

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 5, 2022

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

Dear Secretary Mayorkas:

We write to conduct oversight of the Biden Administration's decision to rescind a Centers for Disease Control and Prevention's (CDC) order, which will turn the humanitarian and national security crisis on the U.S. southern border into a catastrophe. The Administration plans to terminate the CDC's Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists issued pursuant to Title 42 of the United States Code (CDC's Title 42 order).¹ The Administration's decision comes at a time when Americans are still forced to comply with COVID-19 mandates in their daily lives. The Administration has decided to prioritize rescinding this order over rescinding mask and vaccine mandates for the American people. Immigration experts predict that rescinding the CDC's Title 42 order will even further overwhelm U.S. Border Patrol officers and facilities. DHS must adequately prepare to respond to the impending border surge to prevent exacerbating the ongoing national security and humanitarian catastrophe.

The CDC's Title 42 order directs DHS to expel certain "covered noncitizens" without processing them under the immigration laws in Title 8.² The CDC is expected to phase out its order over the next few weeks, terminating it entirely in late May.³ As of March 2022, officials had carried out over 1.7 million expulsions of aliens under various iterations of the Title 42 order.⁴ Despite the high number of expulsions, the even higher number of arrivals has overwhelmed officials and led to the mass release of many aliens into the United States to be processed under Title 8, adding to the multi-years long backlog of cases in the Immigration Courts. In February, only 29 percent of Family Units were expelled under the CDC's Title 42 order, with 66 percent of single adults expelled under Title 42.⁵ The remainder were processed under Title 8.

¹ See *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists*, Centers for Disease Control and Prevention, 86 Fed. Reg. 42828, (Aug. 2, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2021-08-05/pdf/2021-16856.pdf>.

² *Id.*

³ Montoya-Galvez, Camilo & Ed O'Keefe, *Biden expected to end Title 42 border expulsion policy in late May*, CBS News (Mar. 30, 2022).

⁴ Miroff, Nick & Maria Sacchetti, *Biden faces influx of migrants at southern border amid calls to lift pandemic restrictions that aided expulsions*, WASH. POST (Mar. 24, 2022).

⁵ *Id.*

The Biden Administration's open borders policies and rhetoric have already created a humanitarian and national security crisis. From President Biden proposing amnesty as his first piece of legislation to the Administration abolishing U.S. Immigration and Customs Enforcement's (ICE) law enforcement mission via memoranda, the Biden Administration has signaled to the world our immigration laws can be violated without consequence. In calendar year 2021 alone, there were 2,019,945 apprehensions of illegal border crossers by U.S. Border Patrol (USBP).⁶ This historic level of apprehensions has overwhelmed USBP personnel, who are diverted from securing the border by the need to process and care for thousands of migrants per day. In fact, more than 400,000 illegal border crossers were released into the U.S. during President Biden's first year in office.⁷

Reports indicate that USBP facilities are already operating over capacity. Therefore, USBP officials must quickly release many illegal border crossers directly from custody.⁸ In many cases, these illegal border crossers are simply released without even being issued a Notice to Appear in Immigration Court. Instead, they are simply asked to self-report to ICE for further processing once those aliens reach their final destinations in the interior of the country.⁹ With the end of the CDC's Title 42 order, these releases are expected to increase dramatically.

Border officials have expressed concern that the end of the CDC's Title 42 order—on top of an already historic level of illegal crossings and facilities over capacity—“will precipitate another crisis similar to the mass arrival in Del Rio, Texas, last September of Haitian migrants who waded across the Rio Grande and formed a tent city.”¹⁰ Reportedly, DHS predicts that as many as 12,000 to 18,000 illegal border crossers per day would attempt to cross once the CDC's Title 42 order is lifted.¹¹ Even former DHS Secretary Jeh Johnson once stated that over 1,000 apprehensions per day “was a relatively bad number” that “overwhelms the system.”¹² He noted, during the surge in crossings in the spring of 2019, that “I cannot begin to imagine what 4,000 a day looks like, so we are truly in a crisis.”¹³ We are experiencing that crisis now.

If current apprehension levels—which are already well above 5,000 per day on average—are indicative of a crisis, 12,000 to 18,000 illegal border crossers per day will be a catastrophe. The decision to rescind CDC's Title 42 order is basically gifting a pandemic relief package for Transnational Criminal Organizations that control the human smuggling routes and crossings.

⁶ U.S. Department of Homeland Security, U.S. Customs and Border Protection, *Southwest Land Border Encounters*, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed February 22, 2022, sort by Component, U.S. Border Patrol).

⁷ Sullivan, Eileen, *Migrants Left in Limbo After Policy Change to Help Busy Border Officials*, N.Y. TIMES (Feb. 14, 2022).

⁸ Miroff, Nick & Maria Sacchetti, *Biden faces influx of migrants at southern border amid calls to lift pandemic restrictions that aided expulsions*, WASH. POST (Mar. 24, 2022).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Hesson, Ted & Kristina Cooke, *U.S. preps for possible spike in border crossings, as officials mull lifting COVID curbs*, REUTERS (Mar. 29, 2022).

¹² Ernst, Douglas, *Jeh Johnson says border crisis is real: 'I cannot begin to imagine' 4K apprehensions per day*, WASH. TIMES (Mar. 29, 2019).

¹³ *Id.*

Cartels have already profited from the lawlessness bringing contraband, including highly lethal fentanyl, and criminal aliens into the U.S. This will continue, but at an accelerated rate.

Rescinding CDC's Title 42 order will also further erode border security and cede more power to the cartels. Currently, over 1,000 illegal border crossers per day are categorized by USBP as "gotaways," evading apprehension entirely,¹⁴ with over 220,000 gotaways reported since just October 2021.¹⁵ USBP personnel are already stretched beyond their capacity. With the expected and dramatic border surge, even more illegal aliens will evade detection. And those aliens could include criminals and terrorists. Public reporting indicates that at least several potential terrorists were apprehended by USBP personnel after illegally crossing the border last year.¹⁶ It is likely that the numbers of terrorists apprehended is much higher than publicly known. Prior to his departure, former Border Patrol Chief Rodney Scott said that the USBP was encountering "[Aliens with hits on the Terrorist Screening Database] at a level we have never seen before. That's a real threat."¹⁷

To assist Republicans on the Committee on Oversight and Reform understand DHS's preparations to avoid a catastrophic situation on the southwest border following CDC's rescission of the Title 42 order, please provide the following documents and information, no later than April 19, 2022:

1. All documents and communications between the DHS and CDC from August 2, 2021 to the present regarding whether to continue or rescind the CDC's Title 42 order;
2. All documents and communications containing any estimate or projection of the numbers of illegal border crossers expected to arrive in the United States upon termination of the CDC's Title 42 order, whether in the aggregate across the southwest border or disaggregated by sector;
3. All documents and communications relating to any assessment of USBP facilities' capacity to provide a safe and healthy temporary custodial environment for apprehended illegal border crossers and USBP personnel upon termination of the CDC's Title 42 order;
4. An estimate of total current processing capacity for USBP facilities (total hold capacity measured in persons) compared to the actual usage of USBP facilities, disaggregated by sector;

¹⁴ Miroff, Nick, *Border officials say more people are sneaking past them as crossings soar and agents are overwhelmed*, WASH. POST (Apr. 2, 2021).

¹⁵ Melugin, Bill & Adam Shaw, *220,000 illegal immigrants evaded Border Patrol since October: source*, FOX NEWS (Feb. 23, 2022).

¹⁶ See e.g. Ainsley, Julia, *CBP stopped two men on terrorism watchlist at border, says such incidents are rare*, NBC NEWS, (Apr. 6, 2021); Giaritelli, Anna, *Border Patrol stops suspected terrorist from Saudi Arabia in Arizona*, WASH. EXAMINER (Dec. 20, 2021).

¹⁷ Giaritelli, Anna, *Suspected terrorists crossing border 'at a level we have never seen before,' outgoing Broder Patrol chief says*, WASH. EXAMINER (Aug. 16, 2021).

5. An estimate of the projected required usage of USBP facilities upon termination of the CDC's Title 42 order, disaggregated by sector, together with any plans to augment that capacity on a temporary or permanent basis;
6. An explanation of the preparations being undertaken by the DHS and all DHS components to prepare for or respond to an influx of illegal border crossers upon termination of the CDC's Title 42 order;
7. All documents and communications referring to any plans to increase USBP's ability to apprehend or process illegal border crossers through assignment of temporary details of employees from other DHS components or from outside of DHS, including any assessment of the impact on the mission of those employees' current duty stations;
8. All documents and communications between DHS and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) relating to any preparations to expedite processing or adjudication of claims arising under Title 8 of the United States Code upon termination of the CDC's Title 42 order;
9. All documents and communications in the custody and control of DHS or any DHS component referencing or relating to any assessment of border security and USBPs ability to interdict illegal border crossers and illicit narcotics including fentanyl upon termination of the CDC's Title 42 order;
10. All documents and communications in the custody and control of DHS or any DHS component referencing or relating to any assessment of the likely actions of Transnational Criminal Organizations in response to termination of the CDC's Title 42 order;
11. All documents and communications regarding the ability of U.S. Immigration and Customs Enforcement to detain all aliens subject to the mandatory custody provisions of sections 236(c) and section 241(a)(2) of the Immigration and Nationality Act upon termination of the CDC's Title 42 order.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Secretary Mayorkas

April 5, 2022

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Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Jody Hice
Ranking Member
Subcommittee on Government
Operations



Glenn S. Grothman
Ranking Member
Subcommittee on National Security



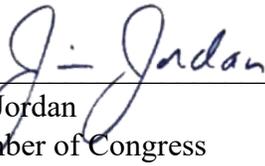
Michael Cloud
Ranking Member
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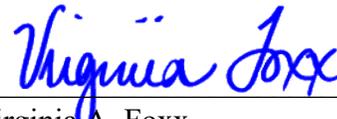
Ralph Norman
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Nancy Mace
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Subcommittee on Civil Rights and
Civil Liberties



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Member of Congress



Virginia A. Foxx
Member of Congress



Bob Gibbs
Member of Congress



Clay Higgins
Member of Congress



Pete Sessions
Member of Congress

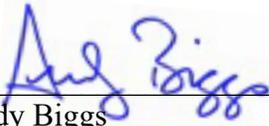


Fred Keller
Member of Congress

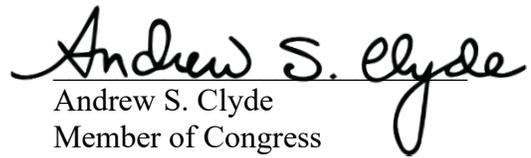
Secretary Mayorkas

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Andy Biggs
Member of Congress



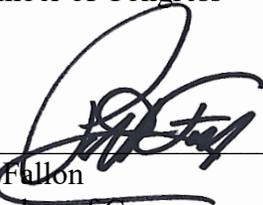
Andrew S. Clyde
Member of Congress



C. Scott Franklin
Member of Congress



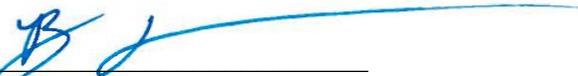
Jake LaTurner
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Pat Fallon
Member of Congress



Yvette Herrell
Member of Congress



Byron Donalds
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Gerald E. Connolly, Chairman
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman
Subcommittee on Economic and Consumer Policy

The Honorable Ro Khanna, Chairman
Subcommittee on Environment

The Honorable Jamie Raskin, Chairman
Subcommittee on Civil Rights and Civil Liberties