

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

September 2, 2021

VIA ELECTRONIC TRANSMISSION

The Honorable Dick Durbin
Chair
United States Senate Committee on the Judiciary

Dear Chair Durbin:

We write to you today to request that the Senate Judiciary Committee convene hearings in which Department of Homeland Security (DHS) Secretary Alejandro Mayorkas, Acting Immigration and Customs Enforcement (ICE) Director Tae Johnson, Acting Customs and Border Protection (CBP) Commissioner Troy Miller, and U.S. Border Patrol Chief Raul Ortiz are called to testify regarding the undeniable and historic crisis at our nation's southern border.

As you recently stated in an interview on MSNBC's *Morning Joe*, "we have an emergency at hand on the southern border" that "demands our full attention."¹ You also pointed out that "the Judiciary Committee has responsibility on the issue of immigration."² We strongly agree with you, which is why we are, once again, asking that the Judiciary Committee convene oversight hearings to get information from the relevant Biden Administration officials regarding their response to what you described as a "desperate situation."³

As you are aware, the Senate Judiciary Committee did not shy away from its immigration oversight duties during the previous administration, even during a global pandemic. Under the leadership of Chairman Grassley and Chairman Graham, the Committee held at least 18 full committee or subcommittee hearings related to immigration policy and oversight of DHS's enforcement of immigration laws. This included a number of hearings on topics of intense interest to the Committee's Democratic members, such as:

- A full committee hearing on oversight of the Trump Administration's decision to terminate the DACA program in which the committee took testimony from and was able to question witnesses from the Department of Justice (DOJ), DHS, and U.S. Citizenship and Immigration Services (USCIS) (October 3, 2017);
- A full committee hearing on oversight of the Department of Homeland Security in which the committee heard testimony from and was able to question DHS Secretary Kirstjen Nielsen (January 16, 2018);
- A full committee oversight hearing on the Trump Administration's immigration enforcement policies and family reunification efforts in which the committee heard testimony from and was able to question witnesses from Border Patrol, ICE, the Executive Office for Immigration Review, and USCIS (July 31, 2018);
- A full committee hearing on oversight of CBP in which the committee heard testimony from and was able to question Acting DHS Secretary Kevin McAleenan (December 11, 2018);

¹ Senator Dick Durbin interview with MSNBC's *Morning Joe* (August 5, 2021), available at https://twitter.com/NRSC_Rapid/status/1423349880395866116.

² *Id.*

³ *Id.*

- A full committee oversight hearing to examine deaths that occurred in CBP custody in which the committee heard testimony from and was able to question Acting DHS Secretary Kevin McAleenan. (March 6, 2019);
- A full committee hearing on a possible fix to the border crisis in which the committee heard testimony from and was able to question Acting DHS Secretary Kevin McAleenan (June 11, 2019);
- A full committee hearing on immigration detainees and enforcement in which the committee heard testimony from and was able to question the ICE Acting Executive Associate Director (October 22, 2019); and
- A full committee oversight hearing to examine best practices for incarceration and detention during COVID-19 (June 2, 2020)

In addition to conducting robust oversight via the hearing process, Chairman Grassley and Chairman Graham also on several occasions publicly admonished the Trump Administration for the manner in which it carried out the statutorily-required consultation with Congress regarding annual refugee admissions.⁴ The Senate Judiciary Committee has critical oversight responsibilities with respect to immigration policy matters and the Executive Branch's implementation and enforcement of the immigration laws that Congress has passed. The Committee's exercise of those oversight responsibilities should not be dependent upon which political party holds the White House or has a majority in the Senate at any given point in time.

Some of us have written to you previously to request that hearings be held on the border crisis, and the situation at the southern border has only gotten worse since that time. In July, CBP reported **212,672** encounters with illegal immigrants attempting to cross the southern border.⁵ That is a staggering **420%** increase from the same time last year. Encounters with unaccompanied children and family units were up **656%** and **3,947%**, respectively. The number of July encounters with unaccompanied children was also the highest ever recorded, surpassing the previous all-time high that was set in March.⁶

In the first ten months of this fiscal year, CBP reports **1,331,822** encounters with illegal immigrants attempting to cross our southern border. Of that number, **1,035,353 (77.7%)** represent attempts to cross the border during the months since President Biden took office. The number of monthly border encounters has also grown during each month of the Biden Administration, and DHS has indicated that, by the end of this fiscal year, border encounters are likely to be "the highest ever recorded."⁷ Secretary Mayorkas himself recently acknowledged that the border crisis is "unsustainable" and "cannot continue."⁸ He further noted, "We can't continue like this, our people in the field can't continue and our system isn't built for it."⁹

In only 7 months of unified control of the federal government, President Biden and congressional Democrats have presided over a border crisis in which there have been **over 1 million** encounters with illegal immigrants at the southern border. That number is larger than the entire populations of Vermont, Delaware, South Dakota, North Dakota, Alaska, Wyoming, and the District of Columbia. That number also

⁴ News Release, *Grassley, Feinstein: Congress Requires More Thorough Engagement With State Dept. On Refugee Numbers*, CHUCK GRASSLEY: UNITED STATES SENATOR FOR IOWA (Sept. 27, 2017), <https://www.grassley.senate.gov/news/news-releases/grassley-feinstein-congress-requires-more-thorough-engagement-state-dept-refugee>; News Release, *Grassley: Administration Ignoring Its Statutory Obligations On Refugee Consultation*, CHUCK GRASSLEY: UNITED STATES SENATOR FOR IOWA (September 19, 2018), <https://www.grassley.senate.gov/news/news-releases/grassley-administration-ignoring-its-statutory-obligations-refugee-consultation>; LETTER FROM CHAIRMAN LINDSEY GRAHAM AND RANKING MEMBER DIANNE FEINSTEIN TO SECRETARY MICHAEL POMPEO AND ACTING SECRETARY KEVIN MCALEENAN (September 20, 2019), available at https://www.feinstein.senate.gov/public/_cache/files/5/2/52296862-8ab6-4c47-856d-f9d6cf84ba83/05F31609E20CB66CA1689638F2DFF739.2019.09.20-refugee-consultation-letter.pdf.

⁵ U.S. Customs and Border Protection, "Southwest Land Border Encounters" (last modified August 12, 2021), available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁶ Sabrina Rodriguez, *Biden proposes long-awaited overhaul to U.S. asylum system*, POLITICO (August 18, 2021), <https://www.politico.com/news/2021/08/18/biden-us-asylum-system-505903>.

⁷ *Huisha-Huisha et al. v. Mayorkas, et al.*, Civ. A. No. 21-100 (D.D.C. filed Jan. 12, 2021), Declaration of David Shahoulian (filed Aug. 2, 2021) at 9, available at <https://www.bloomberglaw.com/public/desktop/document/HUI SHAHUI SHAetalvGAYNORetalDocketNo121cv00100DDCJan122021CourtDoc/1?1628261657>.

⁸ Edmund DeMarche, Emma Colton, and 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>.

⁹ *Id.*

does not include the likely large number of illegal immigrants who were able to evade the Border Patrol after crossing the border.

The record-setting number of illegal immigrants making the dangerous trip to the southern border is putting the lives and health of American citizens at risk. Many of the illegal immigrants attempting to cross the southern border are coming from countries with incredibly low COVID-19 vaccination rates. Mexico has administered enough vaccine doses to fully vaccinate only 33% of its population.¹⁰ In the Northern Triangle countries of Guatemala, Honduras, and El Salvador, vaccine doses have been administered to cover only 13%, 21%, and 49% of the population, respectively.¹¹ As DHS itself acknowledged in a recent court filing, the agency is “experiencing significantly increased rates of noncitizens testing positive for COVID-19.”¹²

A vice president of the National Border Patrol Council recently said “We’re releasing people out of the door day in and day out with actual positive tests for COVID and more keep popping up.”¹³ Furthermore, there have been recent incidents of illegal immigrants testing positive for COVID-19 and being released from federal custody to non-profit charitable groups in border communities that then booked hotel rooms on their behalf without notifying local officials.¹⁴ Recent reports indicate that the federal government has, since February, released approximately 7,000 COVID-19 positive illegal immigrants into the city of McAllen, Texas, alone.¹⁵ This at the same time the Biden Administration is advocating increased pandemic restrictions on the lives of American citizens, even those who are fully vaccinated.

The situation has become so dire that some border communities such as McAllen, Texas, have issued local disaster declarations.¹⁶ The City of McAllen’s disaster declaration noted that “U.S. Customs and Border Protection is releasing an alarmingly substantial number of immigrants into the City of McAllen, Texas, including individuals that are positive for COVID-19.”¹⁷ Biden Administration officials should be subjected to detailed questioning about these mass releases. They should also be questioned about the extent to which illegal immigrants are being tested for COVID-19 and how the Administration is handling cases of illegal immigrants who test positive.

The border crisis has also seen a surge in the number of illegal immigrants with criminal records attempting to cross the border. As an example, in May of this year, Border Patrol agents in the Del Rio Sector reported a **3,166% increase in the number of convicted sex offenders** they had encountered and arrested at the border over the same timeframe last year.¹⁸ Similarly, in June, Border Patrol agents in the Laredo Sector reported a **1,200% increase in the number of criminal migrants** it had encountered and arrested during Fiscal Year 2021.¹⁹ Since the beginning of Fiscal Year 2021, Laredo agents reported that they had brought 760 criminal migrants into custody as compared to 60 who were brought into custody during the same period of time in the previous year.²⁰

¹⁰ Bloomberg COVID-19 Vaccine Tracker, available at <https://www.bloomberg.com/graphics/covid-vaccine-tracker-global-distribution/> (data gathered from government agencies, public statements, Bloomberg interviews, the World Health Organization, and Johns Hopkins University).

¹¹ *Id.*

¹² Declaration of David Shahoulian, *supra* note 7, at 2.

¹³ Ronn Blitzer, *CDC extends order restricting border crossing amid claims of regular release of COVID-positive migrants*, FOX NEWS (August 3, 2021), <https://www.foxnews.com/politics/cdc-border-crossing-restrictions-covid-migrants>.

¹⁴ Press Statement, *Statement Regarding COVID-19 Positive Patients At Texas Inn in Weslaco*, CITY OF WESLACO (July 29, 2021), http://krgv.s3.amazonaws.com/files/city_of_weslaco_statement_072917.pdf; Louis Casiano, *Texas police learn COVID-positive illegal immigrants sent to local hotels, after Whataburger encounter*, FOX NEWS (July 27, 2021), <https://www.foxnews.com/us/texas-police-covid-illegal-immigrants-whataburger>.

¹⁵ Bill Melugin (@BillFOXLA), Twitter (August 4, 2021, 1:52 PM), <https://twitter.com/BillFOXLA/status/1422978791723487232?s=20>.

¹⁶ Sandra Sanchez, *Local South Texas officials declare disaster declarations due to migrant influx, coronavirus concerns*, BORDER REPORT (August 2, 2021), <https://www.borderreport.com/hot-topics/immigration/local-south-texas-officials-declare-disaster-declarations-due-to-migrant-influx-coronavirus-concerns/>.

¹⁷ Declaration of Local Disaster, City of McAllen, Texas (August 2, 2021), available at <https://www.borderreport.com/wp-content/uploads/sites/28/2021/08/Declaration-of-Local-Disaster-8.2.2021.pdf>.

¹⁸ Media Release, *Border Patrol Agents Arrest 10 Sex Offenders*, U.S. CUSTOMS AND BORDER PROTECTION (May 26, 2021), <https://www.cbp.gov/newsroom/local-media-release/border-patrol-agents-arrest-10-sex-offenders>.

¹⁹ Jake Dima, *Laredo Border Patrol reports over 1,000% uptick in arrests of criminal migrants*, WASHINGTON EXAMINER (June 4, 2021), <https://www.washingtonexaminer.com/news/border-patrol-laredo-texas-increase-arrests-criminal-illegal-immigrants>.

²⁰ *Id.*

The border crisis has also resulted in an explosion in human smuggling activity, often carried out by criminal gangs, that endangers the lives of migrants themselves. Earlier this year, a Mexican government official was quoted as saying that organized crime had started to change its modus operandi “from the day Biden took office,” and that organized crime now demonstrated “unprecedented” levels of sophistication.²¹ The official went on to say that “[m]igrants have become a commodity.”²² The attorney general of the Mexican state of Chihuahua was quoted as saying that higher concentrations of migrants at the U.S.-Mexico border have encouraged gangs to kidnap some of them for money and recruit others as drug mules.²³

In the El Paso Sector alone, Border Patrol agents have foiled over 900 human smuggling schemes and arrested 1,815 individuals found in 195 stash houses in FY2021.²⁴ These stash houses do not just contain migrants. In one recent operation over a 48-hour period, Border Patrol agents discovered 134 migrants inside three different stash houses, along with \$600,000 worth of methamphetamine.²⁵ More broadly, CBP noted in its June 2021 operational update that the agency “continues to see a surge in fentanyl seizures” and noted that fentanyl seizures in FY2021 through June were 78% higher than all of FY2020.²⁶

The consequences of the border crisis have been felt by Americans who live in border communities and the brave men and women of CBP and ICE who are working to protect our nation every day. In a recent interview, the then-Border Patrol Chief of Del Rio Sector noted that “we don’t have enough people here in the Border Patrol in Del Rio Sector to deal with this problem” and said that “I am very concerned over the number of folks who are getting away from us.”²⁷ He pointed out that, due to Border Patrol agents having to be pulled off the line to process and care for migrants in detention, there are days when he only has 12 agents to patrol 245 miles of border.²⁸

This has real-life impacts on American citizens who live in border communities. As an example, in June, the American Farm Bureau Federation and all 50 state Farm Bureaus sent a letter to DHS Secretary Mayorkas, Interior Secretary Haaland, and Agriculture Secretary Vilsack pointing out that farming and ranching families on the border “are bearing the brunt of this unprecedented influx and have never seen a more dire situation.”²⁹ The letter went on to say that farming families have experienced damage to their crops and property, which has caused financial hardship. Most importantly, the letter highlighted that “the security and safety of these families are at stake given the current circumstances.”³⁰ Secretary Mayorkas and others should be forced to answer questions about the policy decisions that have led to this crisis and what, if anything, is being done to make sure it doesn’t happen again.

It is time for this Committee’s willful blindness to the situation at our southern border to come to an end. It is not a “challenge,” and it is not “seasonal.” It is a crisis of historic and monumental proportions that deserves this Committee’s immediate attention.

No matter how much the Committee majority may want to ignore the crisis at the southern border and neglect its responsibilities to conduct oversight of the Biden Administration’s immigration policies, it can do so no longer. The time has come for the Senate Judiciary Committee to do its job – a job it should have been doing long before now.

²¹ Dave Graham, *Exclusive: ‘Migrant president’ Biden stirs Mexican angst over boom time for gangs*, REUTERS (March 10, 2021), <https://www.reuters.com/article/us-usa-immigration-mexico-exclusive-idUSKBN2B21D8>.

²² *Id.*

²³ *Id.*

²⁴ Media Release, *State of El Paso Sector*, U.S. CUSTOMS AND BORDER PROTECTION (July 24, 2021), <https://www.cbp.gov/newsroom/local-media-release/state-el-paso-sector>

²⁵ Erika, Esquivel, *Border Patrol agents find stash houses with \$600k worth of methamphetamine, migrants*, KFOX14/CBS4 (July 16, 2021), <https://kfoxtv.com/news/local/border-patrol-agents-find-stash-houses-with-600k-worth-of-methamphetamine-migrants>.

²⁶ Media Release, *CBP Announces June 2021 Operational Update*, U.S. CUSTOMS AND BORDER PROTECTION (July 16, 2021), <https://www.cbp.gov/newsroom/national-media-release/cbp-announces-june-2021-operational-update>.

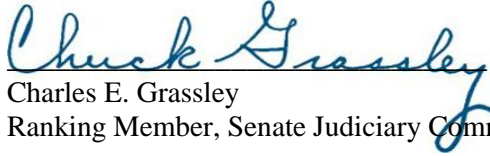
²⁷ Vanessa Croix, *Del Rio Border Patrol overwhelmed by migrants arriving at Texas-Mexico border*, KENS5 (July 29, 2021), <https://www.kens5.com/article/news/special-reports/at-the-border/del-rio-border-patrol-overwhelmed-by-migrants-arriving-at-texas-mexico-border/273-54d68b73-8a89-4146-b7a8-9bd0b8178c89>.

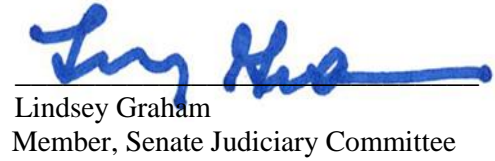
²⁸ *Id.*

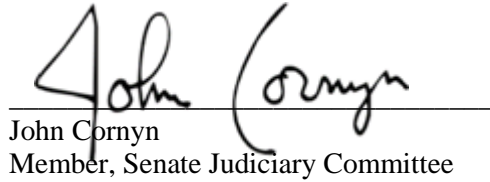
²⁹ LETTER FROM AMERICAN FARM BUREAU FEDERATION TO SECRETARY ALEJANDRO MAYORKAS, SECRETARY TOM VILSACK, AND SECRETARY DEB HAALAND (June 3, 2021), available at https://www.fb.org/files/Letter_to_Sec_Mayorkas_Vilsack_Haaland_June_3_2021.pdf.

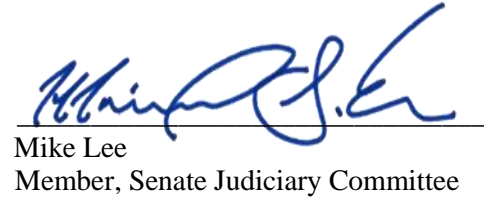
³⁰ *Id.*

Sincerely,

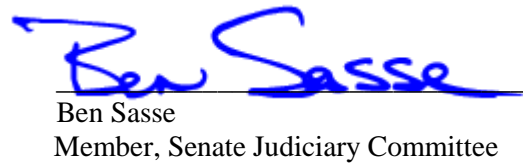

Charles E. Grassley
Ranking Member, Senate Judiciary Committee

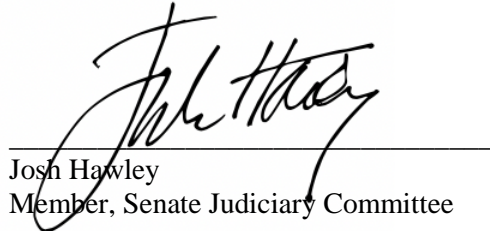

Lindsey Graham
Member, Senate Judiciary Committee

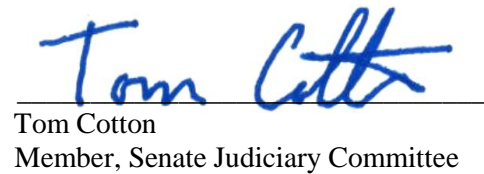

John Cornyn
Member, Senate Judiciary Committee

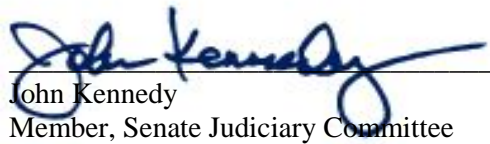

Mike Lee
Member, Senate Judiciary Committee

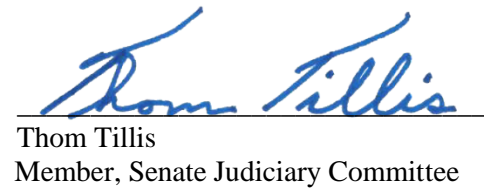

Ted Cruz
Member, Senate Judiciary Committee

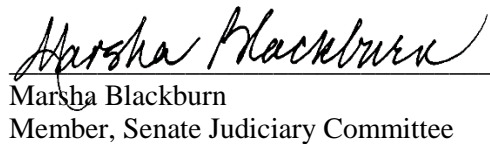

Ben Sasse
Member, Senate Judiciary Committee


Josh Hawley
Member, Senate Judiciary Committee


Tom Cotton
Member, Senate Judiciary Committee


John Kennedy
Member, Senate Judiciary Committee


Thom Tillis
Member, Senate Judiciary Committee


Marsha Blackburn
Member, Senate Judiciary Committee