

United States Senate

WASHINGTON, DC 20510

June 13, 2024

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
Washington, D.C. 20530

Dear Secretary Mayorkas and Attorney General Garland,

We write to you today regarding recent reports of the Biden administration's purported “mass amnesty” for illegal aliens. According to a recent article published by the *New York Post* on June 2, 2024, the Executive Office for Immigration Review (EOIR) detailed the dismissal of over 350,000 removal cases since 2022 under the guise of prosecutorial discretion.

According to the report, the administration has dismissed the removal proceedings of hundreds of thousands of illegal aliens who the Biden administration has determined do not possess a criminal record or are not considered a threat to national security. This action allows these individuals to remain in the United States indefinitely without undergoing the proper legal processes required to either grant or deny their asylum claims. Such a practice undermines the integrity of our immigration system, and is an affront to every person pursuing a legal path to the United States.

According to the article, this practice is governed by a memo issued by Immigration and Customs Enforcement (ICE) Principal Legal Adviser Kerry Doyle in 2022. The memo instructs agency prosecutors to advise immigration judges of which cases ICE considered nonpriority and that the Office of the Principal Legal Advisor believes dismissal of proceedings is appropriate. The numbers are staggering: 102,550 cases were dismissed in 2022, followed by 149,000 in 2023, and 113,843 cases in just the first four months of 2024. This is in stark contrast to the Trump administration, which barely surpassed 26,000 over the entirety of his four years in office.

President Biden’s recent executive order uses 212(f) and 215(a) of the Immigration and Nationality Act to purportedly shut down the southern border if illegal crossings surge to a daily average of 2,500 over 7 days. This action is too little, too late, and its numerous exceptions make clear that the Administration is more interested in creating the appearance of an orderly border than stopping illegal crossings. It is also an implicit admission of the administration’s failure to manage the border crisis effectively from the outset. Only in its fourth year, and only after millions of illegal aliens have unlawfully entered the country, has the Administration discovered that it has any authority to suspend illegal crossings. The executive order does not address the root causes of the crisis—the Biden administration’s open borders policies—and fails to provide a sustainable long-term solution.

This administration's approach has consistently downplayed the severity of the border crisis, initially denying its existence, then reluctantly acknowledging it, and now attempting to address it through inadequate measures. The repeated failures in border management under your leadership have led to an unprecedented backlog of 3.5 million asylum cases, posing a substantial burden on our immigration system and increasing the risk of criminal activities by illegal aliens.

Given the gravity of these issues, we seek detailed responses to the following questions:

1. Can you confirm the accuracy of the reported figure of 350,000 asylum cases dismissed since 2022? If this number is incorrect, please provide the correct data and explain the discrepancy.
2. Of the cases that EOIR has administratively closed in each of the past three fiscal years, how many concerns unlawful entry into the United States across the southern border that occurred on or after January 20, 2021?
3. According to data published by the *New York Post*, at the peak of the Obama administration in 2016, DHS allowed 20,915 asylum seekers to remain in the U.S., while the Trump administration allowed 26,249 throughout its entire tenure. However, since 2022, the DHS has closed over 350,000 asylum cases, with 149,305 allowed in 2023 alone—a 700% increase compared to 2016. Do DHS and EOIR deny the accuracy of these data? If not, how do DHS and EOIR justify this precedent-breaking surge in aliens with defensive asylum claims being allowed to remain in the United States following dismissal of removal proceedings compared to the lower numbers set by prior administrations of both parties?
4. Of the cases dismissed or administratively closed by EOIR, how many pertain to inadmissible aliens who unlawfully crossed the southern border on or after November 1, 2020? In how many instances did ICE OPLA advise EOIR that the case was a nonpriority and recommend dismissal?
5. How do DHS and EOIR plan to effectively reduce the immigration court backlog of 3.5 million cases while maintaining the integrity and security of the immigration process?
6. What percentage of the current backlog of removal proceedings do DHS and EOIR expect to dismiss under this policy, and what impact will this have on the overall case backlog?
7. How do DHS and EOIR intend to prevent this dismissal policy from incentivizing illegal immigration, where illegal aliens might expect their cases to be granted or dismissed, thus allowing them to remain in the country indefinitely?
8. What measures are in place to ensure that dismissed cases do not compromise national security, and how do DHS and EOIR monitor and manage the risk of criminal activities by illegal aliens with dismissed cases?

The American people deserve transparency and accountability regarding the administration's handling of immigration and border security. The current state of affairs at our southern border is unacceptable and demands immediate and effective solutions. We urge you to provide a comprehensive response to these questions and outline a clear plan to restore the integrity of our immigration system.

Thank you for your prompt attention to this critical matter.

Sincerely,



Kevin Cramer
United States Senator



James E. Risch
United States Senator



Steve Daines
United States Senator



Ted Cruz
United States Senator



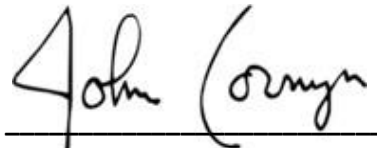
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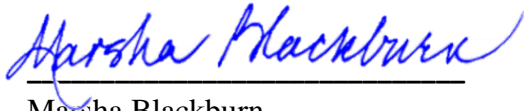
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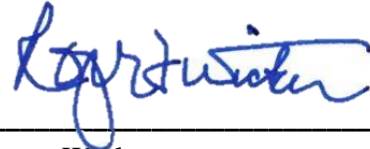
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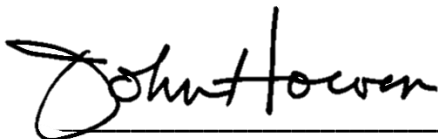
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