their credible fear claim was found illegitimate.

Under Mayorkas' policies, they are instead often flown or bussed to their destination of choice—with NGO help, as this section demonstrates.

### ***Under the Cover of Darkness—Illegal Alien Flights***

The Biden administration is not just working with NGOs to transport illegal aliens across the country, but is also actively doing so using charter and commercial flights, often under the cover of night.

Perhaps the starkest example of this effort to ferry illegal aliens throughout the country was in Westchester County, New York, where at least 2,000 minors were flown without coordination with local officials between August-October 2021.<sup>357</sup>

When airport security personnel questioned the arrival of a night flight, contractors getting off the plane refused to say who they worked with. One told airport staff, "You want to try and be as down-low as possible. A lot of this is just down-low stuff that we don't tell people because what we

<sup>352</sup> Ibid.

<sup>353</sup> Ibid.

<sup>354</sup> U.S. Congress, House of Representatives, Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 117th Cong., 2nd sess., April 28, 2022, 38-39, <https://www.congress.gov/117/chrgr/CHRG-117/hhrg49702/CHRG-117/hhrg49702.pdf>.

<sup>355</sup> Julia Ainsley, "Amid border surge, Biden admin plans to send migrants to cities deeper inside U.S., starting with L.A., say internal documents," *NBC News*, June 8, 2022, <https://www.nbcnews.com/politics/immigration/border-surge-biden-admin-plans-send-migrants-cities-deeper-us-starting-rcna32530>.

<sup>356</sup> 8 U.S.C. § 1324(a).

<sup>357</sup> Miranda Devine, et al., "Biden secretly flying underage migrants into NY in dead of night," *New York Post*, October 18, 2021, <https://nypost.com/2021/10/18/biden-secretly-flying-underage-migrants-into-ny-in-dead-of-night/>.



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don't want to do is attract attention. We don't want the media. Like we don't even know where we're going when they tell us.”<sup>358</sup>

From April to October 2021, 78 flights carrying illegal aliens landed in Jacksonville, Florida.<sup>359</sup> Most of the flights were from Arizona, Texas, and California.<sup>360</sup> Reports show flights landing in Alabama,<sup>361</sup> Pennsylvania,<sup>362</sup> and Tennessee,<sup>363</sup> as well. Per Transportation Security Administration (TSA) data, the Biden administration flew at least 44,957 illegal aliens throughout the country from January to October of 2021.<sup>364</sup> According to data obtained by RealClearInvestigations, DHS the administration would later say it flew more than 71,000 individuals throughout the country.<sup>365</sup>

The flights were temporarily suspended after public outcry, but the Biden administration restarted them in spring 2022.<sup>366</sup>

This is not just an issue at the Southwest border, either. Earlier this year, even illegal aliens being caught at the increasingly porous northern border were “quietly transported” from Plattsburgh, New York, to Harlingen and El Paso, Texas.<sup>367</sup>

Illegal aliens have also been documented boarding commercial flights, carrying packets indicating they do not speak English and may need help transiting to their destinations.<sup>368</sup>

DHS has even authorized illegal aliens to bypass TSA security procedures that apply to citizens and individuals in the country legally,<sup>369</sup> allowing these illegal aliens to fly throughout the United States using DHS arrest warrants and NTAs as personal identification rather than verified forms of ID as required by law.<sup>370</sup>

<sup>358</sup> Miranda Devine, “‘Betraying the American people’: Leaked video reveals Joe Biden’s ‘hush hush’ migrant invasion,” *New York Post*, January 26, 2022, <https://nypost.com/2022/01/26/leaked-video-reveals-joe-bidens-hush-hush-migrant-invasion/>.

<sup>359</sup> Vic Micolucci, “I-team: Documents show 78 flights carrying migrants landed in Jacksonville over last 6 months,” *News4JAX*, November 17, 2021, <https://www.news4jax.com/i-team/2021/11/16/i-team-documents-show-78-flights-carrying-migrants-landed-in-jacksonville-over-last-6-months/>.

<sup>360</sup> *Ibid.*

<sup>361</sup> Karris Harmon, “Report suggests hundreds of illegal immigrants flown from El Paso to Alabama,” *NBC 15 News*, July 13, 2022, <https://myNBC15.com/news/local/late-night-flights-from-el-paso-tx-to-alabama-airports-tuberville-calls-to-secure-border>.

<sup>362</sup> James Varney, “Biden Admin Hiding Flights Scattering Illegal Migrants around the Country,” *The Federalist*, February 15, 2022, <https://thefederalist.com/2022/02/15/biden-admin-hiding-ghost-flights-scattering-illegal-migrants-around-the-country/>.

<sup>363</sup> Tatiana Venn, “HHS Records Reveal Biden Admin Flights Stopping in Multiple Cities to Drop Unaccompanied Alien Children—Plane Originating in San Diego Stopped in Three Cities,” *Judicial Watch*, December 22, 2022, <https://www.judicialwatch.org/biden-admin-flights-stopping-in-cities/>.

<sup>364</sup> John Binder, “Biden’s First Year: 45K Illegals Flown into U.S., Bypassing Photo ID Rules,” *Breitbart*, January 19, 2022, <https://www.breitbart.com/politics/2022/01/19/bidens-first-year-45k-illegal-aliens-flown-into-u-s-many-using-arrest-warrants-as-id-to-bypass-tsa-rules/>.

<sup>365</sup> James Varney, “‘Ghost Flights’: The Mystery of the Migrant Kids the Feds Are Spiriting into the U.S. Interior,” *RealClearInvestigations*, February 10, 2022, [https://www.realclearinvestigations.com/articles/2022/02/10/the-mystery-of-the-migrant-kids-the-feds-are-spiriting-into-the-u-s-interior\\_815986.html](https://www.realclearinvestigations.com/articles/2022/02/10/the-mystery-of-the-migrant-kids-the-feds-are-spiriting-into-the-u-s-interior_815986.html).

<sup>366</sup> Christopher Sadowski et al., “Biden administration resumes after-dark migrant flights to airport outside NYC,” *New York Post*, April 15, 2022, <https://nypost.com/2022/04/15/biden-administration-resumes-migrant-flights-to-airport-outside-nyc/>.

<sup>367</sup> Ted Hesson and Jose Luis Gonzalez, “U.S. Flies Migrants Caught at Canada Border to Texas in Deterrence Effort,” *Reuters*, March 23, 2023, <https://www.reuters.com/world/americas/us-flies-migrants-caught-canada-border-texas-deterrence-effort-2023-03-22/>.

<sup>368</sup> Fred Lucas, “EXCLUSIVE: Illegal Immigrants Fly American, Courtesy of Biden Border Policy,” *The Daily Signal*, May 3, 2021, <https://www.dailysignal.com/2021/04/30/exclusive-illegal-immigrants-fly-american-courtesy-of-biden-border-policy/>.

<sup>369</sup> U.S. Department of Homeland Security, Transportation Security Administration, *Letter to the Honorable Lance Gooden*, January 7, 2022, [https://www.scribd.com/document/553632417/TSA-Response-to-Gooden?secret\\_password=ou1nfHxgvunfMimhUBBd#](https://www.scribd.com/document/553632417/TSA-Response-to-Gooden?secret_password=ou1nfHxgvunfMimhUBBd#).

<sup>370</sup> Jennie Taer, “EXCLUSIVE: Arrest Warrants Count as ID for Illegal Migrants at Airport Security, TSA Says,” *The Daily Caller*, January 18, 2022, <https://dailycaller.com/2022/01/18/exclusive-arrest-warrants-count-as-id-for-migrants-at-airport-security-tsa-says/>.



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This is not only unfair to travelers who must abide by a different set of rules, but it also represents a potential national security risk, because TSA might not be able to verify the identities of some individuals boarding flights.<sup>371</sup>

For example, an illegal alien could give Border Patrol agents a fake name upon being apprehended, and that fake name would then be printed on the alien's NTA or arrest warrant.<sup>372</sup>

Since the alien would be allowed to then use that document as identification with airport security, TSA agents could be forced to conduct extra security measures to authenticate the alien's identity. TSA relies on CBP, ICE, or other law enforcement to ensure the name on document is the person's actual name, but according to Rep. Lance Gooden, R-Tex., "When I asked a border patrol [sic] officer about TSA allowing migrants to fly with no identification, they told me a Notice to Appear is not sufficient identification and they often have to take migrants at their word that they are who they say they are."<sup>373</sup>

In other words, TSA is relying on law enforcement to provide accurate data, when those agencies cannot always authenticate the data they're receiving from aliens.

Indeed, from January to October 2021, out of 45,577 aliens "seeking validation of their DHS documents," TSA was able to verify only 44,947 through its National Transportation Vetting Center (NTVC).<sup>374</sup> Put another way, 630 individuals whose identities TSA potentially could not authenticate boarded planes during these months—something that should be unacceptable to Americans.

Instead of returning them to their home countries, the Biden administration has been paying to fly illegal aliens to the U.S. city of their choice, and made it easier for them to do so. This is just one reason why this open-borders agenda has turned every state into a border state, and further incentivized the largest mass illegal immigration event in CBP's history.

### **Releasing Illegal Aliens Outside Proper Procedure**

Under Mayorkas' leadership, hundreds of thousands of illegal aliens have been released into the interior in such a way that DHS cannot effectively track, monitor, or when appropriate, remove them.

As noted earlier in the report, out of more than 100,000 individuals released by Border Patrol with an NTR between March 21-Aug. 31, 2021, more than 47,000 failed to report to ICE.<sup>375</sup>

<sup>371</sup> Jennie Taer, "EXCLUSIVE: 'Take Migrants At Their Word': Republicans Criticize Process Allowing Illegal Immigrants To Get Through Airport Security Without ID," *The Daily Caller*, December 11, 2021, <https://dailycaller.com/2021/12/11/exclusive-rep-gooden-border-tsa-immigrant-airport-id/>.

<sup>372</sup> *Ibid.*

<sup>373</sup> *Ibid.*

<sup>374</sup> Jennie Taer, "EXCLUSIVE: Arrest Warrants Count as ID for Illegal Migrants at Airport Security, TSA Says," *The Daily Caller*, January 18, 2022, <https://dailycaller.com/2022/01/18/exclusive-arrest-warrants-count-as-id-for-migrants-at-airport-security-tsa-says/>.

<sup>375</sup> Anna Giaritelli, "47,705 Migrants Released with Instructions to Report to ICE Have Gone Missing under Biden," *Washington Examiner*, January 11, 2022, <https://www.washingtonexaminer.com/news/47-705-migrants-released-with-instructions-to-report-to-ice-have-gone-missing-under-biden>.



## SECTION 3: ACTIONS TAKEN TO SPREAD ILLEGAL ALIENS ACROSS THE COUNTRY

In the early months of the crisis in 2021, more than 50,000 illegal aliens were released without court dates at all,<sup>376</sup> and only 13 percent had reported to ICE as instructed.<sup>377</sup> Two years later, in February 2023, NBC reported that since March 2021, approximately 600,000 illegal aliens had been released into the interior without court dates.<sup>378</sup>

And in May 2023, CBP announced plans, via the “Parole with Conditions” guidance, to mass-release illegal aliens if Border Patrol facilities became overcrowded in the chaos that accompanied the final days of Title 42, meaning thousands of illegal aliens were simply dumped onto the streets of border towns for local jurisdictions to handle.<sup>379</sup>

In the days leading up to the end of Title 42, given the massive surge to the border, CBP was giving illegal aliens NTAs with court dates scheduled years in the future. Journalists on site in Texas spoke with aliens about their experiences, including one who showed an NTA with a court date scheduled for April 2027.<sup>380</sup>

Mayorkas’ crisis has backlogged the system so badly that some aliens in New York City may have to wait as long as a decade, until 2033, for a court date.<sup>381</sup> Others reported court dates of 2032 and 2035 in Chicago and Florida, respectively.<sup>382</sup>

In September 2022, the DHS OIG issued a report showing that the Border Patrol was releasing illegal aliens without “alien registration numbers,”<sup>383</sup> or “A-numbers,” which help the government track and maintain proper documentation on aliens from the moment they are apprehended by Border Patrol agents.

In approximately a quarter of the cases audited by the OIG, Border Patrol agents were simply releasing illegal aliens without even assigning them a number, which could make it difficult for DHS to maintain accountability of individuals being encountered and released.<sup>384</sup>

Per the report, the emphasis on rapid processing and release was why illegal aliens were not being assigned A-numbers—“According to Border Patrol officials, agents did not always assign A-numbers because they were trying to expedite processing and move migrants out of Border Patrol facilities that were exceeding capacity limits.”<sup>385</sup>

<sup>376</sup> Stef Kight, “50,000 Migrants Released; Few Report to ICE,” *Axios*, July 27, 2021, <https://www.axios.com/2021/07/27/migrant-release-no-court-date-ice-dhs-immigration>.

<sup>377</sup> *Ibid.*

<sup>378</sup> Julia Ainsley, “Nearly 600,000 Migrants Who Crossed the Border since March were released in the U.S. with no immigration court dates,” *NBC News*, February 3, 2023, <https://www.nbcnews.com/politics/immigration/nearly-600000-migrants-crossed-border-released-inside-us-rcna68687>.

<sup>379</sup> Adam Shaw, “Biden Admin’s Plan for Mass Release of Migrants into US Outlined in Internal 2022 Memo,” *Fox News*, May 10, 2023, <https://www.foxnews.com/politics/biden-admins-plan-mass-release-migrants-us-outlined-internal-2022-memo>.

<sup>380</sup> Kaelan Deese [@KaelanDC], “Speaking to immigrants in the streets of Brownsville this afternoon. This man from Venezuela was given a date to appear in court for April 2027. #Immigration #BrownsvilleTX #migrants,” Tweet, *Twitter*, May 13, 2023, <https://twitter.com/KaelanDC/status/1657471382349807617>.

<sup>381</sup> Steven Nelson, “NYC ICE ‘mostly booked’ for migrants needing court dates—through 2033,” *New York Post*, April 22, 2023,

<https://nypost.com/2023/04/18/nyc-ice-mostly-booked-through-2033-for-migrants-needing-court-dates/>.

<sup>382</sup> Valentina Jaramillo and Stephanie Pagonis, “Migrants allowed into US as asylum seekers given immigration court dates into year 2035,” *New York Post*, May 11, 2023, <https://nypost.com/2023/05/11/migrants-admitted-to-us-given-2035-immigration-court-dates/>.

<sup>383</sup> U.S. Department of Homeland Security, Office of the Inspector General, *U.S. Border Patrol Screened Migrants at the Southwest Border but Could Strengthen Process*, OIG-22-71, September 19, 2022, <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-71-Sep22.pdf>.

<sup>384</sup> *Ibid.*, 3.

<sup>385</sup> *Ibid.*, 7.



## SECTION 3: ACTIONS TAKEN TO SPREAD ILLEGAL ALIENS ACROSS THE COUNTRY

They were doing so in accordance with guidance from Border Patrol headquarters:

“During periods when facilities were near capacity, Border Patrol headquarters directed agents not to assign A-numbers to reduce processing times. Border Patrol headquarters communicated these decisions through informal emails or orally during daily musters. According to Border Patrol agents, the guidance constantly changed depending on the day.”<sup>386</sup>



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<sup>386</sup> Ibid.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### **Section 4: Mayorkas' False and Dishonest Statements**

From the earliest days of the crisis, Biden and Mayorkas' messaging has been simple and dishonest, if somewhat contradictory—there is no crisis, and to the extent they can't deny the crisis, others are to blame.

This section contains approximately 80 statements or comments Mayorkas has made since the first days of the crisis, in which he has been dishonest or misleading about the policies that sparked the crisis, the reality on the ground at the Southwest border, and his responsibility for the devastation and destruction his policies have caused.

Some statements, like the oft-repeated claim that the “border is secure,” are objectively false on their face. Some lies have been repeated often, while others perhaps only once or twice. Taken together, they paint a picture of a secretary who has refused to tell the truth to Congress and the American people, actively choosing to mislead instead.

#### **False Claim 1: The Border Is Secure**

**The Facts:** Perhaps the most oft-repeated falsehood, Mayorkas' claim that the “border is secure”—or similar variations such as, “The border is closed” or “There is not a crisis at the border”—is also one of the most easily disproven. The sheer number of times Mayorkas has made this statement during the past two years is shocking, given the clear and overwhelming evidence to the contrary.

After taking office, Mayorkas wasted no time denying there was a crisis at the Southwest border, doing so in an appearance at the White House March 1, 2021, even though CBP monthly encounters had jumped to more than 101,000 in February 2021—the highest since June 2019,<sup>387</sup> the tail-end of that year's short-lived spike. In March 2021, following Mayorkas' comments denying there was a crisis at the border, they jumped to 173,277—a 120-percent increase from January 2021.<sup>388</sup>

Former DHS Secretary Jeh Johnson, who led the department during the Obama administration, once said that 1,000 encounters a day “overwhelms the system” and the number of encounters in March 2019 (103,731—well over 3,000 per day on average) constituted a crisis.<sup>389</sup>

<sup>387</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Stats and Summaries, *Southwest Border Migration FY 2019*, November 14, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

<sup>388</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, July 18, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

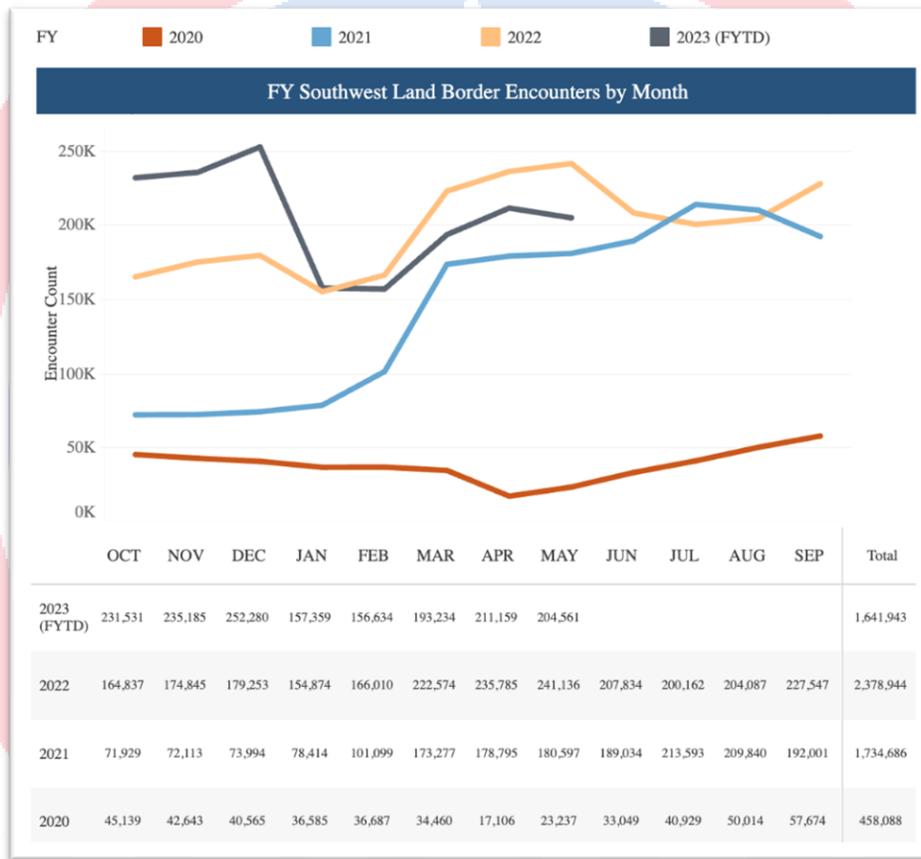
<sup>389</sup> Anna Giaritelli, “Obama's DHS Secretary Jeh Johnson: 'We are truly in a crisis' at southern border,” *Washington Examiner*, March 29, 2019, <https://www.washingtonexaminer.com/news/obamas-dhs-secretary-jeh-johnson-we-are-truly-in-a-crisis-at-southern-border>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

During Mayorkas' first month in office, CBP averaged more than 3,000 encounters per day at the Southwest border—and that was his low-water mark.<sup>390</sup> Since March 2021, CBP has recorded at least 154,000 encounters at the Southwest border every month.<sup>391</sup> From March to December 2022, CBP recorded more than 200,000 encounters per month at the Southwest border.<sup>392</sup> CBP data shows that never before had the agency recorded so many encounters in so many consecutive months.<sup>393</sup>

The following chart is visual evidence of an unsecure border. The first month of Biden and Mayorkas' open-borders policies was February 2021, and the blue line shows Mayorkas' first year in office:



(Source: CBP Southwest Land Border Encounters data)

<sup>390</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Stats and Summaries, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>391</sup> Ibid.

<sup>392</sup> Ibid.

<sup>393</sup> Ibid.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

Throughout the spring and summer of 2021, Americans were buffeted with images of overcrowded CBP facilities,<sup>394</sup> with the Border Patrol pulling agents off their frontline security mission<sup>395</sup> to process and babysit illegal aliens in these facilities to reduce the backlog and alleviate the political embarrassment it was causing the Biden administration.

To this day, Border Patrol agents are still being pulled off the line on a regular basis, resulting in a less secure border. Chris Cabrera, a Border Patrol agent in the Rio Grande Valley Sector and vice president of the NBPC, recently told the House Committee on Homeland Security at a field hearing in McAllen, Texas, that this operational reality is undermining border security:

“Most of our agents are frustrated with the job. They’re frustrated with the fact that we’re babysitters. Maybe 30-40 percent of our agents actually get out to the field on any given day, and then a lot of times they get called back in to process or transport somebody. So, the real bad guys—the smugglers, the ones that are harming people, the people that are bringing in drugs into this country, or trafficking in humans or kids—they’re getting away and that affects the agents and their desire to do their job.”<sup>396</sup>

Brandon Judd, president of the NBPC, echoed this assessment in May 2023:

“If we’re apprehending 3,000 people, that means that we have about 70 percent of our resources on the border. If we’re apprehending 5,000 people, then we have about 50 percent of our resources on the border. Right now we’re apprehending 7,700 people every single day. That means only about 35 to 40% of our resources are on the border. Once that number goes up even more, once Title 42 goes away, we’re going to be down to about 10 percent of our resources.”<sup>397</sup>

Eddie Guerra, sheriff of Hidalgo County, Texas, explained this operational reality to the New York Post in March 2021, just days after Mayorkas’ denial of any crisis at the border, saying, “If you know how to work that computer, you’re sitting in front of that computer, and they’re calling all the agents on the line to go process. So all that does is opens up an opportunity for these smuggling organizations to take advantage of that.”<sup>398</sup>

The Border Patrol’s former chief Ortiz testified to the House Committee on Homeland Security in March 2023 that five of nine Southwest border sectors were “experiencing a higher level of flow” that “creates some unique challenges for us and it puts a strain on the overall immigration

<sup>394</sup> Bart Jansen, “Government watchdog photos show dangerous conditions at Border Patrol sites for migrants,” *USA Today*, July 3, 2019, <https://www.usatoday.com/story/news/politics/2019/07/02/dhs-inspector-general-cbp-migrant-detention-facilities-overcrowded-dangerous/1633984001/>; and Mireya Villareal, Nicole Sganga and Camilo Montoya-Galvez, “Inside a Border Patrol facility holding 16 times more migrants than its capacity,” *CBS News*, March 31, 2021, <https://www.cbsnews.com/news/immigration-border-patrol-migrant-holding-facility-over-capacity/>; and Tyler Olson, “Biden admin releases photos of crowded migrant processing center at border amid transparency criticism,” *Fox News*, March 23, 2021, <https://www.foxnews.com/politics/biden-cbp-releases-photos-crowded-processing-center-minors-border-criticism>.

<sup>395</sup> Paul Bedard, “Photos: Agents pulled from border to feed, diaper illegal immigrants,” *Washington Examiner*, March 23, 2021, <https://www.washingtonexaminer.com/washington-secrets/photos-agents-pulled-from-border-to-feed-diaper-illegal-immigrants>.

<sup>396</sup> “Full Committee Field Hearing: “Failure By Design: Examining Secretary Mayorkas’ Border Crisis,”” *Homeland Security Committee Events*, YouTube video, 2:46:00, March 15, 2023, <https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=9960>.

<sup>397</sup> Charlotte Hazard, “Border Patrol union chief warns cartels will have complete control over border after Title 42 ends,” *Just the News*, *Bentley Media Group*, May 7, 2023, <https://justthenews.com/government/security/border-patrol-union-pres-warns-cartels-will-have-complete-control-over-border>.

<sup>398</sup> Gabrielle Fonrouge, “Texas sheriff in charge of US-Mexico border says its ‘basically open,’ blames Biden,” *New York Post*, March 18, 2021, <https://nypost.com/2021/03/18/texas-sheriff-at-us-mexico-border-says-its-basically-open/>.



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system. ... I have to move resources into those five Southwest border sectors and that forces me to make some adjustments across the entire 2,000 miles of the Southwest border.”<sup>399</sup>

Local law enforcement also recognizes Mayorkas' open-borders policies for what they are. “Now, basically, the border's open,” said Hidalgo County's Guerra in March 2021.<sup>400</sup> In April 2022, the National Sheriff's Association sent a letter signed by more than 70 sheriffs across the nation to Senate leadership, writing, “We simply have no border left in Arizona, New Mexico, Texas or Southern California.”<sup>401</sup> On Feb. 14, 2023, Sheriff Leon Wilmot, of Yuma County, Arizona, declared, “And to see Mayorkas say that the border's secure is a blatant lie.”<sup>402</sup>

Even illegal aliens themselves do not believe the border is closed. One told Fox News in September 2022, after getting off a bus from Texas in front of Vice Pres. Kamala Harris' Washington, D.C., home, “It's open, not closed. The border is open. ... Everybody believes that the border is open. It's open because we enter. We come in, free, no problem. ... We came illegally, not legally.”<sup>403</sup>

Subsequent phases of this investigation will lay out the tangible, extensive, and catastrophic costs of Mayorkas' open-borders policies. Thus, in addition to what has already been documented in this report, a full accounting of the evidence showing this to be an obvious crisis will be forthcoming.

What is important to note here is that the truth has long been apparent, particularly to Mayorkas, who has access not just to the same news reports the public sees, but confidential and classified information. And yet Mayorkas not only refuses to be honest and call the catastrophe at the border a crisis, but actively claims the opposite. He knows he is not being honest with the American people. He was even caught on tape on Aug. 12, 2021, telling Border Patrol agents in a private meeting in Texas that the border crisis was “unsustainable,” that the situation “cannot continue,” and “if our borders are the first line of defense, we're going to lose.”<sup>404</sup> As noted below, just a few weeks later, he told Texas Rep. Pfluger that the border was “no less secure than it was previously.”<sup>405</sup> What is this if not an outright lie to a member of Congress?

<sup>399</sup> “Full Committee Field Hearing: “Failure By Design: Examining Secretary Mayorkas' Border Crisis”,” *Homeland Security Committee Events*, YouTube video, 58:00, March 15, 2023, <https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=3480>.

<sup>400</sup> Gabrielle Fonrouge, “Texas sheriff in charge of US-Mexico border says it's ‘basically open,’ blames Biden,” *New York Post*, March 18, 2021, <https://nypost.com/2021/03/18/texas-sheriff-at-us-mexico-border-says-its-basically-open/>.

<sup>401</sup> Paul Bedard, “Sheriffs' shocker: ‘No border left,’” *Washington Examiner*, April 27, 2022, <https://www.washingtonexaminer.com/news/washington-secrets/sheriffs-shocker-no-border-left>

<sup>402</sup> America's Newsroom [@AmericaNewsroom], “CARTEL CRISIS: How Mexican Cartels Are Exploiting Biden's Open Border Policy @BillHemmer – reporting live from Yuma, AZ – is joined by two county officials who claim the border is under control of the cartels, not the US. ‘We have never seen it this bad.’” Tweet, *Twitter*, February 14, 2023, <https://twitter.com/AmericaNewsroom/status/1625511036227842048?lang=en>.

<sup>403</sup> Emma James and Katelyn Caralle, “Kamala Harris IGNORES reporter's question about migrants bussed to her DC residence by Texas Gov. Abbott, after she was ridiculed over claim border is secure,” *The Daily Mail*, *Associated Newspapers*, September 15, 2022, <https://www.dailymail.co.uk/news/article-11215335/Texas-sends-two-buses-containing-100-illegal-migrants-Vice-Presidents-DC-HOME.html>.

<sup>404</sup> Edmund Demarche, Emma Colton, Bill Melugin, “Mayorkas says border crisis ‘unsustainable’ and ‘we're going to lose’ in leaked audio,” *Fox News*, August 13, 2021, <https://www.foxnews.com/politics/mayorkas-leaked-audio-border>.

<sup>405</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Worldwide Threats To The Homeland: 20 Years After 9/11*, 117th Cong., 1st sess., September 22, 2021, 64, <https://www.congress.gov/117/chrg/CHRG-117hhrg46377/CHRG-117hhrg46377.pdf>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS



### [WATCH: Illegal Alien Tells Reporter, “Everyone Believes That the Border Is Open.”](#)

When Border Patrol agents are so overwhelmed with a flood of illegal alien that they have no choice but to release hundreds of thousands of them into the country, the border is not secure. When hundreds of thousands are released without court dates, the border is not secure. When Border Patrol has recorded more than 1.5 million known gotaways in less than three years, the border is not secure. When record amounts of fentanyl are coming across between ports of entry, contributing to the deaths of thousands of Americans every year, the border is not secure.

Why does Mayorkas continue to claim otherwise?

Below are instances in which Mayorkas has falsely claimed that there is no crisis, or that the border is “secure” and/or “closed.”

#### The Claims:

- **3/1/21:** Former Fox reporter Kristen Fisher: “Thank you, Mr. Secretary. Do you believe that right now there is a crisis at the border?”

Mayorkas: I think that the—the answer is no. I think there is a challenge at the border that we are managing...”<sup>406</sup>

- **3/18/21:** “I want to repeat my assurance to our audience this morning that the border is, in fact, secure.”<sup>407</sup>
- **3/21/21:** “The border is secure. The border is closed.”<sup>408</sup>

<sup>406</sup> The White House, “Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas,” March 1, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/01/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas/>.

<sup>407</sup> “Homeland Security secretary on surge in migration at Southwest U.S. border,” 1:15, *CBS News*, March 18, 2021, <https://www.cbsnews.com/video/homeland-security-secretary-on-surge-in-migration-at-southwest-us-border/>.

<sup>408</sup> “Trump administration dismantled ‘safe’ border policies, Biden rebuilding process: DHS chief Mayorkas,” 12:32, *Fox News*, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.



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- **3/21/21:** “The border is closed. The border is secure.”<sup>409</sup>
- **3/21/21:** “Chuck, our, our message has been straightforward and simple. And it’s true. The border is closed.”<sup>410</sup>
- **3/21/21:** “And quite frankly, when we are finished doing so, the American public will look back on this and say we secured our border and we upheld our values and our principles as a nation.”<sup>411</sup>
- **5/11/21:** Fox reporter Peter Doocy: “So, I’m curious what you meant last week when you said, ‘The border is closed.’  
Mayorkas: “The bord- — what I meant is precisely that: The border is closed.”<sup>412</sup>
- **5/26/21:** “The president could not have been clearer in his articulation of this administration’s position nor could I have been clearer and continue to be so, which is the border is closed...”<sup>413</sup>
- **5/26/21:** The Biden administration’s efforts on the border crisis “speak powerfully to the fact the border is closed and that we enforce the laws that Congress has passed, but we will do so effectively to ensure the greatest impact and outcome from the resources that we have.”<sup>414</sup>
- **9/20/21:** The “borders are not open.”<sup>415</sup>
- **9/21/21:** Senator Ron Johnson, R-Wisc.: “You have repeatedly stated that our borders are not open; they are closed. Do you honestly believe that our borders are closed?”  
Mayorkas: “Senator, I do, and let me speak to that.”<sup>416</sup>
- **9/22/21:** “Congressman [Pfluger], the border is secure. We are executing our plan. I have been very clear and unequivocal in that regard...Congressman, [the border] is no less secure than it was previously.”<sup>417</sup>

<sup>409</sup> “‘The Border Is Closed, The Border Is Secure’: Secretary Alejandro Mayorkas,” *Good Morning America*, March 21 2021, <https://www.goodmorningamerica.com/news/video/border-closed-border-secure-secretary-alejandro-mayorkas-76589288>.

<sup>410</sup> “Meet The Press – March 21, 2021,” *NBC News*, March 21, 2021, <https://www.nbcnews.com/meet-the-press/meet-press-march-21-2021-n1261691>.

<sup>411</sup> *Ibid.*

<sup>412</sup> The White House, “Press Briefing by Press Secretary Jen Psaki, Secretary of Energy Jennifer Granholm, and Secretary of Homeland Security Alejandro Mayorkas, May 11, 2021,” May 11, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/05/11/press-briefing-by-press-secretary-jen-psaki-secretary-of-energy-jennifer-granholm-and-secretary-of-homeland-security-alejandro-mayorkas-may-11-2021/>.

<sup>413</sup> Caroline Downey, “DHS Secretary Insists ‘Border Is Closed,’ Defends Response to Migrant Crisis,” *National Review*, May 26, 2021, <https://www.nationalreview.com/news/dhs-secretary-insists-border-is-closed-defends-response-to-migrant-crisis/>.

<sup>414</sup> *Ibid.*

<sup>415</sup> Callie Patteson, “DHS Secretary Alejandro Mayorkas Says ‘Borders Are Not Open,’” *New York Post*, September 20, 2021, <https://nypost.com/2021/09/20/dhs-secretary-alejandro-mayorkas-says-borders-are-not-open/>.

<sup>416</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Threats To The Homeland: Evaluating The Landscape 20 Years After 9/11*, 117th Cong., 1st sess., 1:20:26, September 21, 2021, <https://www.hsgac.senate.gov/hearings/threats-to-the-homeland-evaluating-the-landscape-20-years-after-9-11/>.

<sup>417</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Worldwide Threats To The Homeland: 20 Years After 9/11*, 117th Cong., 1st sess., September 22, 2021, 64, <https://www.congress.gov/117/chrg/CHRG-117hrg46377/CHRG-117hrg46377.pdf>.



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- **9/22/21:** Representative Kat Cammack, R-Fla.: “We have a record number of retirements. Historic level of narcotics that have come across the border and you still stand by your statement, yes or no, that the border is secure?”

Mayorkas: “Yes.”<sup>418</sup>

- **5/1/22:** CNN anchor Dana Bash: “What’s your message now?”

Mayorkas: “The same. The very same, because our border is not open. ... And so, the border is not open. ... Do not come.”<sup>419</sup>

- **7/3/22:** ABC’s Martha Raddatz: “Just a simple question: Do you think it's working?”

Mayorkas: “I think that we are doing a good job.”<sup>420</sup>

- **7/19/22:** “Look, the border is secure. We are working to make the border more secure.”<sup>421</sup>

- **11/15/22:** Representative Dan Bishop, R-N.C.: “Secretary Mayorkas, do you continue to maintain that the border is secure?”

Mayorkas: “Yes. We are working day in and day out to enhance its security, Congressman.”<sup>422</sup>

- **1/5/23:** “Let me be clear, Title 42 or not, the border is not open.”<sup>423</sup>

- **4/19/23:** “It is my testimony that the border is secure.”<sup>424</sup>

- **5/11/23:** “I want to be very clear: Our borders are not open.”<sup>425</sup>

<sup>418</sup> Ibid, 82.

<sup>419</sup> “Do Not Come’: Secretary Mayorkas’s Message To Migrants,” *CNN*, May 1, 2022, <https://www.cnn.com/videos/politics/2022/05/01/mayorkas-full.cnn>.

<sup>420</sup> “This Week’ Transcript 7-3-22: Rep. Liz Cheney & Secretary Alejandro Mayorkas,” *ABC News*, July 3, 2022, <https://abcnews.go.com/Politics/week-transcript-22-rep-liz-cheney-secretary-alejandro/story?id=86127088>.

<sup>421</sup> Adam Shaw, “Mayorkas Claims Southern Border ‘Is Secure’ As Historic Migrant Crisis Rages,” *Fox News*, July 20, 2022, <https://www.foxnews.com/politics/mayorkas-claims-southern-border-secure-historic-migrant-crisis-rages>.

<sup>422</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Worldwide Threats to the Homeland*, 117th Cong., 2nd sess., November 15, 2022, 64, <https://www.congress.gov/117/chrg/CHRG-117hrg50981/CHRG-117hrg50981.pdf>.

<sup>423</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Delivers Remarks on DHS’s Continued Preparation for the End of Title 42 and Announcement of New Border Enforcement Measures and Additional Safe and Orderly Processes*, January 5, 2023, <https://www.dhs.gov/news/2023/01/05/secretary-mayorkas-delivers-remarks-dhss-continued-preparation-end-title-42-and>.

<sup>424</sup> “Vice Chair Guest Asks Secretary Mayorkas If He Thinks the Border is Secure,” *Homeland Security Committee Events*, YouTube video, 2:00, April 19, 2023, <https://www.youtube.com/watch?v=ZN-dLMuoGBI>.

<sup>425</sup> The White House, “Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas,” May 11, 2023, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### **False Claim 2: DHS Has Operational Control of the Border**

**The Facts:** Another of Mayorkas' repeated false claims is his assertion that DHS maintains "operational control" of the border. As with several of his unsupported claims that the "border is secure," he has told this lie to Congress. The record makes this clear.

It is first important for Americans to understand what "operational control" means. Per the definition laid out by the Secure Fence Act of 2006, operational control constitutes "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."<sup>426</sup>

On April 28, 2022, Mayorkas testified to the House Judiciary Committee under oath that DHS possessed operational control of the Southwest border.<sup>427</sup> When asked twice by Rep. Chip Roy, R-Tex, if DHS maintained operational control of the Southwest border, Mayorkas answered affirmatively both times.<sup>428</sup> Roy then displayed the definition of operational control, asking Mayorkas if he still maintained that DHS possessed operational control as defined by the Secure Fence Act, to which Mayorkas again said yes.<sup>429</sup>



### **WATCH: Mayorkas Claims DHS Has Operational Control of the Border According to the Secure Fence Act Definition**

Mayorkas' testimony was later refuted by his own Border Patrol chief.<sup>430</sup>

<sup>426</sup> 8 U.S.C. § 1701, Pub. L. 109–367, § 2(b).

<sup>427</sup> Video of the exchange between Roy and Mayorkas linked below indicates that the secretary, when asked by Roy if he maintains that DHS has operational control of the Southwest border in light of the statutory definition, answers "Yes, we do," or "We do," though it is slightly covered by crosstalk. The congressional transcript fails to account for this aspect of the exchange.

<sup>428</sup> Ibid.

<sup>429</sup> Ibid.

<sup>430</sup> "Full Committee Field Hearing: 'Failure By Design: Examining Secretary Mayorkas' Border Crisis,'" *Homeland Security Committee Events*, YouTube video, 42:51, March 15, 2023, <https://www.youtube.com/watch?v=7Z1ETzh3AUA&t=2571s>.



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In March 2023, now-former Border Patrol Chief Ortiz testified before the House Committee on Homeland Security that DHS *did not* have operational control of the border, either by the statutory definition or not.<sup>431</sup>

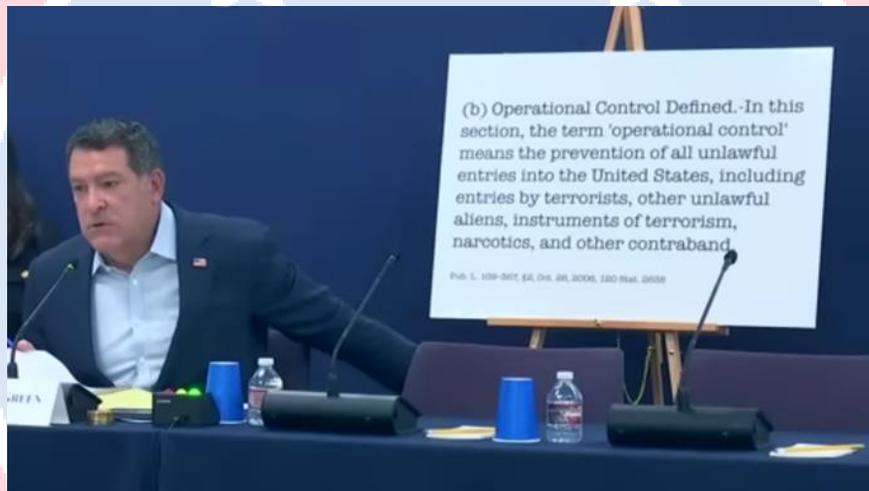
When asked by Chairman Mark Green whether DHS had operational control of the Southwest border, Ortiz answered that the department did not.<sup>432</sup> In a subsequent exchange, Ortiz furthered confirmed that DHS also did not possess operational control per the Secure Fence Act definition:

Green: “You heard the secretary, he said we have operational control, that’s the definition of operational control.”

Ortiz: “Based upon the definition you have sir, up there, no.”

Green: “We don’t have operational control?”

“Ortiz: No sir.”<sup>433</sup>



### **WATCH: Border Patrol Chief Tells Congress DHS Does Not Have Operational Control of the Southwest Border**

Mayorkas’ testimony was inconsistent with the assessments of border security professionals. Worse, his testimony has also been inconsistent with itself.

After definitively declaring DHS possessed operational control in April 2022, he backtracked to alter the definition of operational control in hopes of meeting a lower, self-manufactured standard.<sup>434</sup> He gave the following testimony to the Senate Homeland Security and Governmental Affairs Committee in May 2022, just days after telling Roy that DHS had operational control based on the Secure Fence Act definition:

<sup>431</sup> Ibid.

<sup>432</sup> Ibid.

<sup>433</sup> Ibid.

<sup>434</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Resources and Authorities Needed to Protect and Secure the Homeland*, 117th Cong., 2nd sess., 1:21:10, May 4, 2022, <https://www.hsgac.senate.gov/hearings/05-04-2022-resources-and-authorities-needed-to-protect-and-secure-the-homeland/>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

“Well actually, there’s a statutory definition which provides, if I’m not mistaken, and I’ll double-check to make sure of my accuracy before this committee, is that operational control is if no individual and no controlled substance passes through our border. So, under that strict definition, this country has never had operational control. But obviously, a layer of reasonableness must be applied here, and looking at that definition through the lens of reasonableness, we dedicate now 23,000 personnel to the border.”<sup>435</sup>

He later told Senate Judiciary Committee in March 2023 that by the statutory definition, “no administration has ever had operational control,”<sup>436</sup> and that he does not use the Secure Fence Act definition in evaluating operational control.<sup>437</sup> These comments came just days after Ortiz’s testimony to the House Committee on Homeland Security.

The record clearly establishes that Mayorkas has been dishonest in his own inconsistent testimony about operational control. He has claimed DHS has operational control—what reasonable person, let alone the DHS secretary, would claim any measure of control at the border, given the chaos already demonstrated throughout this report?

He has claimed to have operational control based on the Secure Fence Act definition<sup>438</sup>—another false claim, as he himself later admitted in declaring that no administration has ever had operational control per the definition. And he has been dishonest by claiming to not use the statutory definition in determining whether DHS has operational control, after using that definition as a measure of the term in his April 2022 testimony.

Mayorkas cannot have it both ways. His claim of operational control in the context of the statutory definition in 2022, followed by a new interpretation later in which he insinuated that the statutory definition is unreasonable, is intellectually dishonest at best, and deceitful at worst. It also indicates that he has substituted Congress’ judgment as expressed in the law for his own.

Even adopting Mayorkas’ own framework, as expressed in his May 2022 testimony,<sup>439</sup> of looking at border security through the “lens of reasonableness,” DHS under his leadership is not even meeting his own manufactured standard, for all the reasons documented in this report.

Chairman Green summed it up best during the House Committee on Homeland Security’s recent hearing in McAllen, saying, “It’s either ignorance, which is unacceptable, or it’s lying.”<sup>440</sup>

<sup>435</sup> Ibid.

<sup>436</sup> Suzanne Monyak, “Republican Senators Grill DHS Chief Over Border Security,” *CQ Roll Call*, March 28, 2023, <https://rollcall.com/2023/03/28/republican-senators-grill-dhs-chief-over-border-security/>.

<sup>437</sup> Ibid.

<sup>438</sup> 8 U.S.C. § 1701, Pub. L. 109–367, § 2(b).

<sup>439</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Resources and Authorities Needed to Protect and Secure the Homeland*, 117th Cong., 2nd sess., 1:21:10, May 4, 2022, <https://www.hsgac.senate.gov/hearings/05-04-2022-resources-and-authorities-needed-to-protect-and-secure-the-homeland/>.

<sup>440</sup> “Full Committee Field Hearing: ‘Failure By Design: Examining Secretary Mayorkas’ Border Crisis,” *Homeland Security Committee Events*, YouTube video, 44:13, March 15, 2023, <https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=2653>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### The Claims:

- **4/27/22:** “Ranking Member Katko, it is our responsibility to maintain operational control of the border...and we will not lose operational control of the border.”<sup>441</sup>
- **4/28/22:** Representative Roy: “The Secure Fence Act of 2006 says what? That the Secretary of Homeland Security shall take all actions the Secretary determines necessary to achieve and maintain operational control over the entire international land and maritime borders. Will you testify under oath right now, do we have operational control, yes or no?”

Mayorkas: “Yes, we do, and we—”

Roy: “We have operational control of the borders?”

Mayorkas: “Yes, we do, and Congressman, we are working to—”

Roy: “Assume operational control defined. In this section the term operational control means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. Do you stand behind your testimony that we have operational control in light of this definition?”

Mayorkas: “Congressman, I think the Secretary of Homeland Security would have said the same thing in 2020 and 2019.”<sup>442</sup>

- **3/28/23:** “With respect to the definition of operational control—I do not use the definition that appears in the Secure Fence Act, and the Secure Fence Act provides, statutorily, that operational control is defined as ‘preventing all unlawful entries into the United States.’ By that definition, no administration has ever had operational control. So the way I define it is maximizing the resources that we have to deliver the most effective results, and we are indeed doing that.”<sup>443</sup>
- **4/19/23:** Representative Bishop: “Do you admit that your policies have led the country farther away from operational control of the border, as defined by the Congress?”

Mayorkas: “Congressman, no I do not.”<sup>444</sup>

<sup>441</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *A Review of the Fiscal Year 2023 Budget Request for the Department of Homeland Security*, 117th Cong., 2nd sess., April 27, 2022, 40, <https://www.congress.gov/117/chrg/CHRG-117hrg48215/CHRG-117hrg48215.pdf>.

<sup>442</sup> U.S. Congress, House of Representatives, Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 117th Cong., 2nd sess., April 28, 2022, 119-120, <https://www.congress.gov/117/chrg/CHRG-117hrg49702/CHRG-117hrg49702.pdf>.

<sup>443</sup> Alejandro Mayorkas, “Secretary Mayorkas Testifies at Homeland Security Oversight Hearing,” *C-SPAN video*, 38:36, March 28, 2023, <https://www.c-span.org/video/?526938-1/secretary-mayorkas-testifies-homeland-security-oversight-hearing>.

<sup>444</sup> “Rep. Dan Bishop Shreds Mayorkas’ DHS Budget Request,” *Homeland Security Committee Republicans*, YouTube video, 2:00, April 19, 2023, <https://www.youtube.com/watch?v=9C0bE731s6E>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### **False Claim 3: Biden and Mayorkas Bear No Responsibility for the Crisis**

**The Facts:** From inflation to high gas prices to the botched withdrawal from Afghanistan, the Biden administration rarely, if ever, accepts responsibility, even when its policies are directly linked to adverse outcomes. The same is true for the historic border crisis. Claiming there is no connection between Mayorkas' open-borders policies and the border crisis plaguing the country is simply dishonest and represents a refusal to accept responsibility—particularly when officials like former Border Patrol Chief Ortiz have stated that policies of “no consequences” lead to increased border crossings.<sup>445</sup> As this report has already demonstrated, Mayorkas has effectively removed many of the consequences of illegal entry.

### **The Claims:**

- **3/21/21:** Former Fox anchor Chris Wallace: “Mr. Secretary, do you not see a connection between the surge at the border and the policy changes that Joe Biden has made in his first two months?”

Mayorkas: “Chris, I do not.”<sup>446</sup>

- **4/28/22:** Representative Jim Jordan, R-Ohio: “Do you think that maybe, just maybe, your actions and your policies are encouraging migrants to come to the border?”

[...]

Mayorkas: “Congressman, the increase at the border is the result of a number of factors, and it’s a regional phenomenon.

Jordan: “Maybe a number of factors, I’m asking about those specific factors, your actions and policies.”

Mayorkas: “I do not.”<sup>447</sup>

<sup>445</sup> Deposition of Raul Ortiz, *State of Florida v. United States*, No. 3:21-cv-01066, 171-172, (N.D. Fla. 2023),

<https://www.myfloridalegal.com/files/pdf/page/1CF30ECB773FB37B852588AE004B49AF/072822+Ortiz+,+Raul.pdf>.

<sup>446</sup> “Trump Administration Dismantled ‘Safe’ Border Policies, Biden Rebuilding Process: DHS Chief Mayorkas,” *Fox News*, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>447</sup> U.S. Congress, House of Representatives, Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 117th Cong., 2nd sess., April 28, 2022, 73, <https://www.congress.gov/117/chr/CHRG-117hrg49702/CHRG-117hrg49702.pdf>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### **False Claim 4: The Border Crisis Is Trump's Fault and DHS Inherited a Broken System**

**The Facts:** The previous administration implemented a set of effective policies that secured the border, resolved the 2019 crisis, and gave the United States the greatest level of border security in its history. These policies included MPP, which had an immediate impact on the flood of illegal aliens at the Southwest border. The Trump administration also negotiated agreements with Central American countries to give individuals the chance to apply for asylum in those countries, further disincentivizing individuals to illegally cross the border.

At the peak of the short-lived 2019 crisis—May 2019—CBP recorded 144,116 total encounters at the Southwest border.<sup>448</sup> Overall, March to June 2019 saw more than 100,000 total monthly encounters.<sup>449</sup> The Trump administration's rapid response to the crisis brought the numbers steadily down, to just over 45,000 in October 2019, and as low as 17,106 in April 2020.<sup>450</sup>

From FY17-20, CBP recorded just over three million total nationwide encounters.<sup>451</sup> Based on DHS' own numbers through May 2023, if total nationwide encounters continue at their current pace, CBP will have recorded more than 11 million nationwide encounters by the end of the Biden administration's four-year term—an increase of almost 270 percent.<sup>452</sup> This does not include the known gotaways, which already exceed 1.5 million since FY21.<sup>453</sup>

Contrary to Mayorkas' baseless attacks listed below, the Trump administration was also one of the most generous in history in terms of granting asylum. The administration prioritized reducing the asylum backlog left over from the Obama administration, hiring 500 new asylum officers<sup>454</sup> and working to prevent fraud so that legitimate applicants could have their cases adjudicated in a timely manner.<sup>455</sup> The Trump administration granted more asylum claims in 2019—46,508—than any other year in the past 30 years.<sup>456</sup> Indeed, more individuals received asylum grants during the entire Trump administration than under the last four full fiscal years of the Obama-Biden administration.<sup>457</sup>

<sup>448</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>449</sup> *Ibid.*

<sup>450</sup> *Ibid.*

<sup>451</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics Fiscal Year 2020*, May 8, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2020>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics FY 2019*, May 8, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2019>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics FY2018*, March 29, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2018>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics FY2017*, December 15, 2017, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2017>.

<sup>452</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>453</sup> U.S. Congress, House of Representatives, Committee on Homeland Security Majority, *Chairmen Green, Comer, Jordan Investigate Biden Admin's Handling of Suspected Terrorists Crossing U.S.-Mexico Border*, 118th Cong., 1st sess., May 19, 2023, <https://homeland.house.gov/chairmen-green-comer-jordan-investigate-biden-admins-handling-of-suspected-terrorists-crossing-u-s-mexico-border/>.

<sup>454</sup> Chad Wolf, Lora Ries, and Mark Morgan, "Fact-Checking DHS Secretary Alejandro Mayorkas' Comments on Border Crisis," *The Heritage Foundation*, March 25, 2021, <https://www.heritage.org/homeland-security/commentary/fact-checking-dhs-secretary-alejandro-mayorkas-comments-border-crisis>.

<sup>455</sup> *Ibid.*

<sup>456</sup> U.S. Department of Homeland Security, News, *Table 16. Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2019*, December 14, 2022, <https://www.dhs.gov/immigration-statistics/yearbook/2019/table16>.

<sup>457</sup> *Ibid.*



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The Biden administration started ending those policies on Jan. 20, 2021, with a spate of executive orders that revived incentives to cross illegally—and the cartels and smuggling organizations took advantage.

In the wake of the short-lived 2019 crisis, the Trump administration implemented effective policies, and monthly apprehensions began to drop—only for them to begin significantly increasing in late summer and particularly around the time of Biden's election win in November 2020, after he ran a campaign calling for mass amnesty and advocating other benefits for those who come to the United States illegally. He even urged would-be illegal aliens to “surge” to the border and file asylum claims, saying in a 2019 Democratic presidential debate, “I would in fact make sure, that there is, we immediately surge to the border all those people who are seeking asylum. They deserve to be heard.”<sup>458</sup>

Biden—who has taken numerous steps to weaken immigration enforcement<sup>459</sup>—has deputized Mayorkas to help make the left's open-borders vision a reality.

Disagreement with the previous administration's policies is not dishonest, but making false statements about the nature and consequences of those policies is. It may be the easiest political route to take, but it is also just false.

### **The Claims:**

- **3/1/21:** “To put it succinctly, the prior administration dismantled our nation's immigration system in its entirety. ... Quite frankly, the entire system was gutted.”<sup>460</sup>
- **3/1/21:** “What we are seeing now at the border is the immediate result of the dismantlement of the system and the time that it takes to rebuild it virtually from scratch.”<sup>461</sup>
- **3/16/21:** “The prior administration completely dismantled the asylum system.”<sup>462</sup>
- **3/21/21:** “But it is taking time and it is difficult, because the entire system was dismantled by the prior administration. There was a system in place in both Republican and Democratic administrations that was torn down during the Trump administration.”<sup>463</sup>

<sup>458</sup> “Candidate Biden Calls On Illegal Immigrants to Surge the Border,” *Speaker Kevin McCarthy*, YouTube video, March 19, 2021, <https://www.youtube.com/watch?v=rYwLYMPLYbo>.

<sup>459</sup> Lora Ries and Michael Sutherland, “Biden Administration's Border Catastrophe – A Policy Tracker,” *The Heritage Foundation*, June 25, 2021, <https://datavisualizations.heritage.org/immigration/biden-administrations-border-catastrophe-a-policy-tracker/>.

<sup>460</sup> The White House, “Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas,” March 1, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/01/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas/>.

<sup>461</sup> *Ibid.*

<sup>462</sup> U.S. Department of Homeland Security, News, *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, March 16, 2021, <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

<sup>463</sup> “Interview with Gov. Asa Hutchinson (R-AR); Interview with Rep. Michelle Steel (R-CA); Interview with Sen. Richard Durbin (D-IL); Interview with U.S. Homeland Security Secretary Alejandro Mayorkas; Interview with Rep. Young Kim (R-CA),” *CNN Transcripts*, March 21, 2021, <https://transcripts.cnn.com/show/sotu/date/2021-03-21/segment/01>.



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- **3/21/21:** “What I am seeing is the result and what we are seeing is the result of President Trump's dismantlement of the safe and orderly immigration processes that were built over many, many years by presidents of both parties.”<sup>464</sup>
- **3/21/21:** “Please remember something, that President Trump dismantled the orderly, humane and efficient way of allowing children to make their claims under United States law in their home countries.”<sup>465</sup>
- **8/12/21:** “[The crisis as the border] has also been made more difficult because of the fact that the prior administration dismantled our asylum system.”<sup>466</sup>
- **4/27/22:** “We inherited a broken and dismantled system that is already under strain. ... Only Congress can fix this.”<sup>467</sup>
- **5/4/22:** “We inherited a broken and dismantled system that is already under strain...”<sup>468</sup>
- **5/11/23:** “The fundamental reason—the fundamental reason why we have a challenge at our border and we’ve had this challenge many a time before is because we are working within the constraints of a broken—a fundamentally broken immigration system.”<sup>469</sup>

### **False Claim 5: The Border Crisis Is Congress' Fault, Because They Will Not Fund DHS**

**The Facts:** To justify this claim, Mayorkas would need to explain why, if Congress' inaction over “decades” is responsible for the chaos, the United States has never experienced a sustained border crisis anywhere approaching the magnitude of the border crisis experienced on his watch.

It is also disingenuous to blame Congress for the reasons clearly delineated throughout this report—Biden and Mayorkas have collaborated to open America's borders by ending effective border security policies that worked, replacing them with policies that encourage and facilitate mass illegal immigration. Finally, it is actually Mayorkas' department that has advocated cuts in funding for border security and immigration enforcement.

<sup>464</sup> “Trump Administration Dismantled ‘Safe’ Border Policies, Biden Rebuilding Process: DHS Chief Mayorkas,” *Fox News*, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>465</sup> “Meet The Press – March 21, 2021,” *NBC News*, March 21, 2021, <https://www.nbcnews.com/meet-the-press/meet-the-press-march-21-2021-n1261691>.

<sup>466</sup> “Mayorkas Says ‘Unprecedented Number of Migrants’ Arriving At Border, Blames Trump and COVID-19,” *Forbes Breaking News*, YouTube video, 5:08, August 12, 2021, <https://www.youtube.com/watch?v=4rqJsyTs6WM>.

<sup>467</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *A Review of the Fiscal Year 2023 Budget Request for the Department of Homeland Security*, 117th Cong., 2nd sess., April 27, 2022, 12, <https://www.congress.gov/117/chrhg/CHRG-117/hrg48215/CHRG-117/hrg48215.pdf>.

<sup>468</sup> “A Review of the President’s Fiscal Year 2023 Funding Request for the U.S. Department of Homeland Security,” *U.S. Senate Committee on Appropriations video*, 34:53, May 4, 2022, <https://www.appropriations.senate.gov/hearings/a-review-of-the-presidents-fiscal-year-2023-funding-request-for-the-us-department-of-homeland-security>.

<sup>469</sup> The White House, “Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas,” May 11, 2023, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.



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In FY21, CBP's total budget enacted by Congress was more than \$16.2 billion, including \$4.8 billion for border security operations.<sup>470</sup> In FY22, CBP's budget increased to \$18.075 billion, with \$5.1 billion enacted for border security operations, while in FY23, Congress enacted more than \$6.3 billion for border security operations.<sup>471</sup> This latter amount was actually around \$870 million more than the Biden administration requested.<sup>472</sup> Meanwhile, the president's FY24 budget request actually cut border security operations funding by several hundred million dollars, and CBP's overall budget by more than \$1 billion.<sup>473</sup> For ICE, meanwhile, DHS requested just \$3.8 billion for the ERO budget in FY24, a decrease of nearly \$700 million from FY23 enacted levels.<sup>474</sup>

From FY21-23, Congress increased CBP funding every year, exposing Mayorkas' claim in May of this year as dishonest blame-shifting.<sup>475</sup> This is a policy-driven crisis, not one driven by lack of resources, and Congress is not responsible for the chaos Mayorkas has unleashed through his actions, rhetoric, and policies.

### **The Claim:**

- **5/11/23:** "Our current situation...is also the result of Congress's decision not to provide us with the resources we need and that we requested. ... And we also are operating on resources that are far less than those that we need and that we've requested."<sup>476</sup>

### **False Claim 6: DHS Is Enforcing America's Immigration Laws**

**The Facts:** Mayorkas' claims that the Biden administration is enforcing the law are demonstrably false. The list of statutes thrown aside or ignored by Mayorkas is extensive, as demonstrated earlier in this report, including abuse of the statutes regarding parole, detention, and removal of inadmissible aliens. He has not enforced numerous laws passed by Congress, and indicated that he would not implement the law as written, including the statement that being in the country illegally is no longer sufficient grounds by itself for removal—a stunning admission by the official in charge of enforcing America's immigration laws.<sup>477</sup>

Mayorkas has instead created a swath of new mass-parole programs under which tens of thousands of individuals have been admitted to the country, giving legally questionable policy the

<sup>470</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Budget Overview: Fiscal Year 2022 Congressional Justification*, May 27, 2021, 6-8, [https://www.dhs.gov/sites/default/files/publications/u.s.\\_customs\\_and\\_border\\_protection\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/u.s._customs_and_border_protection_0.pdf).

<sup>471</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 6-8, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION_Remediated.pdf).

<sup>472</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Budget Overview: Fiscal Year 2023 Congressional Justification*, March 27, 2022, 6, [https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf).

<sup>473</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 6-8, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION_Remediated.pdf).

<sup>474</sup> U.S. Department of Homeland Security, U.S. Customs and Immigration Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 5-6, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf).

<sup>475</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 6-8, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION_Remediated.pdf).

<sup>476</sup> The White House, "Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas," May 11, 2023, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.

<sup>477</sup> Stephen Dinan, "DHS Chief: Being in the U.S. Illegally Isn't Enough to Earn Deportation," *The Washington Times*, September 30, 2021, <https://www.washingtontimes.com/news/2021/sep/30/mayorkas-being-us-illegally-isnt-enough-earn-depor/>.



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vener of legality. He has ignored court orders, including the federal district court's ruling in *Texas v. Biden*, requiring him to reinstate MPP.<sup>478</sup> He has also ignored the Fifth Circuit's 2021 rebuke of his use of mass parole to release individuals into the country.<sup>479</sup>

Moreover, Mayorkas has instructed ICE officials not to pursue detention and deportation of most of those in the country illegally, unless they be serious threats to public safety, spies, "a threat to border security," or national security threats, even issuing guidance that being in the country illegally is by itself no longer a sufficient reason for removal—in clear contradiction of the statute.<sup>480</sup>

His policies have not only turned the asylum system on its head, but have been a driving factor behind the crisis. Due to his policies, hundreds of thousands of individuals have been incentivized to flood across the border, claim asylum even if they don't qualify, and be released into the interior while their claim is adjudicated, many of them never to be heard from again.

And yet, Mayorkas continues to brazenly claim that he is enforcing the law.

### **The Claims:**

- **5/26/21:** "[T]his administration administers and enforces the laws of the United States of America..."<sup>481</sup>
- **9/22/21:** "DHS continues enforcing our immigration laws and responsibly managing our border, while restoring fairness and efficiency in our immigration system."<sup>482</sup>
- **9/26/21:** "What we do is we follow the law as Congress has passed it."<sup>483</sup>
- **7/3/22:** "We are enforcing our laws."<sup>484</sup>
- **1/5/23:** "At the outset, let me be clear: Title 42 or not, the border is not open. We will continue to fully enforce our immigration laws in a safe, orderly, and humane manner."<sup>485</sup>
- **1/19/23:** "We are executing a comprehensive strategy to secure our borders and build a safe, orderly, and humane immigration process."<sup>486</sup>

<sup>478</sup> *State of Texas v. United States*, No. 6:21-cv-00003, (S.D. Tex. 2021).

<sup>479</sup> *Texas v. Biden*, No. 21-10806, 4, 105-106 (5th Cir. 2021).

<sup>480</sup> U.S. Department of Homeland Security, *Memorandum: Guidelines for the Enforcement of Civil Immigration Law*, September 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>481</sup> Caroline Downey, "DHS Secretary Insists 'Border Is Closed,' Defends Response to Migrant Crisis," *National Review*, May 26, 2021, <https://www.nationalreview.com/news/dhs-secretary-insists-border-is-closed-defends-response-to-migrant-crisis/>.

<sup>482</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Worldwide Threats To The Homeland: 20 Years After 9/11*, 117th Cong., 1st sess., September 22, 2021, 17, <https://www.congress.gov/117/chrg/CHRG-117hrg46377/CHRG-117hrg46377.pdf>.

<sup>483</sup> "'Fox News Sunday' on September 26, 2021," *Fox News*, September 26, 2021, <https://www.foxnews.com/transcript/fox-news-sunday-on-september-26-2021>.

<sup>484</sup> "'This Week' Transcript 7-3-22: Rep. Liz Cheney & Secretary Alejandro Mayorkas," *ABC News*, July 3, 2022, <https://abcnews.go.com/Politics/week-transcript-22-rep-liz-cheney-secretary-alejandro/story?id=86127088>.

<sup>485</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Delivers Remarks on DHS's Continued Preparation for the End of Title 42 and Announcement of New Border Enforcement Measures and Additional Safe and Orderly Processes*, January 5, 2023, <https://www.dhs.gov/news/2023/01/05/secretary-mayorkas-delivers-remarks-dhss-continued-preparation-end-title-42-and>.

<sup>486</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Remarks at the United States Conference of Mayors 91st Winter Meeting Remarks as Delivered*, January 19, 2023, <https://www.dhs.gov/news/2023/01/19/secretary-mayorkas-remarks-united-states-conference-mayors-91st-winter-meeting>.



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- **4/19/23:** “You’re asking me whether we enforce the laws that Congress has passed, and the answer is yes, we do.”<sup>487</sup>

### **False Claim 7: DHS Is Promptly Removing Illegal Aliens**

**The Facts:** Mayorkas has repeatedly hidden behind heavily nuanced terms like “immigration enforcement proceedings” to disguise the fact that the number of illegal aliens being detained and removed has plummeted under his leadership. For all his tough talk about enforcing the law, the reality is quite different.

Americans across the country can be forgiven for thinking that “immigration enforcement proceedings” is synonymous with “removed from the country.” It often means anything but.

In truth, immigration enforcement proceedings can drag on for years, and under the Biden administration, they increasingly do so. DHS’ own numbers back this up.

Per the ICE FY24 budget justification, the Non-Detained Docket continues to grow, “primarily due to the historic levels of Customs and Border Protection (CBP) encounters at the Southwest Border (SWB) of the United States and [sic]. The backlog of cases has continued to trend upwards ... Through February 27, 2023, ICE’s NDD caseload count has risen to over 5.29 million, already an increase of 10.2 percent since FY 2022 year-end.”<sup>488</sup> In FY20, by comparison, the number of illegal aliens on the NDD was approximately 3.26 million.<sup>489</sup>

When asked by Rep. Mike Ezell, R-Miss., whether he believed Mayorkas has been honest with the American people, former DHS Acting Secretary Wolf responded by specifically pointing to Mayorkas’ misleading framing of his department’s enforcement of immigration law:

“I don’t [believe he has been honest.] ... [H]e talks about putting people in expedited removal. He knows what that means. The staff of this committee knows what that means. None of those individuals will likely be removed. All they have to do is claim asylum and they are pulled out of expedited removal.

“So, he uses terms like these for the American people to try to explain away what’s going on along that border. But those that work in the department, know immigration, they know something else.”<sup>490</sup>

An April 2017 DHS OIG report found that at the time, ICE was “almost certainly not deporting all the noncitizens who could be deported and will likely not be able to keep up with growing numbers of deportable noncitizens.”<sup>491</sup> This was *well before* Mayorkas implemented the open-borders agenda that sparked the current catastrophic crisis. Southwest border encounters in

<sup>487</sup> “Rep. Dan Bishop Shreds Mayorkas’ DHS Budget Request,” *Homeland Security Committee Republicans*, YouTube video, 0:50, April 19, 2023, <https://www.youtube.com/watch?v=9C0bE731s6E>.

<sup>488</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 65, <https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT.pdf>.

<sup>489</sup> *Ibid.*

<sup>490</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 2:55:15, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=10515s>.

<sup>491</sup> U.S. Department of Homeland Security, Office of Inspector General, *ICE Deportation Operations*, April 13, 2017, 7, <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-51-Apr17.pdf>.

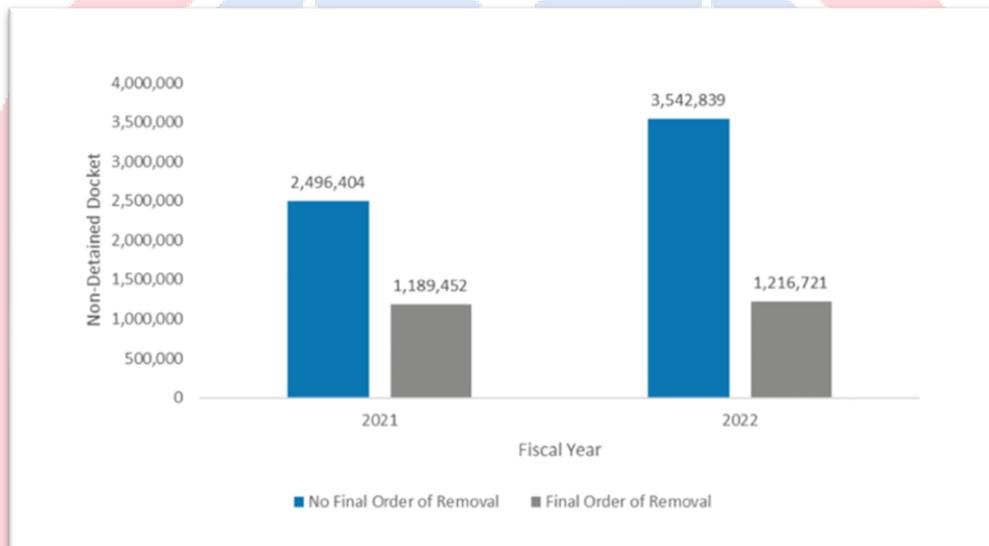


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FY17, the year the report was released, totaled around 415,000.<sup>492</sup> In FY22, they exceeded 2.3 million.<sup>493</sup>

ICE is not currently removing all those who could be removed—not even close. In FY22, ICE conducted a mere 72,177 removals.<sup>494</sup> In FY21, the number was 59,011.<sup>495</sup> By comparison, in FY20, in the midst of the COVID-19 pandemic, ICE removed 185,884 illegal aliens,<sup>496</sup> while in FY19, removals exceeded 267,000.<sup>497</sup> Removals across the board have plummeted since Mayorkas assumed leadership of DHS and rewrote the agency's guidance.

Meanwhile, as ICE's FY22 annual report documents, the number of individuals on the Non-Detained Docket with no final order of removal increased by more than one million from FY21 to FY22, while those with a final order of removal only increased approximately 27,000.<sup>498</sup>



(Source: ICE Annual Report Fiscal Year 2022)

Even removals of *criminal illegal aliens* are down substantially. As of the first quarter of FY23, 407,983 of the 5.29 million individuals on the NDD were convicted criminal aliens.<sup>499</sup> However,

<sup>492</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Border Migration FY2017*, December 15, 2017, <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>.

<sup>493</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>494</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2022*, December 30, 2022, 23, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

<sup>495</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2021*, March 11, 2022, 9, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2021.pdf>.

<sup>496</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2020*, December 23, 2020, 4, <https://www.ice.gov/doclib/news/library/reports/annual-report/iceReportFY2020.pdf>.

<sup>497</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report*, 19, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

<sup>498</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2022*, December 2022, 21, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

<sup>499</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 65, <https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT.pdf>.



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ICE initially set a target of just 29,389 removals for FY24,<sup>500</sup> a number that has since been replaced with “TBD” in its budget document<sup>501</sup>—down from a target of 151,000 in FY20, the last full year of the Trump administration. To its credit, ICE set a target of 91,500 criminal removals in FY22, but ultimately removed only 38,447 convicted criminals.<sup>502</sup>

**Enforcement and Removal Operations (ERO):** Enforcement and Removal Operations (ERO) enforces the Nation’s immigration laws by identifying and apprehending noncitizens, detaining those individuals pending final determination of removability, and removing them from the United States. ERO prioritizes the apprehension, arrest, and removal of those who pose a threat to national security, individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States, and individuals determined to pose a threat to public safety. ERO manages all logistical aspects of the removal process, including domestic transportation, detention, alternatives to detention programs, bond management, and supervised release. In addition, ERO repatriates those ordered removed from the United States to more than 170 countries around the world.

*Strategic Measures*

<b>Measure Name:</b>	Number of convicted criminal noncitizens who were returned or were removed from the United States						
<b>Strategic Alignment:</b>	3.2 : Enforce U.S. Immigration Laws						
<b>Description:</b>	This measure includes both the return and removal of noncitizens who have a prior criminal conviction from the United States by ICE Enforcement and Removal Operations (ERO). This measure reflects the program’s efforts to ensure convicted criminal noncitizens do not remain in the United States.						
<b>Fiscal Year:</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Targets:</b>	126,000	151,000	151,000	97,440	91,500	29,389	29,389
<b>Results:</b>	145,262	150,141	103,762	39,149	38,447	TBD	TBD

ICE - 2

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ICE - 2

*In March 2023, ICE’s budget justification listed 29,389 removals of convicted criminal aliens as its target for FY23 and FY24. Those numbers have since been removed from the document. (Source: ICE FY24 Budget Justification)*

<sup>500</sup> Kristen Ziccarelli, “Expert Insight: Biden Administration Deprioritizes Criminal Alien Deportation in FY 24 Budget,” *America First Policy Institute Center for Homeland Security and Immigration*, April 11, 2023, <https://americafirstpolicy.com/latest/print/expert-insight-biden-administration-deprioritizes-criminal-alien-deportation-in-fy24-budget>.

<sup>501</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 23, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf).

<sup>502</sup> *Ibid.*



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Illegal aliens are not being promptly removed from the interior under Mayorkas' policies. If they are not detained at all, DHS' most recent Lifecycle Report shows that removal rates are under eight percent.<sup>503</sup> If they are released from detention at any point while their case is adjudicated, removal rates drop even lower, under four percent.<sup>504</sup>

The numbers simply do not support Mayorkas' claim that those who do not show up for their court dates or ICE appointment become an enforcement "priority."

### **The Claims:**

- **9/20/21:** "If you come to the United States illegally, you will be returned."<sup>505</sup>
- **9/30/21:** "A noncitizen who poses a current threat to public safety, typically because of serious criminal conduct, is a priority for apprehension and removal."<sup>506</sup>
- **5/1/22:** "You know what happens to these individuals? They are either expelled under the Title 42 of the CDC, or they are placed into immigration enforcement proceedings. They make their claims under the law. If those claims don't prevail, they are promptly removed from the United States."<sup>507</sup>
- **5/1/22:** "Do you know what 'release' means, Bret? Because release doesn't mean just let go into the United States. It means, if we do not detain individuals, they're placed on alternatives to detention, and they are in immigration enforcement proceedings. And if they do not appear for their immigration enforcement proceedings, they are a priority for enforcement action."<sup>508</sup>
- **5/1/22:** "What happens now is, individuals are either expelled under the Title 42 authority, or they are placed in immigration enforcement proceedings and they are removed if they do not have a valid claim under our law to remain."<sup>509</sup>
- **5/11/23:** "People who cross our border unlawfully and without a legal basis to remain will be promptly processed and removed."<sup>510</sup>

<sup>503</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Fiscal Year 2021 Enforcement Lifecycle Report*, by Nadwa Mossad, et. al., 16, November 2022, [https://www.dhs.gov/sites/default/files/2022-12/2022\\_1114\\_pley\\_enforcement\\_lifecycle\\_report\\_fy2021.pdf](https://www.dhs.gov/sites/default/files/2022-12/2022_1114_pley_enforcement_lifecycle_report_fy2021.pdf).

<sup>504</sup> Ibid.

<sup>505</sup> Callie Patteson, "DHS Secretary Alejandro Mayorkas Says 'Borders Are Not Open,'" *New York Post*, September 20, 2021, <https://nypost.com/2021/09/20/dhs-secretary-alejandro-mayorkas-says-borders-are-not-open/>.

<sup>506</sup> U.S. Department of Homeland Security, *Memorandum: Guidelines for the Enforcement of Civil Immigration Law*, September 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>507</sup> Glenn Kessler, "Mayorkas's Claim That Undocumented Immigrants Are 'Promptly Removed,'" *The Washington Post*, May 5, 2022, <https://www.washingtonpost.com/politics/2022/05/05/mayorkas-claim-that-undocumented-immigrants-are-promptly-removed/&cd=3&hl=en&ct=cnk&gl=us/>.

<sup>508</sup> Ibid.

<sup>509</sup> "'Do Not Come': Secretary Mayorkas's Message To Migrants," *CNN*, May 1, 2022, <https://www.cnn.com/videos/politics/2022/05/01/mayorkas-full.cnn>.

<sup>510</sup> The White House, "Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas," May 11, 2023, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.



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Mayorkas has been dishonest in several ways with this falsehood. First, it's incorrect to categorically claim that if "you come to the United States illegally, you will be returned" under his policies—as the massive number of illegal aliens unlawfully paroled or otherwise released into the country on his watch demonstrates.<sup>511</sup>

Second, placing an illegal alien into "immigration enforcement proceedings" does not mean that alien has been, or will imminently be, removed from the country. Rather, the alien is likely to remain in the country during immigration proceedings, which can take years to complete. During that time, there is little assurance the alien will continue to appear in court or ultimately be deported if ordered removed. Mayorkas knows this.

Third, illegal aliens are certainly not promptly removed, as the Lifecycle Report and NDD clearly show. Further, many of those who have committed crimes are not "a priority" for Mayorkas' DHS, based on his own guidance to ICE.

### **False Claim 8: Inaccurate Accounts of Expulsions**

**The Facts:** Many of Mayorkas' claims about the expulsion of illegal aliens are often at odds with the truth. Specifically, early in the crisis, Mayorkas made claims that DHS was consistently expelling illegal aliens under Title 42, when in reality, expulsion rates for family units in particular were dropping precipitously.

In December 2020, around 75 percent of family units were being expelled.<sup>512</sup> In February 2021, Biden's first full month in office, the number was just 41 percent,<sup>513</sup> and a subsequent report from Axios showed that from March 14-21, 2021, just 13 percent of family units were sent back.<sup>514</sup>

Washington Post reporter Nick Miroff also noted the drop, tweeting, "It's no longer true that 'most' families are being expelled under Title 42."<sup>515</sup>

Former CBP Acting Commissioner Morgan has gone so far as to say of Mayorkas' claims about expulsions of single adults not posing a challenge for Border Patrol, "One wonders if Mayorkas ran this line by the men and women of the Border Patrol before saying it publicly, because if he had, he would've been embarrassed to make such a claim. ... [T]o suggest that dealing with this massive increase is not an operational challenge for the Border Patrol is to deny not just reality, but basic math."<sup>516</sup>

<sup>511</sup> Callie Patteson, "DHS Secretary Alejandro Mayorkas Says 'Borders Are Not Open,'" *New York Post*, September 20, 2021, <https://nypost.com/2021/09/20/dhs-secretary-alejandro-mayorkas-says-borders-are-not-open/>.

<sup>512</sup> Chad Wolf, Lora Ries, and Mark Morgan, "Fact-Checking DHS Secretary Alejandro Mayorkas' Comments on Border Crisis," *The Heritage Foundation*, March 25, 2021, <https://www.heritage.org/homeland-security/commentary/fact-checking-dhs-secretary-alejandro-mayorkas-comments-border-crisis>.

<sup>513</sup> *Ibid.*

<sup>514</sup> Stef Kight, "Scoop: Biden Administration Expelled Just 13% of Migrant Families in Past Week," *Axios*, March 23, 2021, <https://www.axios.com/2021/03/23/biden-administration-migrant-families-expelled>.

<sup>515</sup> Nick Miroff (@NickMiroff), "It's no longer true that 'most' families are being expelled under Title 42. Stats from a one-day snapshot I saw last week showed about 25 percent of families were processed under Title 42." Twitter, March 15, 2021, <https://twitter.com/NickMiroff/status/1371491174993772544?s=20>.

<sup>516</sup> "Heritage Experts Fact-Check Mayorkas' Dishonest, Misleading Statement on Border Crisis," *The Heritage Foundation*, March 16, 2021, <https://www.heritage.org/press/heritage-experts-fact-check-mayorkas-dishonest-misleading-statement-border-crisis>.



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### The Claims:

- **3/16/21:** “The expulsion of single adults does not pose an operational challenge for the Border Patrol...”<sup>517</sup>
- **3/16/21:** “We are expelling most single adults and families.”<sup>518</sup>
- **3/21/21:** “We are expelling families. We are expelling single adults. We have communicated and we will continue to communicate to the children, do not come.”<sup>519</sup>

### False Claim 9: Slander of Mounted Border Patrol Agents in Del Rio, Texas

**The Facts:** Mayorkas' dishonesty reached new heights in the fall of 2021, in the wake of the quickly debunked “whipping” allegations levied against Border Patrol agents of the Horse Patrol Unit in Carrizo Springs, Texas. The agents were later cleared of the false charges,<sup>520</sup> though they received undefined administrative punishments and were removed from the Horse Patrol, adversely impacting their careers and reputations.<sup>521</sup>

Mayorkas was a major reason why these agents were treated so terribly by the Biden administration, the press, and others in the political commentariat. In the days immediately following the incident, he took to cable news with such incendiary statements as, “We are very troubled by what we have seen,” and “One cannot weaponize a horse to aggressively attack a child.”<sup>522</sup> Mayorkas told CNN in the same segment, “I was horrified by what I saw”—just seconds after promising an investigation that would be driven by facts, not politics.<sup>523</sup>

Most shamefully, on the morning of Friday, Sept. 24, 2021, nearly a week after the events in question, Mayorkas was informed by DHS assistant secretary for public affairs, Marsha Espinosa, of eyewitness reports that no whipping had occurred in Del Rio.<sup>524</sup> However, despite this information, several hours later Mayorkas went to the White House podium and further denigrated the men of the Horse Patrol, saying their behavior “painfully conjured up the worst elements of our nation’s ongoing battle against systemic racism.”<sup>525</sup>

<sup>517</sup> U.S. Department of Homeland Security, News, *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, March 16, 2021, <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

<sup>518</sup> *Ibid.*

<sup>519</sup> “Interview with Gov. Asa Hutchinson (R-AR); Interview with Rep. Michelle Steel (R-CA); Interview with Sen. Richard Durbin (D-IL); Interview with U.S. Homeland Security Secretary Alejandro Mayorkas; Interview with Rep. Young Kim (R-CA),” *CNN Transcripts*, March 21, 2021, <https://transcripts.cnn.com/show/sotu/date/2021-03-21/segment/01>.

<sup>520</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Office of Professional Responsibility, *Report of Investigation*, 5, July 8, 2022, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

<sup>521</sup> Callie Patteson, Samuel Chamberlain, and MaryAnn Martinez, “Biden Admin Admits Border Agents Did Not ‘Whip’ Migrants, Punishes Them Anyway,” *New York Post*, July 8, 2022, <https://nypost.com/2022/07/08/border-agents-falsely-accused-of-whipping-migrants-punishment/>.

<sup>522</sup> “‘Horrified’: Mayorkas Reacts to Disturbing US Border Patrol Video,” *CNN*, September 21, 2021,

<https://www.cnn.com/videos/politics/2021/09/21/mayorkas-reacts-to-border-patrol-del-rio-texas-horse-video-sot-keilar-new-day-vpx.cnn>.

<sup>523</sup> *Ibid.*

<sup>524</sup> Bill Melugin and Adam Shaw, “Mayorkas Alerted That No Haitian Migrants Were ‘Whipped’ Hours Before WH Press Conference,” *Fox News*, October 12, 2022, <https://www.foxnews.com/politics/mayorkas-alerted-haitian-migrants-whipped-hours-wh-press-conference>.

<sup>525</sup> Adam Shaw, “Mayorkas Doubles Down on Border Patrol Criticism, Even As ‘Whip’ Narrative Crumbles,” *Fox News*, September 24, 2021, <https://www.foxnews.com/politics/mayorkas-doubles-down-border-patrol-criticism-whip-narrative>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

On top of his slanderous accusations, Mayorkas promised Congress on Sept. 22, 2021, that the investigation into the events in Del Rio would be completed in “days, not weeks.”<sup>526</sup> DHS did not release the report until July 8, 2022.<sup>527</sup>

Joel Martinez, then-acting chief patrol agent of the Border Patrol's Laredo Sector, told House Committee on Homeland Security staff in June 2023 that Mayorkas' slander of the agents had negatively affected agents across the force, saying the incident “got blown way out of proportion. We never whipped anybody. And, regardless of what really happened, it was never really cleared up, and that takes a toll on our agents, right?”<sup>528</sup>

When asked by New York Rep. Anthony D'Esposito during congressional testimony how Border Patrol agents felt as they watched Mayorkas throw them under the bus, former Border Patrol Chief Scott described it as “a kick in the gut” that “damaged morale beyond anything that could be imagined.”<sup>529</sup>

### **The Claims:**

- **9/22/21:** “The facts will drive the actions that we take. We ourselves will pull no punches and we need to conduct this investigation thoroughly, but very quickly. It will be completed in days and not weeks. I wanted to ensure this committee, and you, Mr. Chairman, and Mr. Ranking Member, of that fact.”<sup>530</sup>
- **9/24/21:** “We know that those images painfully conjured up the worst elements of our nation's ongoing battle against systemic racism. ... First of all, the images, as I expressed earlier—the images horrified us in terms of what they suggest and what they conjure up, in terms of not only our nation's history, but, unfortunately, the fact that that page of history has not been turned entirely. And that means that there is much work to do, and we are very focused on doing it.”<sup>531</sup>

<sup>526</sup> Kevin Johnson, “Mayorkas Vows Swift Probe into Agents on Horseback at Texas Border,” *USA Today*, September 22, 2021,

<https://www.usatoday.com/story/news/politics/2021/09/22/photos-border-patrol-using-horse-reins-whips-prompts-dhs-probe/5812845001/>.

<sup>527</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Office of Professional Responsibility, *CBP Office of Professional Responsibility – Del Rio Horse Patrol Unit Investigation Report*, July 8, 2022, <https://www.cbp.gov/document/report/cbp-office-professional-responsibility-del-rio-horse-patrol-unit-investigation>.

<sup>528</sup> Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, June 1, 2023.

<sup>529</sup> “Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 2:27:07, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=8827s>.

<sup>530</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *Worldwide Threats To The Homeland: 20 Years After 9/11*, 117th Cong., 1st sess., September 22, 2021, 11, <https://www.congress.gov/117/chrg/CHRG-117hhrg46377/CHRG-117hhrg46377.pdf>.

<sup>531</sup> Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas,” September 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/>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### **False Claim 10: DHS Has “Effectively Managed” the Self-Inflicted Border Crisis**

**The Facts:** Almost as absurd as claiming the border is secure is suggesting that Mayorkas' DHS has “effectively managed” the very border crisis the Biden administration intentionally created.

- More than 5.4 million encounters at the Southwest border, and nearly 6.5 million nationwide;<sup>532</sup>
- More than 1.5 million known gotaways since FY21;<sup>533</sup>
- Nearly 390,000 encounters of UACs,<sup>534</sup> many of them ultimately neglected, abused, or trafficked upon arrival;<sup>535</sup>
- More than 407,000 criminal aliens at large in American communities;<sup>536</sup>
- A record number of fentanyl poisonings in the United States,<sup>537</sup> largely driven by record amounts of the drug flooding across the Southwest border;<sup>538</sup>
- Individuals from more than 160 countries being apprehended at the border;<sup>539</sup>
- Ten straight months exceeding 200,000 encounters at the Southwest border;<sup>540</sup>
- A 533-percent increase in the number of Border Patrol apprehensions of Chinese nationals at the Southwest border in the first eight months of FY23 compared to all of FY22;<sup>541</sup> and
- Shuttering international bridges handling hundreds of thousands of commercial vehicles annually because CBP of personnel shifts to help process illegal aliens.<sup>542</sup>

If this is “effective,” Americans should shudder to think what “ineffective” looks like.

Despite these numbers, Mayorkas even told South Carolina Sen. Lindsey Graham during a November 2021 hearing, when asked how he would grade his own performance on the border crisis, “I’m a tough grader on myself. And I give myself an ‘A’ for effort, investment in mission, and support of our workforce.”<sup>543</sup>

<sup>532</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Nationwide Encounters, July 18, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>533</sup> MaryAnn Martinez and Stephanie Pagonis, “530K Illegal Migrants Sneaked into US Since October: CBP,” *New York Post*, May 10, 2023, <https://nypost.com/2023/05/10/530k-illegal-migrants-have-border-agents-since-start-of-2023/>.

<sup>534</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>535</sup> Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warnings,” *New York Times*, April 17, 2023, <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>.

<sup>536</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 65, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf).

<sup>537</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, *Estimates of Drug Overdose Deaths Involving Fentanyl, Methamphetamine, Cocaine, Heroin, and Oxycodone: United States, 2021*, May 2023, <https://www.cdc.gov/nchs/data/vsrr/vsrr027.pdf>.

<sup>538</sup> Elissa Salamy, “Cartels ‘Pouring’ Drugs Into the US, Says Border Expert,” *The National Desk*, August 23, 2022, <https://thenationaldesk.com/news/americas-news-now/cartels-pouring-drugs-into-the-us-says-border-expert-mexico-china-fentanyl-crisis-mark-morgan-cdc-overdose-immigration-migrant>.

<sup>539</sup> Robert Sherman, “Migrants From More Than 160 Countries Encountered At Border,” *NewsNation*, October 6, 2022, <https://www.newsnationnow.com/us-news/immigration/migrants-from-more-than-160-countries-encountered-at-border/>.

<sup>540</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>541</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>542</sup> Vic Kolenc, “Border Cargo Operations Restored, But Car Crossings At El Paso-Area Ports Remain Difficult,” *El Paso Times*, April 18, 2023, <https://www.elpasotimes.com/story/money/business/2023/04/18/feds-cargo-inspections-restored-at-bridge-of-americas-zaragoza-el-paso-ports/70126240007/>.

<sup>543</sup> Tim Hains, “DHS Secretary Mayorkas Grades Biden Immigration Policy As ‘A For Effort,’” *RealClearPolitics*, video, November 16, 2021, [https://www.realclearpolitics.com/video/2021/11/16/dhs\\_secretary\\_mayorkas\\_grades\\_biden\\_immigration\\_politics\\_as\\_a\\_and\\_on\\_the\\_road\\_to\\_success.html](https://www.realclearpolitics.com/video/2021/11/16/dhs_secretary_mayorkas_grades_biden_immigration_politics_as_a_and_on_the_road_to_success.html).



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An illustrative example of how Mayorkas' DHS claims “effective” management of the border crisis can be found in a May 2021 report, following DHS' release of images from a processing tent facility in Donna, Texas. The department used the photos, which showed very few UACs in a facility that weeks prior had been overcrowded, as proof that its strategy was working.<sup>544</sup>

However, Texas Democratic Rep. Henry Cuellar told one outlet that it was simply another shell game, saying, “All they're doing is they're moving kids from one tent to the other tent and saying, ‘Oh, they're not in the Border Patrol (custody),’ but they're right next door. They're just next door in HHS.”<sup>545</sup> In other words, “the photos are misleading because [Cuellar] says the unaccompanied migrant children actually still are at the same sprawling tent compound in Dona [sic], but just in other tents that are operated by the U.S. Department of Health and Human Services.”<sup>546</sup>

Far from “effectively managing” the border, Mayorkas and Biden's policies have created a massive illegal immigration crisis of epic proportions. The total costs to the country, both in terms of human life and financial devastation, will be addressed in subsequent phases of this investigation.

### The Claims:

- **6/25/21:** “As everyone knows, we faced significant challenges back in March; we've made extraordinary progress.”<sup>547</sup>
- **4/27/22:** “Yet, we have effectively managed an unprecedented number of non-citizens seeking to enter the United States.”<sup>548</sup>
- **4/28/22:** “Yet, we have effectively managed an unprecedented number of non-citizens seeking to enter the United States...”<sup>549</sup>
- **5/4/22:** “Only Congress can fix this. Yet we have effectively managed an unprecedented number of noncitizens seeking to enter the United States.”<sup>550</sup>
- **1/6/23:** “We have seen the situation at the border managed in an orderly way, we have seen it in extraordinarily challenging circumstances as well. You can rest assured, Poppy, that we're doing everything that we possibly can to build a system that provides humanitarian relief in a safe and orderly way...”<sup>551</sup>

<sup>544</sup> Sandra Sanchez, “DHS Photos of Empty Processing Facility for Migrant Youth Are Misleading, Border Congressman Says,” *Border Report*, May 5, 2021, <https://www.borderreport.com/immigration/dhs-misleads-with-photos-of-empty-processing-facility-for-migrant-youth-border-congressman-says/>.

<sup>545</sup> *Ibid.*

<sup>546</sup> *Ibid.*

<sup>547</sup> The White House, “Remarks by Vice President Harris, Secretary of Homeland Security Mayorkas, Chairman Durbin, and Representative Escobar in Press Gaggle,” June 25, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/25/remarks-by-vice-president-harris-secretary-of-homeland-security-mayorkas-chairman-durbin-and-representative-escobar-in-press-gaggle/>.

<sup>548</sup> U.S. Congress, House of Representatives, Committee on Homeland Security, *A Review of the Fiscal Year 2023 Budget Request for the Department of Homeland Security*, 117th Cong., 2nd sess., April 27, 2022, 12, <https://www.congress.gov/117/chrg/CHRG-117hrg48215/CHRG-117hrg48215.pdf>.

<sup>549</sup> U.S. Congress, House of Representatives, Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 117th Cong., 2nd sess., April 28, 2022, 11, <https://www.congress.gov/117/chrg/CHRG-117hrg49702/CHRG-117hrg49702.pdf>.

<sup>550</sup> “A Review of the President's Fiscal Year 2023 Funding Request for the U.S. Department of Homeland Security,” *U.S. Senate Committee on Appropriations video*, 35:00, May 4, 2022, <https://www.appropriations.senate.gov/hearings/a-review-of-the-presidents-fiscal-year-2023-funding-request-for-the-us-department-of-homeland-security>.

<sup>551</sup> Zachary Leeman, “CNN's Poppy Harlow Pushes Mayorkas After He Touts Border Successes: ‘If That's Not a Crisis, Secretary, What Is?’,” *Mediaite*, January 6, 2023, <https://www.mediaite.com/tv/cnns-poppy-harlow-pushes-mayorkas-after-he-touts-border-successes-if-thats-not-a-crisis-secretary-what-is/>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### **False Claim 11: The Border Crisis Does Not Affect CBP's Counter-Narcotics Efforts**

**The Facts:** Mayorkas made an incredible statement earlier this year when he tried to de-link the historic border crisis from CBP's efforts to counter cartels' drug-smuggling operations. The record number of illegal aliens flooding across the border have forced thousands of Border Patrol agents off the frontline security mission and into administrative roles to process and release these individuals into the country as quickly as possible.

With fewer Border Patrol agents in the field, the cartels have seized the opportunity to move more people and drugs across the increasingly unguarded border. The record amounts of fentanyl being intercepted between ports of entry are further proof of this operational reality.<sup>552</sup>

During Mayorkas' testimony before the House Committee on Homeland Security in April 2023, Chairman Green reminded the secretary, "The cartels are overwhelming the crossing sites, tying up the Border Patrol, and then they're slipping the drugs, and the human trafficking, and the nefarious folks they want to get in the U.S., around CBP when they're tied up. It's a distraction. In the military, we'd call it a 'neutralizing attack.'"<sup>553</sup>

Before the House Committee on Homeland Security in June 2023, former Border Patrol Chief Scott outlined the cartels' strategy and how they have taken advantage of Mayorkas' policies:

"So historically, the cartels have used any distraction they can and honestly, a lot of people have a hard time picturing this so just think of sports. You fake a play to the right, you run the real play to the left. That's what the cartels have done.

[...]

"Now, unfortunately, we've given them millions of distractions. We've given them right now what 3,500 distractions a day that the Border Patrol is having to go deal with so that they can bring anything they want in. It's lowered their overhead, it's lowered their risk, and it's a direct impact on the ability to get narcotics in cities in the U.S. and other threats."<sup>554</sup>

John Modlin, the Border Patrol's chief patrol agent for the Tucson Sector in Arizona, testified to Congress in a February 2023 hearing that the cartels use these tactics, saying "smuggling organizations split large groups of migrants into many smaller groups. These small groups are then directed to illegally cross the border all at once and at different locations, effectively saturating the area with migrants and exhausting our response capability."<sup>555</sup> These tactics also ensure the cartels can move narcotics across the border.

<sup>552</sup> Mark Morgan and Tom Hogan, "Five Takeaways From Biden Border Patrol Chief's Revealing Testimony," *The Heritage Foundation*, March 21, 2023, <https://www.heritage.org/homeland-security/commentary/five-takeaways-biden-border-patrol-chiefs-revealing-testimony>.

<sup>553</sup> "A Review of the Fiscal Year 2024 Budget Request for the Department of Homeland Security," *Homeland Security Committee Events*, YouTube video, 37:38, April 19, 2023, <https://www.youtube.com/watch?v=wjBoiPO2fNw&t=2258s>.

<sup>554</sup> "Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis," *Homeland Security Committee Events*, YouTube video, 2:52:57, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=10377s>.

<sup>555</sup> "On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents," *House Oversight and Accountability Committee*, YouTube video, 29:30, February 7, 2023, <https://oversight.house.gov/hearing/on-the-front-lines-of-the-border-crisis-a-hearing-with-chief-patrol-agents/>.



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In March 2023, Mayorkas told Sen. John Cornyn, R-Tex., that he was “not aware of that as a strategy,”<sup>556</sup> despite recent testimony from Attorney General Garland indicating that the attorney general was aware that cartels were employing such tactics.<sup>557</sup>

Former DHS Acting Secretary Wolf told Rep. Dale Strong, R-Ala., in June 2023, “I can’t imagine how he’s not aware of those tactics. ... I can’t imagine why he would not know that just by visiting the border, talking to Border Patrol agents ... [F]rankly, it’s just common knowledge that those are the tactics.”<sup>558</sup>



### **WATCH: Mayorkas Admits He Does Not Know the Cartels' Basic Smuggling Strategy**

It is nearly impossible to believe Mayorkas could be so incompetent as to not be aware of this basic cartel strategy. It is far more likely this was simply another lie to Congress under oath.

As Chairman Green has articulated, both lying and simple ignorance are legitimate reasons for this Cabinet secretary to lose his job.

When Border Patrol agents are pulled off the line, away from their primary mission—securing the border by apprehending illegal aliens and deadly narcotics—the fight to stop the latter from entering and devastating our communities is that much harder.

DHS' own assessments make clear that Mayorkas should not be in the dark about how the cartels have weaponized and capitalized on the border crisis sparked by his policies.

<sup>556</sup> “Watch Live: DHS Secretary Mayorkas Testifies Before Senate Judiciary Committee Hearing,” *PBS NewsHour*, YouTube video, 1:13:55, March 28, 2023, <https://www.youtube.com/watch?v=-U7tg1Fyug&t=4435s>.

<sup>557</sup> Senator John Cornyn, “Senator Cornyn Presses AG Garland on Justice Department’s Response to Fentanyl Crisis,” C-SPAN video, March 1, 2023, <https://www.c-span.org/video/?c5059611/senator-cornyn-presses-ag-garland-justice-departments-response-fentanyl-crisis>.

<sup>558</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 2:47:18, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=10038s>.



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Moreover, in May 2022, Florida Attorney General Ashley Moody released a heavily redacted CBP document demonstrating that officials were aware of the cartels' intimate involvement in facilitating, expanding, and profiting from the border crisis Mayorkas and Biden have created:<sup>559</sup>

“Irregular migration flows to the United States, in part but not solely enabled by transnational organized crime networks and actors have and will likely increase in fiscal year (FY) 2021 as economic opportunities emerge and migrant perceptions of U.S. immigration policies shift.

[...]

“[W]e assess that smuggling networks are very active in promoting the flow of migrants through Mexico as drug trafficking organizations maintain control of the primary trafficking corridors into the United States. The drug trafficking organizations' control of these corridors allows them to regulate the flow of migrants...TCOs will exploit migration flows and entrench themselves in the smuggling cycle. TCOs endanger vulnerable individuals, amass illicit profits that feed cartel violence in Mexico and along the border, and create a volatile border environment.”<sup>560</sup>

### The Claim:

- **1/4/23:** Washington Post reporter Miroff: “But I do want to ask you, does the extraordinary wave of migration that we are seeing across the southern border, record numbers of apprehensions that CBP is reporting every month, does it have an impact on the agency's ability to detect and stop illegal drugs from entering the country?”

Mayorkas: “No. No, it doesn't, Nick.”<sup>561</sup>

<sup>559</sup> State of Florida, Office of the Attorney General, *AG Moody Releases DHS Document Showing Biden Admin. Knows Drug Cartels are Controlling Illegal Migration and Profiting from Chaos at SW Border*, May 13, 2022, <https://www.myfloridalegal.com/newsrelease/ag-moody-releases-dhs-document-showing-biden-admin-knows-drug-cartels-are-controlling>.

<sup>560</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Overview of the Southwest Border*, Accessed on July 6, 2023, 2, 3, 5, <https://www.myfloridalegal.com/files/pdf/page/7C077C65BEDE74C685258841005FF57C/Mayorkas+Doc.pdf>, (obtained through a FOIA request and released by the Florida Attorney General).

<sup>561</sup> Washington Post Live, “Transcript: Cartel RX: The Fentanyl Epidemic with DHS Secretary Mayorkas,” *The Washington Post*, January 4, 2023, <https://www.washingtonpost.com/washington-post-live/2023/01/04/transcript-cartel-rx-fentanyl-epidemic-with-dhs-secretary-mayorkas/>.



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### **False Claim 12: DHS Is Expanding “Lawful Pathways” to Solve the Crisis**

**The Facts:** This is one of Mayorkas' most disingenuous rhetorical games to date. As was covered in a previous section about his refusal to enforce the law, Mayorkas has collaborated with others in the Biden administration to give illegal immigration the appearance of being lawful, i.e., “lawful pathways,” in particular using mass-parole to bring hundreds of thousands of individuals into the country who would otherwise have no claim to enter.<sup>562</sup>

Mayorkas' recent rhetoric about “lawful pathways” is the messaging component of this strategy. There is nothing lawful about mass parole of these individuals—it's simply an Orwellian attempt to unilaterally redefine the law.

It is also misleading to claim these measures are “working” to resolve the crisis at the Southwest border. After DHS implemented many of these “lawful pathways” early in 2023, encounter numbers remained extraordinarily high. In January and February 2023, following announcement of the CHNV and CBP One programs, CBP reported an average of more than 5,000 encounters at the Southwest border per day, and in March the number exceeded 6,400 per day.<sup>563</sup>

After dropping under 200,000 monthly encounters between January and March, these numbers once again exceeded that mark in April and May.<sup>564</sup> Though encounters with individuals of certain nationalities dropped between January and March—particularly Cubans, Haitians, Nicaraguans, and Venezuelans—encounters of those nationalities nearly tripled in April 2023.<sup>565</sup>

Ultimately, the incentives to enter the United States without a lawful basis still remain, whether between the ports of entry or at them. As long as they do, the crisis will not be resolved.

Previous sections of this report have already demonstrated how Mayorkas is using these so-called “lawful pathways” in the wake of Title 42's end and through mass use of the CBP One app to play a massive shell game.<sup>566</sup>

Mayorkas building so-called “lawful pathways” suggests he believes that he has the authority to write the laws. He does not. The Constitution's fundamental principle of the separation of powers seems to mean nothing to this secretary.

Finally, Congress has already created numerous “lawful pathways” Mayorkas is required to follow, specifically the laws giving him the authority to detain and remove illegal aliens, those arriving at the Southwest border and already in the interior. He has chosen not to do so.

<sup>562</sup> U.S. Department of Homeland Security, News, *DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways*, May 10, 2023, <https://www.dhs.gov/news/2023/05/10/dhs-and-doj-finalize-rule-incentivize-use-lawful-immigration-pathways>.

<sup>563</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>564</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>565</sup> Ibid.

<sup>566</sup> Erin Dwinell, “Latest Border Encounter Numbers Expose Biden's Ports of Entry Bait-and-Switch,” *The Daily Signal*, March 17, 2023, <https://www.dailysignal.com/2023/03/17/latest-border-encounter-numbers-expose-bidens-ports-of-entry-bait-and-switch/>.



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### The Claims:

- **1/8/23:** “[W]e are building lawful pathways so people do not have to place their lives and their life savings in the hands of ruthless smugglers.”<sup>567</sup>
- **1/19/23:** “Working within a broken system in desperate need of legislative reform, two weeks ago we announced new lawful pathways for noncitizens seeking relief in the United States, accompanied by a consequence regime for those who do not avail themselves of those processes. Since then, encounters from the targeted countries have dropped significantly.”<sup>568</sup>
- **1/25/23:** DHS press release titled, “Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures”, with the following quote from Mayorkas: “These expanded border enforcement measures are working.”<sup>569</sup>
- **5/11/23:** “President Biden has led the largest expansion of lawful pathways in decades. People from Cuba, Haiti, Venezuela, and Nicaragua have arrived through lawfully available pathways. And we reduced border encounters from these groups by 90 percent between December of last year and March of this year.”<sup>570</sup>

<sup>567</sup> “‘This Week’ Transcript 1-8-23: Sec. Alejandro Mayorkas, Rep. Scott Perry, Rep. Andy Barr and U.S. Capitol Police Officer Harry Dunn,” *ABC News*, January 8, 2023, <https://abcnews.go.com/Politics/week-transcript-1-8-23-sec-alejandro-mayorkas/story?id=96289853>.

<sup>568</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Remarks at the United States Conference of Mayors 91st Winter Meeting Remarks as Delivered*, January 19, 2023, <https://www.dhs.gov/news/2023/01/19/secretary-mayorkas-remarks-united-states-conference-mayors-91st-winter-meeting>.

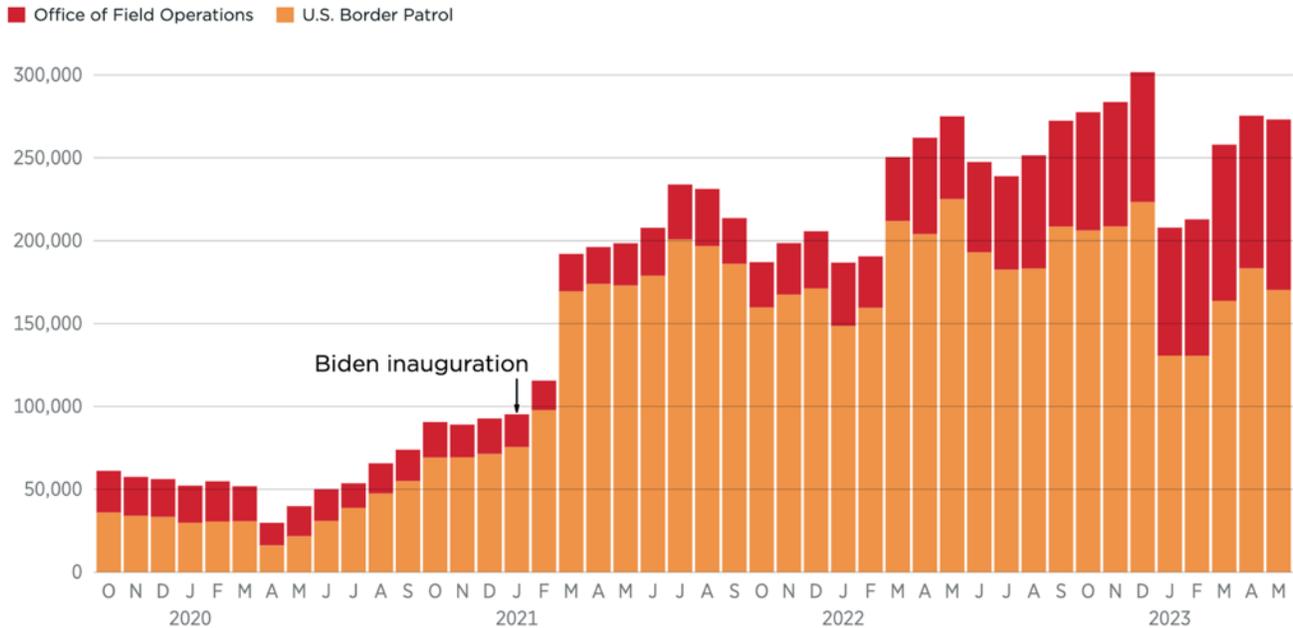
<sup>569</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection Newsroom, *Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures*, January 25, 2023, <https://www.dhs.gov/news/2023/01/25/unlawful-southwest-border-crossings-plummet-under-new-border-enforcement-measures>.

<sup>570</sup> The White House, “Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas,” May 11, 2023, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

### Monthly Unlawful Entry Encounters



Source: Heritage Foundation representation of CBP data<sup>571</sup>

### **False Claim 13: Border Crises Are an Annual Phenomenon**

**The Facts:** Another lie told by senior Biden administration officials early in the crisis was that the historic numbers of illegal aliens surging across the border were just part of an annual pattern of increased numbers based on the time of year. Biden himself made this claim in a 2021 press conference, saying, “It happens every single solitary year. There is a significant increase in the number of people coming to the border in the winter months of January, February, March. That happens every year.”<sup>572</sup>

Aside from the fact that Southwest border encounters actually decreased from November 2019 to March 2020, the scope of the increase is what is truly historic. March encounters increased more than 400 percent from 2020 to 2021.<sup>573</sup> March 2018 to March 2021, a 244-percent increase.<sup>574</sup> Even comparing March 2019 to March 2021 shows a 67-percent increase in monthly encounters.<sup>575</sup>

<sup>571</sup> “Illegal Alien Encounters Surge and Shift Under Biden,” The Heritage Foundation, June 21, 2023, <https://datavisualizations.heritage.org/immigration/illegal-alien-encounters-surge-and-shift-under-biden/>.

<sup>572</sup> The White House, “Remarks by President Biden in Press Conference,” March 25, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/25/remarks-by-president-biden-in-press-conference/>.

<sup>573</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>574</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Border Migration FY2018*, September 28, 2022, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2018>.

<sup>575</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Border Migration FY 2019*, November 14, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.



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Border crossings even skyrocketed in the summer months, when numbers traditionally are expected to *decline* due to the intense heat.<sup>576</sup> In July 2021, encounters totaled 213,593, while a year later in August, they exceeded 204,000.<sup>577</sup> Mayorkas knew from the start—this was not “seasonal.”

It should also be noted that, in contrast to his statement below about the “annual phenomenon of irregular migration,” Mayorkas has repeatedly claimed that the world, particularly the Western Hemisphere, is witnessing a unique surge in movement across borders.<sup>578</sup> For example, on May 11, 2023, he told the White House press corps that the world was experiencing “a global displacement of people that is the greatest since at least World War II.”<sup>579</sup> He told CNN in March 2023 that the surge was “the greatest level of migration that we’ve had in the hemisphere in decades and decades.”<sup>580</sup> On March 16, 2021, he even admitted, “We are on pace to encounter more individuals on the southwest border than we have in the last 20 years.”<sup>581</sup>

Mayorkas cannot have it both ways—the border crisis cannot simultaneously be simply a regular, annual phenomenon to be dealt with, and also the result of an unprecedented wave of global movement. One of these is a dishonest statement.

### **The Claim:**

- **9/6/21:** “We are addressing, of course, the annual phenomenon of irregular migration, and the significant challenge at our Southern Border.”<sup>582</sup>

### **False Claim 14: Poverty, Violence, Climate Change, Corruption Caused the Border Crisis**

**The Facts:** Much like Mayorkas’ efforts to shift blame for the crisis onto the Trump administration, he has also tried to deflect responsibility onto any number of other global issues. The truth is that all of the conditions Mayorkas has blamed—poverty, corruption, gang violence—have been problems for decades, nor do they necessarily explain the rise in encounters of individuals from outside Central and South America. Even DHS’ latest Quadrennial Homeland Security Review calls “food insecurity, violence, corruption, lack of opportunities, and systemic

<sup>576</sup> John Gramlich and Alissa Scheller, “What’s happening at the U.S.-Mexico border in 7 charts,” *Pew Research Center*, November 9, 2021, <https://www.pewresearch.org/short-reads/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/>.

<sup>577</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>578</sup> The White House, “Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas,” May 11, 2023, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.

<sup>579</sup> *Ibid.*

<sup>580</sup> “Mayorkas: US Immigration System Is ‘Completely Broken,’” *CNN*, 1:05, March 8, 2023, <https://www.cnn.com/videos/tv/2023/03/08/amanpour-alejandro-mayorkas.cnn>.

<sup>581</sup> U.S. Department of Homeland Security, News, *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, March 16, 2021, <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

<sup>582</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Delivers Remarks at the National Press Club*, September 9, 2021, <https://www.dhs.gov/news/2021/09/09/secretary-mayorkas-delivers-remarks-national-press-club>.



## SECTION 4: MAYORKAS' FALSE AND DISHONEST STATEMENTS

poverty” in Latin American and Caribbean nations “long-standing factors.”<sup>583</sup> If they are “long-standing factors,” they cannot also be uniquely blamed for the current historic crisis.

Mayorkas has blamed COVID-19 for pushing more individuals to the Southwest border, but during the pandemic itself, monthly encounters dropped as low as 17,000, remaining at low levels for months. Also on Mayorkas’ list is climate change. The fact is that Biden and Mayorkas’ policies are the catalyst for this crisis. No amount of scapegoating will change that.

### **The Claims:**

- **8/12/21:** “There are several reasons for the rise in migrant encounters at the Southern border. Worsening conditions, of course, in the countries of origin, including poverty, a rise in violence, and corruption.”<sup>584</sup>
- **8/12/21:** “We’re facing a serious challenge at our Southern border, and the challenge is of course made more acute, more difficult because of the COVID-19 pandemic.”<sup>585</sup>
- **10/12/21:** “The downturn in economies, the attendant rise in violence, the downturn in economies made more acute by reason of the impact of the COVID-19 pandemic, the suppression of any humanitarian relief over the past number of years, and the pent-up thirst for relief among many different populations. I think an accumulation of factors contributes to the rise in migration that we’ve seen.”<sup>586</sup>
- **7/3/22:** “The migration that is occurring throughout the hemisphere is reflective of the economic downturn, increase in violence throughout the region, the result of the COVID-19 pandemic, the results of climate change...”<sup>587</sup>
- **3/7/23:** “The challenge of extreme weather events, the gravity and frequency, not just here in the United States, but internationally and their consequences of triggering migration, the greatest level of migration that we’ve had in the hemisphere in decades and decades.”<sup>588</sup>

<sup>583</sup> U.S. Department of Homeland Security, News, *2023 Quadrennial Homeland Security Review (QHSR)*, April 20, 2023, 19, <https://www.dhs.gov/publication/2023-quadrennial-homeland-security-review-qhsr>.

<sup>584</sup> U.S. Department of Homeland Security, News, *Secretary Mayorkas Delivers Remarks in Brownsville, Texas*, August 12, 2021, <https://www.dhs.gov/news/2021/08/12/secretary-mayorkas-delivers-remarks-brownsville-texas>.

<sup>585</sup> Ibid.

<sup>586</sup> “Mayorkas: Title 42 ‘Is Not an Immigration Policy That We in This Administration Would Embrace,’” *Yahoo News*, October 12, 2021, <https://news.yahoo.com/mayorkas-dhs-title-42-immigration-095900696.html>.

<sup>587</sup> “‘This Week’ Transcript 7-3-22: Rep. Liz Cheney & Secretary Alejandro Mayorkas,” *ABC News*, July 3, 2022, <https://abcnews.go.com/Politics/week-transcript-22-rep-liz-cheney-secretary-alejandro/story?id=86127088>.

<sup>588</sup> “Mayorkas: US Immigration System Is ‘Completely Broken,’” *CNN*, 1:05, March 8, 2023, <https://www.cnn.com/videos/tv/2023/03/08/amanpour-alejandro-mayorkas.cnn>.



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### **False Claim 15: The Trump Administration Did Not Prepare DHS for the COVID-19 Pandemic**

**The Facts:** Early in his tenure, Mayorkas claimed the previous administration had done nothing to prepare CBP to deal with the COVID-19 pandemic. Aside from implementing Title 42, which Mayorkas and the Biden administration spent months trying to end, this is untrue, as former DHS Acting Secretary Wolf made explicitly clear shortly after Mayorkas' remarks were published:

“This statement is a slap in the face to the men and women at DHS, who worked tirelessly to put plans in place to deal with the challenge of a pandemic on top of keeping our immigration system running. We implemented extensive plans – to include vaccine distribution to frontline officers when the vaccine would be made available – to ensure our frontline workers would be protected. We worked with other federal agencies to ensure Title 42 would be available to our immigration enforcement officials. We knew that putting illegal aliens in crowded Border Patrol facilities during COVID was not the answer. Unfortunately, the Biden administration believes it is.”<sup>589</sup>

Wolf also said, “We provided the transition team with extensive briefings on the border and the tools we had in place to address illegal crossings. We warned them about the consequences of removing these policies. ... They knew it all and still rushed to dismantle the system for political reasons.”<sup>590</sup>

#### **The Claim:**

- **3/16/21:** “And, there were no plans to protect our front-line personnel against the COVID-19 pandemic. There was no appropriate planning for the pandemic at all.”<sup>591</sup>

### **False Claim 16: Republican Criticism Is Fueling Cartel Profits**

**The Facts:** One of Mayorkas' most sinister lies is blaming his political opponents for the rise in cartel profits on his watch. As shown below, he has claimed that Republican criticism of his and Biden's open-borders policies is driving cartel messaging operations. The cartels are not just savage organizations, but highly sophisticated and informed groups that closely track the political and legal environments in the United States.

They know full well the laws of the United States and the policies of Mayorkas' DHS—and how they can be exploited, as a later phase of the investigation will document. They have taken advantage of the opportunity those policies have presented.

In reality, Republican criticism has nothing to do with the crisis—the evidence shows that the crisis is the result of open-borders policies that have been taken full advantage of by the cartels.

<sup>589</sup> “Heritage Experts Fact-Check Mayorkas' Dishonest, Misleading Statement on Border Crisis,” The Heritage Foundation, March 16, 2021, <https://www.heritage.org/press/heritage-experts-fact-check-mayorkas-dishonest-misleading-statement-border-crisis>.

<sup>590</sup> Ibid.

<sup>591</sup> U.S. Department of Homeland Security, News, *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, March 16, 2021, <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.



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Mayorkas' claims are an attempt to distort the truth and deflect responsibility for the role his policies have played in enriching and empowering the cartels.

The experiences of those who have been released into the country after crossing illegally are a far more powerful inducement to those considering making the journey than any domestic political debates. Aliens who have been released often contact family members and friends in their home countries, telling them they have been released, and when those back home see others who have made it, many are also incentivized to make the journey.<sup>592</sup>

The accounts of senior Border Patrol agents affirm this fact.<sup>593</sup> In a May 2023 interview with members of the House Committee on Homeland Security, Jason Owens, the chief patrol agent for the Border Patrol's Del Rio Sector, told the committee, "I believe that the migrants communicate the entirety of their experience to their friends and family back home, and that would include what their experience was with whatever processing pathway they were put into."<sup>594</sup>

When asked if, in his experience, illegal aliens relay what happens to them throughout the apprehension and detention process to family members and friends, Aaron Heitke, chief patrol agent for the San Diego Sector, affirmed the same during an interview with the House Committee on Homeland Security.<sup>595</sup>

Former Border Patrol Chief Scott told the House Committee on Homeland Security in June 2023, "[E]very gotaway and then every person released into the United States does exactly what you would do—they call home. And they tell their family and friends where they're at. They check in. Their friends and family hear that, that message gets out, and then more come."<sup>596</sup>



### **[WATCH: Venezuelan Tells Journalist He Left Colombia After Seven Years Because Friends Had Made It Into the United States](#)**

<sup>592</sup> Todd Bensman, "How Selfies Fuel Rise In Illegal Migrants," *New York Post*, August 18, 2022, <https://nypost.com/2022/08/18/how-selfies-fuel-rise-in-illegal-migrants/>.

<sup>593</sup> Jason Owens, Transcript Interview with the House Committee on Homeland Security, May 5, 2023.

<sup>594</sup> *Ibid.*

<sup>595</sup> Aaron Heitke, Transcript Interview with the House Committee on Homeland Security, May 9, 2023.

<sup>596</sup> "Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis," *Homeland Security Committee Events*, YouTube video, 2:49:42, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=10182s>.



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Simple logic dictates that pushing disinformation would quickly prove devastating to the cartels' business model. As one veteran border reporter has written:

“Telling a lie that the border is easily breached when it is not might work once or twice on the first fools — But not millions of times. Lying would kill business instantly, while happy immigrants who paid their smuggling fees and send back videos of their children enrolling in Chicago Public Schools keeps the cash register ringing for months and years.”<sup>597</sup>

### **The Claim:**

- **10/15/2022:** “The political cry that the border is open is music to the smugglers' ears, because they take that political rhetoric and they market it.”<sup>598</sup>



**[WATCH: Venezuelans Tell Journalist at the Border They Have Family Who Were Allowed into the Country](#)**

<sup>597</sup> Todd Bensman, “Migrant Interviews Debunk Biden DHS’s False Talking Point About Cartel ‘Disinformation,’” *The Federalist*, May 26, 2023, <https://thefederalist.com/2023/05/26/migrant-interviews-debunk-biden-dhs-false-talking-point-about-cartel-disinformation/>.

<sup>598</sup> Timothy Nerozzi, “Mayorkas Claims Republicans Saying the Border Is ‘Open’ Is ‘Music to the Smugglers’ Ears,” *Fox News*, October 15, 2022, [https://www.foxnews.com/politics/mayorkas-claims-republicans-saying-the-border-is-open-is-music-to-the-smugglers-ears?intcmp=tw\\_fnc](https://www.foxnews.com/politics/mayorkas-claims-republicans-saying-the-border-is-open-is-music-to-the-smugglers-ears?intcmp=tw_fnc).



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### **False Claim 17: States Are Not Working with DHS on the Crisis**

**The Facts:** The states, especially those on the border, have been forced to deal with a historic border crisis sparked and maintained by Biden and Mayorkas' policies. These states have proactively moved to tackle the various consequences of the border crisis,<sup>599</sup> including pushing the Biden administration to change course on its disastrous policies. Perhaps no state has done more on its own to protect its citizens and security than Texas. Governor Greg Abbott, in particular, has tried repeatedly to work with the administration, to no avail.<sup>600</sup> Mayorkas' claims that Abbott has not "collaborated" with him are false.<sup>601</sup>

#### **The Claim:**

- **1/8/23:** "Well, Governor Abbott is not collaborating with the federal government on an issue that requires collaboration."<sup>602</sup>

### **False Claim 18: Safe Third Country Agreements Returned Illegal Aliens to Countries to Face Persecution**

**The Facts:** In an interview with former Fox anchor Chris Wallace, Mayorkas misled viewers about an effective Trump-era policy that helped reduce the number of fraudulent asylum claims.<sup>603</sup> The term "safe third country" agreement has been used as a shorthand for a handful of policies dealing with returning individuals to other countries in the context of where and how they could claim asylum.

During the Trump administration, officials implemented a the safe third country policy, requiring individuals to make their asylum claims in the first safe country in which they arrived, rather than journey to the Southwest border to file those claims.<sup>604</sup> If they failed to do so, they were returned to the first safe country which they entered to claim asylum in that country.<sup>605</sup>

<sup>599</sup> Summer Concepcion, "Four GOP governors send National Guard to the southern border," *NBC News*, May 31, 2023, <https://www.nbcnews.com/politics/immigration/va-gov-glenn-youngkin-sends-national-guard-southern-border-rcna87048>.

<sup>600</sup> Governor Greg Abbott, *Letter to Kamala D. Harris*, April 9, 2021, <https://gov.texas.gov/uploads/files/press/O-HarrisKamala202104090287.pdf>; and Governor Greg Abbott, *Letter to Joseph R. Biden*, November 16, 2022, [https://gov.texas.gov/uploads/files/press/BidenJoseph\\_11.16.22.pdf](https://gov.texas.gov/uploads/files/press/BidenJoseph_11.16.22.pdf); and Office of the Texas Governor, Greg Abbott, *Governor Abbot Hand-Delivers Letter To President Biden At Border Visit*, January 8, 2023, <https://gov.texas.gov/news/post/governor-abbott-hand-delivers-letter-to-president-biden-at-border-visit>.

<sup>601</sup> *Ibid.*

<sup>602</sup> "This Week' Transcript 1-8-23: Sec. Alejandro Mayorkas, Rep. Scott Perry, Rep. Andy Barr and U.S. Capitol Police Officer Harry Dunn," *ABC News*, January 8, 2023, <https://abcnews.go.com/Politics/week-transcript-1-8-23-sec-alejandro-mayorkas/story?id=96289853>.

<sup>603</sup> "Trump administration dismantled 'safe' border policies, Biden rebuilding process: DHS Chief Mayorkas," 9:50, *Fox News*, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>604</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office for Immigration Review, Rule, "Asylum Eligibility and Procedural Modifications," *Federal Register* 84, no. 136 (July 16, 2019): 33829-33845, <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>.

<sup>605</sup> *Ibid.*



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Mayorkas was being dishonest when he said that under this policy, the Trump administration returned individuals to countries from which they were fleeing “persecution.” Also misleading was his use of the word “persecution” itself, as the vast majority of those arriving at the Southwest border do not qualify for asylum because they are not seeking refuge from persecution as defined by section 101 of the INA. In FY22, the asylum grant rate was just 13 percent, according to DOJ statistics, and is at the same level in FY23.<sup>606</sup>

### **The Claim:**

- **3/21/21:** “Safe Third Country Agreements is misnamed. There’s nothing safe about it. To return people to the very countries from which they are fleeing persecution.”<sup>607</sup>

### **False Claim 19: Biden Visited the Border Before 2023**

**The Facts:** There is little to no available evidence to demonstrate that Biden visited the Southwest border in his political career before January 2023. Even the Washington Post’s Glenn Kessler published a fact check in October 2021 to this effect, in which he wrote, “[W]e cannot find evidence that Biden at one point made a visit to the southern border. ... We did our own search through the Lexis-Nexis database and also could not find a record of a visit.”<sup>608</sup>

### **The Claim:**

- **1/6/23:** “The president knows the border very well...and he’s going to see the border not for the first time in his public service career this Sunday...”<sup>609</sup>

### **False Claim 20: DHS Under Mayorkas Used Title 42 to the “Fullest Extent” Possible**

**The Facts:** As this report has documented, the use of Title 42 authority was dramatically reduced on Mayorkas’ watch before it was eliminated altogether. Under the previous administration, Border Patrol agents made significant use of Title 42 authority.<sup>610</sup> From April 2020-January 2021, the Border Patrol expelled nearly 700 percent more illegal aliens via Title 42 than were processed under Title 8 authority.<sup>611</sup>

Mayorkas’ DHS, however, failed to fully use the authority granted by Title 42. By the end of FY22, Border Patrol apprehensions processed under Title 8 authority actually exceeded total Title 42

<sup>606</sup> U.S. Department of Justice, Executive Office for Immigration Review, *Adjudication Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim*, April 21, 2023, <https://www.justice.gov/eoir/page/file/1062976/download>.

<sup>607</sup> “Trump administration dismantled ‘safe’ border policies, Biden rebuilding process: DHS Chief Mayorkas,” 9:50, *Fox News*, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>608</sup> Glenn Kessler, “Biden said he’s been to the southern border. It was a drive-by.,” *The Washington Post*, October 22, 2021, <https://www.washingtonpost.com/politics/2021/10/22/biden-said-hes-been-southern-border-before-it-was-drive-by/>.

<sup>609</sup> Zachary Leeman, “CNN’s Poppy Harlow Pushes Mayorkas After He Touts Border Successes: ‘If That’s Not a Crisis, Secretary, What Is?’,” 2:26, *Mediaite*, January 6, 2023, <https://www.mediaite.com/tv/cnns-poppy-harlow-pushes-mayorkas-after-he-touts-border-successes-if-thats-not-a-crisis-secretary-what-is/>.

<sup>610</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2020*, March 27, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020>; and U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2021*, May 26, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021>.

<sup>611</sup> *Ibid.*

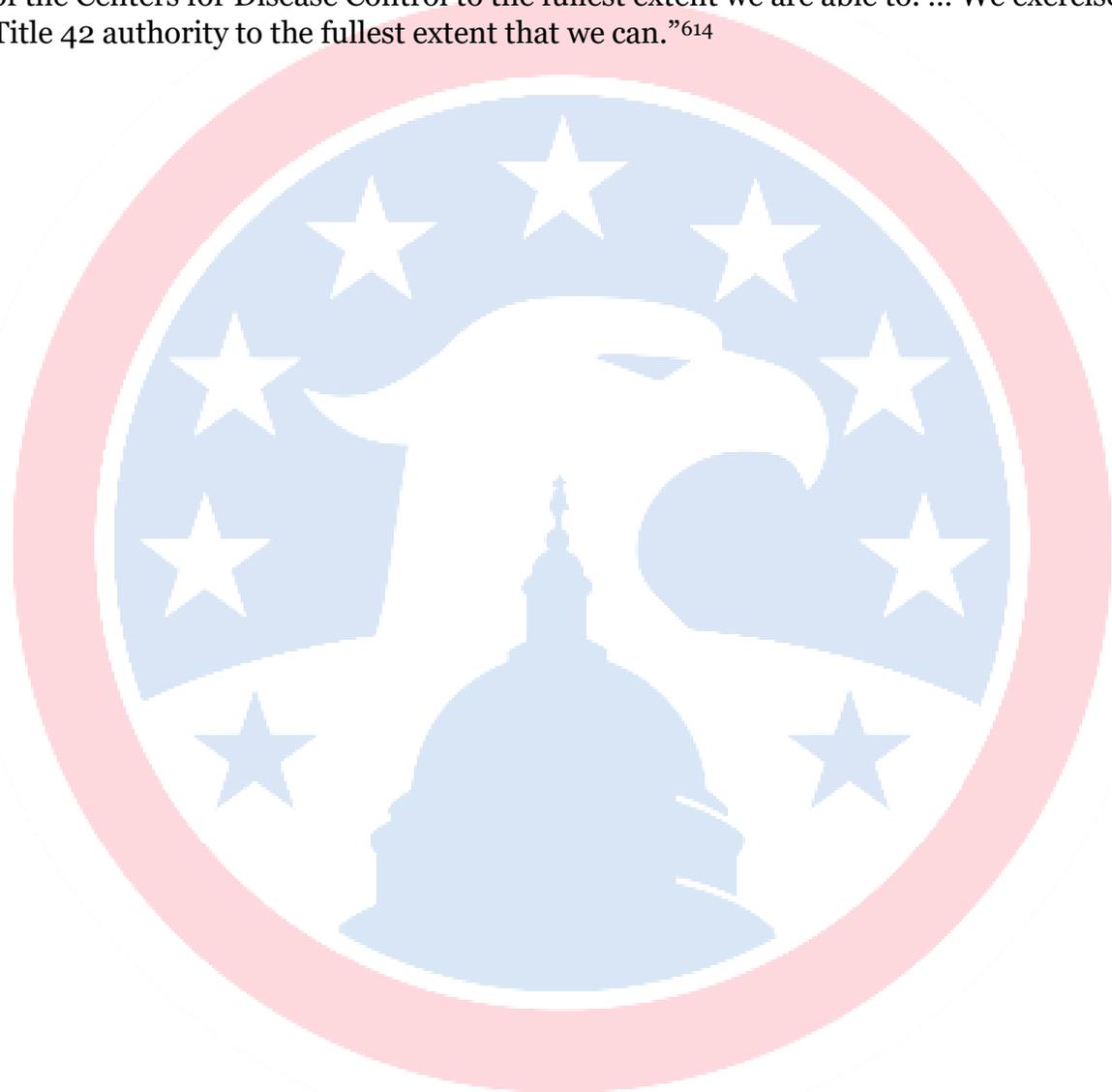


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expulsions.<sup>612</sup> Mayorkas, in testimony before the Senate in September 2021, deflected responsibility for the decrease by blaming a supposed lack of capacity in Mexico to handle Title 42 expulsions.<sup>613</sup>

### **The Claim:**

- **9/21/21:** “If I may say, Senator, we use the Title 42 authority, the public health authority, of the Centers for Disease Control to the fullest extent we are able to. ... We exercise the Title 42 authority to the fullest extent that we can.”<sup>614</sup>



<sup>612</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2022*, November 14, 2022, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy22>.

<sup>613</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Threats To The Homeland: Evaluating The Landscape 20 Years After 9/11*, 117th Cong., 1st sess., 1:24:18, September 21, 2021, <https://www.hsgac.senate.gov/hearings/threats-to-the-homeland-evaluating-the-landscape-20-years-after-9-11/>.

<sup>614</sup> U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Threats To The Homeland: Evaluating The Landscape 20 Years After 9/11*, 117th Cong., 1st sess., 1:22:55, September 21, 2021, <https://www.hsgac.senate.gov/hearings/threats-to-the-homeland-evaluating-the-landscape-20-years-after-9-11/>.



## **Section 5: Dereliction By the Numbers**

- Under the Biden administration, encounters at the Southwest border have exceeded 5.45 million,<sup>615</sup> with total nationwide encounters totaling more than 6.45 million.<sup>616</sup>
- Since FY21, CBP has recorded more than 1.5 million known gotaways, bringing total encounters, plus known gotaways, to at least 7.5 million in two-and-a-half years under the Biden administration.
- Since Oct. 1, 2020, CBP has recorded more than 97,500 arrests of individuals with criminal convictions or those with outstanding warrants.<sup>617</sup>
- Border Patrol arrests of criminal illegal aliens have exploded, as well.<sup>618</sup>
  - In FY22, Border Patrol arrested illegal aliens with a combined 62 convictions for homicide and manslaughter, up from just three in FY20.<sup>619</sup>
  - Convictions for sexual offenses among aliens arrested in FY20 totaled 156, increasing to 488 in FY21 and 365 in FY22.<sup>620</sup>
  - The number of convictions for burglary, robbery, larceny, theft, and fraud hit 896 in FY22, up from 143 in FY20.<sup>621</sup>
- Through May, CBP has seized almost 20,000 pounds of fentanyl along the Southwest border in FY23, including approximately 2,200 pounds between ports of entry.<sup>622</sup>
- Since FY21, 241 people on the Terrorist Screening Data Set (TSDS) have been caught between Southwest and northern border ports of entry, compared to 14 from FY17-20.<sup>623</sup>

<sup>615</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, June 21, 2023, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>616</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>617</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics Fiscal Year 2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>618</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Criminal Noncitizen Statistics Fiscal Year 2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>.

<sup>619</sup> Ibid.

<sup>620</sup> Ibid.

<sup>621</sup> Ibid.

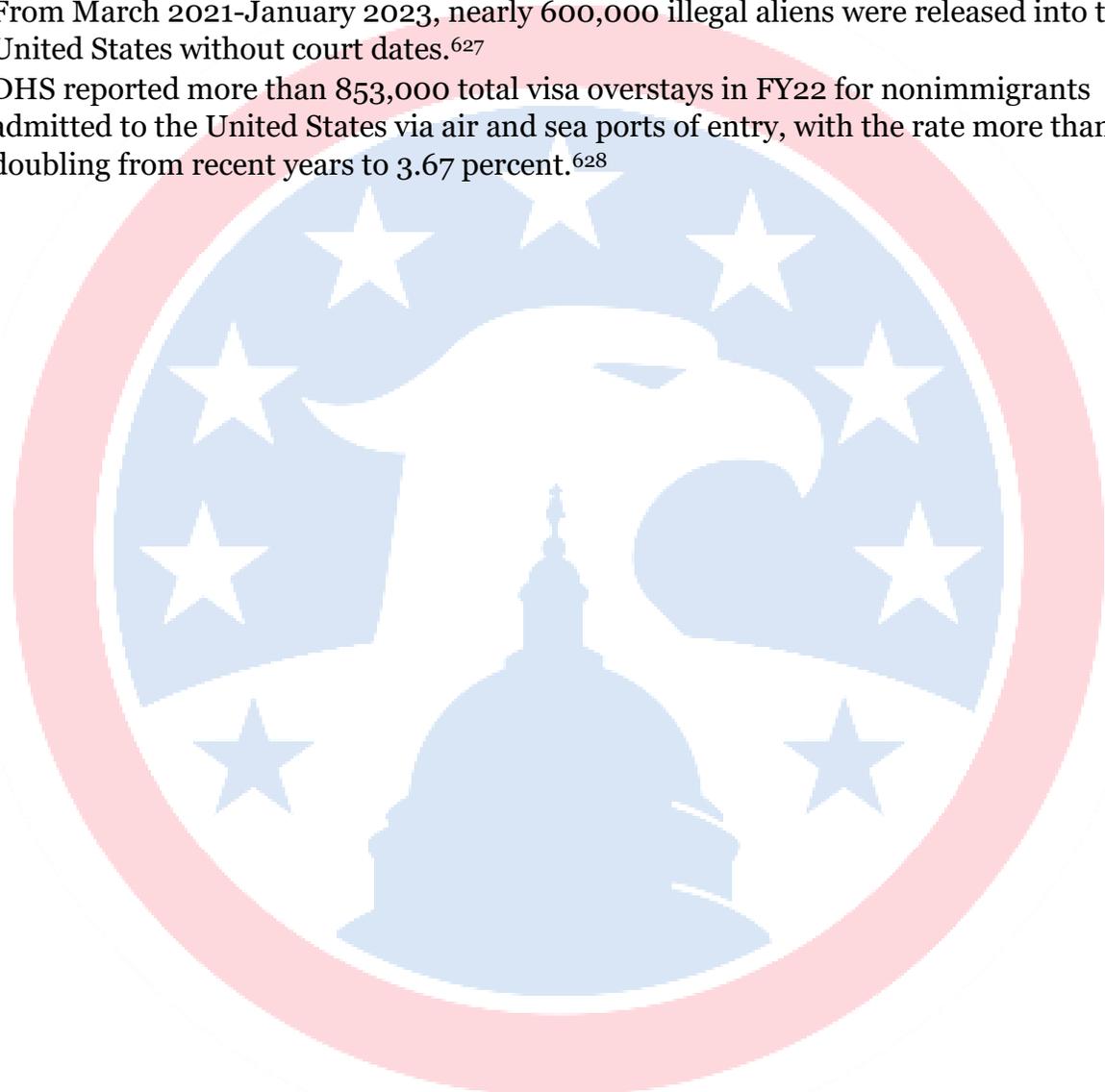
<sup>622</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Drug Seizure Statistics FY2023*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

<sup>623</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics Fiscal Year 2023*, June 15, 2023, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.



## SECTION 5: DERELICTION BY THE NUMBERS

- Individuals from more than 160 countries have been apprehended crossing the border illegally, including aliens from countries on the State Sponsors of Terrorism list.<sup>624</sup>
- The number of Chinese nationals illegally crossing has skyrocketed. Southwest border apprehensions jumped from 323 in FY21 to 12,480 in the first eight months of FY23.<sup>625</sup>
- In FY22, Mayorkas established a target to remove 91,500 criminal illegal aliens—down from 151,000 in FY20. ICE ultimately only removed 38,447 convicted criminal aliens.<sup>626</sup>
- From March 2021-January 2023, nearly 600,000 illegal aliens were released into the United States without court dates.<sup>627</sup>
- DHS reported more than 853,000 total visa overstays in FY22 for nonimmigrants admitted to the United States via air and sea ports of entry, with the rate more than doubling from recent years to 3.67 percent.<sup>628</sup>



<sup>624</sup> Robert Sherman, “Migrants from More than 160 Countries Encountered at Border,” *NewsNation*, October 6, 2022, <https://www.newsnationnow.com/us-news/immigration/migrants-from-more-than-160-countries-encountered-at-border/>.

<sup>625</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, June 14, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>626</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Budget Overview: Fiscal Year 2024 Congressional Justification*, March 1, 2023, 23, <https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT.pdf>.

<sup>627</sup> Julia Ainsley, “Nearly 600,000 migrants who crossed the border since March 2021 were released in the U.S. with no immigration court dates,” *NBC News*, February 3, 2023, <https://www.nbcnews.com/politics/immigration/nearly-600000-migrants-crossed-border-released-inside-us-rcna68687>.

<sup>628</sup> U.S. Department of Homeland Security, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, <https://cis.org/sites/default/files/2023-06/FY%202022-2023%20Entry%20Exit%20Overstay%20Report.pdf>.



## CONCLUSION: MAYORKAS HAS BEEN DERELICT IN HIS DUTY

### **Conclusion—Mayorkas Has Been Derelict in His Duty**

The overwhelming body of evidence points to only one reasonable conclusion—Mayorkas has been derelict in his duty.

#### **Laws and Orders Ignored**

Mayorkas has ignored, abused, or failed to enforce nearly a dozen laws passed by Congress. Time after time, where the law unequivocally prohibits or requires certain actions by the secretary, Mayorkas has done the exact opposite.

Federal law does not allow for the mass parole of illegal aliens into the interior of the United States.<sup>629</sup> Mayorkas has broken with senior DHS officials before him—who followed the law and paroled a mere handful of aliens on their watch—and paroled hundreds of thousands of illegal aliens into the interior.

The law requires DHS to detain illegal aliens who cross the border illegally, whether or not they claim asylum.<sup>630</sup> Mayorkas has not only refused to detain hundreds of thousands of illegal aliens, but created programs like Parole + ATD that directly contradict the law as written, despite the evidence showing that many illegal aliens who are never or only partially detained are almost never removed from the country.<sup>631</sup>

Mayorkas is required to remove illegal aliens, but under his leadership and policies, removals by ICE have hit historic lows, and the targets set by his department continue to drop.<sup>632</sup> He has even told ICE agents that an alien’s unlawful presence in the country is no longer sufficient grounds to remove them, despite the clear language of the law saying otherwise.<sup>633</sup> He has even flouted the orders of a co-equal branch of government, refusing to fully and faithfully comply with a federal court order requiring him to reinstate the Migrant Protection Protocols.

For two straight months after being ordered to do so, Mayorkas failed to enroll a single illegal alien in the policy, but in the same timeframe, he paroled tens of thousands of illegal aliens into the country.<sup>634</sup> As previously documented, from the time of the ruling until the program’s end in June 2022, DHS only enrolled a minuscule number of illegal aliens in the program.

Mayorkas’ legal strategy of implementing a potentially unlawful policy, forcing states to challenge the policy in court, and then moving on to another, new policy after the former has been struck down, has been described as a “game of whack-a-mole.”<sup>635</sup> The courts address specific legal issues

<sup>629</sup> 8 U.S.C. § 1182.

<sup>630</sup> *Ibid.*

<sup>631</sup> *Ibid.*

<sup>632</sup> 8 U.S.C. § 1225.

<sup>633</sup> U.S. Department of Homeland Security, *Memorandum: Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, January 20, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

<sup>634</sup> *State of Texas v. Biden*, No. 2:21-cv-00067, (N.D. Tex. 2021).

<sup>635</sup> See Plaintiff’s Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, and Declaratory Relief, *State of Florida v. Mayorkas*, No. 3:23-cv-9962, 7, (N.D. Fla. 2023).



## CONCLUSION: MAYORKAS HAS BEEN DERELICT IN HIS DUTY

and arguments one at a time in the narrow frame of specific cases, meaning that Mayorkas can essentially continue to use this strategy indefinitely.

Consequently, in addition to his failure to enforce of various statutes, Mayorkas has failed in his duty as required by Section 103 of the INA requiring him “to control and guard the boundaries and borders of the United States against the illegal entry of aliens.”<sup>636</sup>

His actions are documented in the public record and are matters of objective fact. They are undeniable, and so is his dereliction of duty.

### **Effective Policies Undone**

The Mayorkas border crisis is fundamentally a policy-driven crisis. It is not due to lack of resources, the COVID-19 pandemic, climate change, or any other external factors.

This crisis is the result not just of laws Mayorkas has ignored, but of effective border security policies ended by his department, and a radical open-borders agenda implemented in their place.

Despite repeated warnings from experienced border security and enforcement professionals of the consequences that would ensue if he ended policies that had secured the border and brought illegal immigration to record lows, Mayorkas either ended, or worked in support of ending, policies like MPP, asylum cooperative agreements with the Northern Triangle, and construction of new border wall.

Mayorkas also restricted ICE officials from doing their job and enforcing the law against the majority of those who illegally enter and remain in the United States.

It was no secret what these decisions would cause, but Mayorkas pressed ahead in every instance.

### **Open-Borders Policies Implemented**

In conjunction with ending successful policies, Mayorkas willfully embarked on a campaign to upend immigration enforcement in the United States.

Per the evidence documented in this report, border security and enforcement under Mayorkas' direction is no longer about deterring illegal entry and holding accountable those who break the law. Instead, the priority is the rapid processing and release of illegal aliens into the United States. This policy of mass “catch-and-release” is a magnet for people all over the world, who know that if they cross the border illegally or improperly, particularly as a UAC or in a “family unit,” they will almost certainly be released into the interior—and almost certainly never be removed.

In conjunction with undermining the statutes prohibiting mass parole and requiring detention of illegal aliens, Mayorkas has created numerous programs designed to relieve the Biden administration of the embarrassing optics of overcrowded Border Patrol facilities, most notably through his use of the CBP One mobile app.

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<sup>636</sup> 8 U.S.C. § 1103(a)(5).



## CONCLUSION: MAYORKAS HAS BEEN DERELICT IN HIS DUTY

Hundreds of thousands of illegal aliens have even been released into the country without court dates or other proper documentation ensuring DHS can track them and adequately hold them accountable for missing court dates or failing to comply with a lawful order of removal.

These actions represent a policy of open borders and are antithetical to the law and to the oath Mayorkas swore.

### **False Statements to Congress and the American People**

Mayorkas has failed to execute the laws of the United States, duly passed by Congress. He has willfully ended policies that worked to control and guard the borders of the United States. He has implemented in their place an agenda of open-borders responsible for the worst border crisis in American history. Moreover, he has consistently lied to Congress and the American people about his actions and their consequences. The evidence indicates he has even lied under oath to the people's representatives.

He testified before the House Judiciary Committee in April 2022 that DHS had operational control of the Southwest border, according to the definition of the Secure Fence Act of 2006, only to tell multiple Senate committees in May 2022 and March 2023 that no one has ever had operational control per that definition.<sup>637</sup>

Mayorkas has testified that the border is secure—a lie. He has testified that the border is “no less secure than it was” when he took office—a demonstrable lie. He has testified that his policies bear no responsibility for the crisis at the border—an easily proven lie. He has consistently attempted to mislead the American people about the state of the crisis, and DHS' response to it.

When public officials lie to Congress and the American people, they are guilty of being derelict in their duty.

### **Summary**

On top of these failures to uphold the law and fulfill his oath of office, Mayorkas has willfully undermined the sacred foundation of our constitutional republic—the separation of powers. He has rejected his responsibility to enforce the laws passed by Congress, and he has refused to respect rulings by the federal judiciary.

This is about far more than simple policy differences—though this investigation will reveal numerous and shocking findings about the mass human suffering, financial costs, and national security threats unleashed by Mayorkas' radical open-borders agenda. Rather, this Committee, the American people, and our Constitution demand that any policy, wise or foolish, implemented by any administration, have its foundation in the laws passed by Congress, and work to the benefit of the American people.

<sup>637</sup> 8 U.S.C. § 1701, Pub. L. 109–367, § 2(b).



## CONCLUSION: MAYORKAS HAS BEEN DERELICT IN HIS DUTY

This cannot be said to be true of Mayorkas' actions and policies as DHS secretary. It is, therefore, the solemn conclusion of this Committee that Mayorkas has been derelict in his duty, and that this dereliction has been intentional. This conclusion is shared by former senior DHS officials.

Former DHS Acting Secretary Wolf:

Mayorkas “has embraced ineffective and unlawful policies that have made American communities dangerous and have enriched the Mexican cartels. ... The laws did not change between administrations. Just the decision by this one not to follow the laws. For the reasons cited here and others...it is my professional opinion that this administration is derelict in its duty to faithfully execute the laws as written and protect American communities.”<sup>638</sup>

Former USCIS Acting Director Edlow:

“The Biden administration, through the Secretary, has seen fit to ignore the law, instead favoring poorly conceived and poorly executed policy decisions. Actions through executive orders, departmental memos, and rules lay waste to the INA and Congressional intent. ... The massive number of encounters recorded by CBP and the small number of alien removals by ICE, however, suggest that this secretary has failed to faithfully execute the laws entrusted to him.”<sup>639</sup>

Former Border Patrol Chief Scott: “The chaos at our southwest border and the consequences are a result of actions taken by the Biden administration. ... I believe the Secretary is derelict in his duties to secure the border.”<sup>640</sup>



**[WATCH: Former DHS Officials Find Mayorkas Derelict in His Duty](#)**

<sup>638</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 32:23, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=1941s>.

<sup>639</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 33:47, June 14, 2023, <https://www.youtube.com/watch?v=0gjm6jzYHqw&t=2026s>.

<sup>640</sup> “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” *Homeland Security Committee Events*, YouTube video, 39:04, June 14, 2023, <https://www.youtube.com/live/0gjm6jzYHqw?feature=share&t=2344>.



## CONCLUSION: MAYORKAS HAS BEEN DERELICT IN HIS DUTY

The next phases of this investigation will examine the consequences of Mayorkas' catastrophic border crisis. The consequences affecting Americans every day are the direct byproduct of Mayorkas' policies and decisions since his first day in office. If he had chosen to enforce the laws written and passed by Congress, maintain proven border security policies, and tell the truth, Americans would not be suffering from the devastation this crisis has caused, and almost three-quarters of the American people would not believe their government is failing on border security.<sup>641</sup>

Mayorkas has made his choices, however, and as he said in testimony before the Senate in November 2021, "For the policies that are promulgated, I should be held accountable."<sup>642</sup>

It is this Committee's responsibility to do just that—we will continue to investigate Mayorkas, reveal our findings to the American people, and ensure he truly is held accountable.



<sup>641</sup> Amina Dunn, "Americans remain critical of government's handling of situation at U.S.-Mexico border," *Pew Research Center*, June 21, 2023, <https://www.pewresearch.org/short-reads/2023/06/21/americans-remain-critical-of-governments-handling-of-situation-at-us-mexico-border/>.

<sup>642</sup> "Department of Homeland Security Oversight Hearing," C-SPAN video, 2:05:05, November 16, 2021, <https://www.c-span.org/video/?516002-1/department-homeland-security-oversight-hearing&live=#>.